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## Legal Basis and Procedures Unification on Oil Spill Damage Compensation In International Convention on Civil Liability for Oil Pollution Damage (1992) and The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001): on Indonesian International Private Law Perspective

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# **Legal Basis and Procedures Unification on Oil Spill Damage Compensation In International Convention on Civil Liability for Oil Pollution Damage (1992) and The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001): on Indonesian International Private Law Perspective**

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# THE APPLICABLE LAW AND AUTHORIZED FORUM ACCORDING TO THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (1992) AND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE (2001): INDONESIAN INTERNATIONAL PRIVATE LAW

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## Abstract

*Oil spills into the sea have always been a major threat to the environment since the increase of oil and hazardous substances trade by sea-going vessels and seaborne craft since the 1960s. Consequently, it became necessary to ensure sufficient compensation for persons who suffer from damage caused by pollution emerging from the discharge of oil from ships. The Civil Liability Convention and Bunker Convention grant compensation for parties suffering from oil pollution damages. Despite being established as an attempt to unify international legal basis and procedures on oil spill damage compensation, the conventions are often defeated by States' pursuit of civil liability by choice of law or criminal liability. These variations of States' court decisions come in regards to which institution serves a greater benefit for the liability of oil pollution damage. This paper evaluates the implementation of the conventions from the perspective of Indonesian Private International Law with the use of doctrinal legal research methods through a study of conventions and regulations, as well as three selected case studies of the Torrey Canyon incident, the MT Prestige case, and the MT Princess Empress case. From the cases, we found that the convention can be advantageous in cross-border cases due to its large number of members and recognition and enforcement clause. Hence, this paper aims to provide recommendations for utilizing the Civil Liability Convention and Bunker Convention to settle oil pollution damage compensation in consideration of Indonesian Private International Law.*

**Keywords:** *Bunker Convention, Civil Liability Convention, Oil Spills Damage Compensation, Private International Law*

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## I. INTRODUCTION

Water transportation has been one of the most prominent means of transport for goods since the start of international trade. Alongside the development of sea-going vessels and seaborne crafts following the rapid growth of international trade within the last century, the risk of ship-related incidents also increased exponentially. One of the most prominent forms of maritime incidents is oil spills.

One of the first and most serious oil spill cases was the Torrey Canyon case, which sparked the idea of an international convention to regulate the mechanism for oil spill damage compensation. The Torrey Canyon was a vessel built in 1959 and registered in the State of Liberia.<sup>1</sup> The vessel went aground within England's territory while carrying crude oil as cargo in 1967. The incident caused approximately 60.000 tons of its cargo to spill into the sea, eventually reaching the beaches of England. The British Government then estimated that the total losses reached £6.000.000, which includes expenses spent on the usage of bombs to blow the vessel up and detergents to remove the oil from the water.<sup>2</sup>

Not only do oil spill incidents cause pollution that damages the marine ecosystem, but they also more often than not result in losses to various parties. This calls for sufficient regulations to accommodate affected parties to demand compensation. For this purpose, the International Maritime Organization administered an International Convention on Civil Liability for Oil Pollution Damage ("**CLC Convention**") in 1969, which was then amended by the 1992 Protocol, for oil spill damages caused by vessels carrying oil as cargo.<sup>3</sup> Another convention, the International Convention on Civil Liability for Bunker Oil Pollution Damage ("**Bunker Convention**"), was then adopted in 2001 for oil spill damages caused by any other types of vessel.<sup>4</sup>

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<sup>1</sup> Comité Maritime International, *Torrey Canyon* (Belgium: Comité Maritime International, 2018), 3.

<sup>2</sup> *Ibid*, 3-4.

<sup>3</sup> *Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969*, November 27, 1992, U.N.T.S. 1956. Next will be referred to as CLC Convention 1992.

<sup>4</sup> *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*, U.N.T.S. March 23, 2001. Next will be referred to as Bunker Convention 2001. The CLC Convention and the Bunker Convention mentioned together will hereinafter be referred to compoundly as "CLC and Bunker Convention" or "the Conventions".

However, despite being ratified by a significant number of States, the Conventions have not been widely used as a legal basis in oil spill cases.<sup>5</sup> Many States often opt for other routes to settle the cases, such as by pursuing civil liability based on choice of law or criminal liability. This raises questions on the effectiveness of the Conventions in regulating compensation claims and how Indonesia, as a Contracting State to both Conventions, can utilize the Conventions to their full potential. We use the doctrinal legal research method as a tool to analyze what the law is through secondary data such as doctrines, existing case law, statutes, and previous legal research and literature.

This paper reviews the provisions in the CLC and Bunker Convention regarding the mechanism of claiming compensation in Section 1. Section 2 will then go over three oil spill cases and their connection, or lack thereof, to the CLC and Bunker Convention. Lastly, Section 3 will demonstrate the relevance of the Conventions in Indonesia, as well as why they should be implemented to resolve oil spill damage compensation claims, from the Indonesian private international law perspective.

## **II. DISCUSSION**

### **A. CLC and Bunker Convention's Mechanism of Compensation**

CLC and Bunker Convention essentially were established to unify the procedure of compensation claims that are caused by oil spills from sea-going vessels and any seaborne craft of any type. As the policy of the Convention regulates how