



International Law Against Countries That Have Introduced Sanctions Pollution

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ARTICLE INFO

Keywords:

International Law, Pollution, Sea

Date received : 05 Sept 2023

Revision date : 15 Nov 2023

Date received : 16 Des 2023

ABSTRACT

The 1982 International Convention on the law of the sea or UNCLOS describes the rules, actions, and uses of the sea nationally and/or internationally. Pollution activities arise from various sectors and polluters not only the state but the existence of corporations is also able to trigger the emergence of pollution, especially in the field of waters that will seep through the flow of water and also follow the wind wave (wind wave) to enter the territory of another country. Research conducted is normative legal research or doctoral research, based on the results of research that the settlement of international sea zinc has been described in the International Convention on Article 287 paragraph (1) Chapter XV UNCLOS 1982 on the selection of Settlement Procedures. In fact sanski that has been given is not implemented because the sanctioned countries do not put forward the principle of good faith.

INTRODUCTION

Laws relating to sea tides during several decades as the emergence of various principles that each contrary. A series of conferences have been held beginning in 1958 when the first international law of the Sea Conference in 1958 (KHL I), followed by the Second International Law of the Sea Conference in 1960 (KHL II), followed by the third international law of the Sea Conference in 1973 (KHL III). It ended in 1982 with the adoption of the 1982 International Convention on the Law of the Sea (UNCLOS 1982).³ the Convention entered into force on 16 November 1994 twelve months after obtaining the required 60 ratifications. Making regulations on the law of the Sea International namely the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) which was then agreed by the member states of the United Nations, is expected to

be able to defuse conflicts towards peace at sea (Ida Bagus Wyasa Putra, 2003).

Pollution of the marine environment means entered by humans directly or indirectly, materials or energy into the marine environment, including kuala, which results or may bring such adverse consequences such as damage to marine biological wealth and life in the sea, danger to human health, interference with activities at sea including fishing and other legitimate uses of the sea, deterioration in the quality of sea water usefulness and reduction of comfort (Andri G. Wibisana, 2017). directly or indirectly, materials or energy into the marine environment, including cause or may result in such adverse consequences as damage to marine life and marine life, danger to human health, disruption of marine activities including fishing and other lawful uses of the sea, deterioration in the quality of sea

water use and lack of comfort (Sukanda Husin, 2016).

To get rid of the problems associated with the sea source of oil spills in a country that simultaneously following the water flow of coastal countries results in a lack of productivity at sea. Oil spill accidents in foreign countries not only impact on coastal areas but also have an impact on neighboring countries geographically close (Malcolm M N Shaw, 2013). One of the major problems with oil protracted settlement exactly ten years ago occurred until it is currently unresolved. On August 21, 2009, a bridge leak occurred Montara oil well located in Perth, Australia managed by Thai companies, namely The Petroleum Authority of Thailand Exploration and Production Australasia (PTTEP Australasia), The Petroleum Authority of Thailand Exploration and Production Public Company Limited (PTTEP), dan The Petroleum Authority of Thailand Public Company Limited (PTT PLC).

In international law, dispute resolution is the most important and decisive stage. The role of international law in dispute resolution indicates that international law is an essential guideline for the parties to the dispute (Andri G. Wibisana, 2017). Explanations of various methods have been presented by international law which may be settled by the parties amicably or using a settlement forum applicable to Article 33 paragraph (1) of the Charter of the United Nations. So the author is interested to conduct research with the title International Law Against Countries That Have Introduced sanctions Pollution.

METHOD

This study employs normative legal methodologies. This study utilizes both primary and secondary legal resources. Through the study of literature, the technique for gathering legal materials is carried out. Normative research methods in which research begins with *das solen* (law on paper) and ends with *das sein* (law in actions). This research is classified as *ke* in normative legal research based on a literature review or a review of merely secondary sources. It is said to be normative because the law is assumed to be an autonomous entity whose enforceability is determined by the law itself and not by external factors. This research methodology employs the Statute and Conceptual approaches. Primer Legal Material, which is authoritative legal material, has authority in the form of laws and regulations relevant to this paper's discussion (Ariman Sitompul, 2023)

RESULTS AND DISCUSSION

The Montara oil well case is still in the process of being resolved through two channels, namely the filing of a class action lawsuit in the Australian Federal Court by representatives of NTT's tumpuk laut farmers and the filing of a lawsuit by the Indonesian government in the Central Jakarta District Court. Seeing that marine pollution is very detrimental to all mankind, serious treatment is needed in solving cases related to marine pollution. Marine pollution comes from various sources, one of which is the failure of the process of exploitation of oil and other products (Sefriani, 2011).

Oil spill that flows into the Timor Sea, it caused the presence of wind waves (water waves) that carry the oil it flows into the timor Sea. For that so far there has been no decision the court determines which party is guilty. But when a the state has been found guilty and convicted by one of the judiciary for example, such as the International Court of Justice (ICJ) or the International Court of Justice, then the country with a good effort (good faith) to implement the content of the ICJ decision. The Manila Declaration of principles good faith, it can be said that good faith is the main requirement in dispute resolution. Clearly stated in Section 1 of Article 5 The Manila Declaration requires the existence of the principle of good faith in efforts dispute resolution first. Good faith is a principle very fundamental and fundamental in any dispute resolution Interstate. There is no time limit to the use of this principle because it aims at more than one stage, namely the first in order to prevent the emergence of disputes that can affect the harmonization between countries one with the other, both the existence of this principle is also recommended post dispute resolved. If the state wants to implement no other power can compel the state to do it. It is based on the principle of *par im parem no habet empire*, then in this case the apparent weakness of international law because the sovereignty of a country it can not be contested by sovereignty of any country (Diana Kusumasari, 2011).

The existence of a declaration initiated by Australia to Chapter XV UNCLOS 1982 on Dispute Resolution to make Indonesia confused to be able to solve this case. Because the perpetrators of Timor Sea pollution is a private party that is the company Thailand is located in Australia. The truth is that before using the settlement method in Article 287 paragraph (1) , the settlement of cross-border disputes must be through negotiation or negotiation in advance. But because of negotiations between Indonesia and Australia deadlock (dead lock) in solving the case, then both parties have the right to

submit this case to the judiciary ICJ, ITLOS, and International Arbitration.

Should until now Indonesia and PTTEP company already choose a solution that will be used in solving the case. UNCLOS 1982 can be used as an instrument in solve the problem, but the company PTTEP not a complete solution to the problem of marine pollution montara oil well leak. Declarations that have been triggered Australia to Chapter XV UNCLOS 1982, is not a reason can be fully accepted to resolve the problems that occur in Indonesia and PTTEP company (Radifan Taufiq Hanisifanto,2018).

International law wherever possible used as a basis in presenting arguments. Arguments based primarily on law international law. Especially when dealing with diplomats or government representatives from Western countries, such as Europe, the US and Australia it has a strong tradition of law. Therefore, arguing and arguing with them can not be other than using the means they.

That the states parties to the dispute about interpretation or application. This convention has agreed to by peaceful means of their own choosing, the procedures set forth in this chapter shall apply only in the event that no settlement by such means is reached and agreement between the parties does not exclude the possibility of any further procedure.

Efforts to end international settlement has a verdict binding in nature. International decisions must be made and followed by the parties to the dispute, but in this case the company PTTEP and Australia has not yet solved this problem through efforts international settlement to Indonesia. So until now not there is a ruling that contains sanctions against the Australian government which perpetrators of marine pollution is perusahaan owned by Thailand which is in Australia)Mhd. Nasir Sitompul., & Ariman Sitompul. (2023). Australia and Indonesia need to propose this problem to the way of international settlement in accordance with Article 280 of UNCLOS 1982, namely Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice (Hikmahanto Juwana,2018).

The disputed state has the right to resolve each one according to the path they choose. With so there will be a decision that contains sanctions that must be lived by state actors in order to cope with pollution and prevent the occurrence of pollution of the sea. Decisions that are final and must be followed by all countries in dispute. As already explained in enactment of Article 290 paragraph (1) UNCLOS 1982 which states that when a dispute is submitted

as it should be to a court or court that prima facie argues that the state shall have jurisdiction under this chapter or Chapter XI Section 5, then the court or the court can determine the action while anything that is considered adequate according to the circumstances to maintain the rights of each party in the dispute or to prevent heavy losses to the marine environment, while waiting for the final decision.

So far Indonesia has asked for compensation (compensation) and filed a class action suit in the Federal Court of Australia, the smell of PTTEP company actually never menggris at all request for compensation that has been submitted by Indonesia. There is no provision or decision that binds the two countries to be able to move forward menggugat Australia as the country where the company was founded PTTEP for non-compliance to compensate for marine pollution it happened in the East Sea. If there have been sanctions imposed such as form of economic sanctions, it will make it easier for Indonesia to challenge the decision eksekutorial to Australia for sanctions the judgment in this case may be overturned.

Article 41 U.N. The Charter states that the restriction of economic sanctions is one of the dispute resolution to avoid the use of violence and war in dispute resolution. Economic sanctions are a way of resolving disputed disputes legality, because of its effectiveness and the impact on the state country whose citizens are given economic sanctions, or on international relations between the countries involved.

Based on bilateral or multilateral agreements between Indonesia with one or more countries, in accordance with the principle of reciprocity. Only this road that can penetrate the Prohibition of Article 436 Rv". The procedure for the execution of foreign court decisions by in Indonesia read more explained by M. Yahya Harahap quoting from Article 436 Verse (2) Rv that the only way to execute a foreign court ruling in Indonesia is to make the decision as a basis law to file a new lawsuit in the courts of Indonesia. Then, the decision of the foreign court by the Indonesian court can be made as evidence of writing with the power of binding it casuistry, namely: a) can be valued as an authentic deed that has the power of proof perfect and binding; or b) only as a legal fact freely assessed in accordance with judge's judgment.

The emergence of the verdict means that the attachment of the state dispute for the realization of the sanctions contained in the decision such. The fact is that there are still countries that do not obey the sanctions that have been obtained, it shows that the state does not obey applicable international law. Disobedience in running sanctions is a touchstone of

the state does not respect the opponent's country in dispute (Ariman Sitompul, 2023).

Fostering the country's adherence to international law, Chayes give an example of 2 alternative solutions that contradict each other. The first through enforcement mechanisms that apply many sanctions such as economic sanctions, membership sanctions up to unilateral sanctions. Against this first mechanism Chayes managed to conclude that the application of this mechanism is ineffective, requires high costs, can cause legitimacy problems and actually many fail. The second alternative offered by Chayes is the management model, where obedience is not spurred by violence or sanctions but through a model of cooperation in obedience, namely through the process of interaction justification, discourse, and persuasion. Obedience to the law international no longer solely because of fear of sanctions but more on concerns of status reduction through loss of reputation as a good member of the community of nations (Nafa Fadhillah, Nasir Sitompul, 2022).

See the state is the subject of most international law qualified among other subjects of international law, the state it is advisable to implement the sanctions that have been imposed in accordance with the verdict of an international dispute. If the state does not run sanctions that have been received, the country will be excluded by their credibility as a nation will also decline. Exclusion resulted in a lack of confidence a country to get along with the international community.

The fact is that the state obeys the rules for one reason that is for maintained harmonization of relations between states. Emergence of factors interest and calculation of profit and loss on an event make interstate relations closely related. Small big keuntunganyang will be obtained is important in maintaining the integrity and relations between the two countries. Dealing with international law is not there is an imposition, then both countries act on personal will as a bilateral or multilateral organization. Expected all state activities are still within the agreement corridor international (Mhd.Nasir Sitompul, Ariman Sitompul, 2022).

Internal ties of a country resulted in stronger it is the responsibility of each state to carry out such sanctions. Referencing in the conflict between Indonesia and Australia is sengketa law, then must be decided based on the principles and rules of law international. The content of political elements contained therein, making Montara case is difficult fatherly filed according to settlement international disputes. As a result to date, there is no strength laws

that can be accounted for in the form of sanctions imposed according to the international ruling for Australia to heed the request Indonesia to pay compensation for sea pollution.

CONCLUSION

Polluting countries already receive sanctions then the polluting countries have the right to run these sanctions by putting forward the principle of good intentions to run decisions that have been handed down through the settlement decision dispute and / or may carry out the execution of the judgment. However the execution of such a ruling cannot be carried out on the territory of the Republic Indonesia. But if the foreign court ruling is arranged specifically in its own laws, bilateral agreements, or multilateral then the foreign court decision can be execution in the territory of the Republic of Indonesia.

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International Asia Of Law and Money Laundering

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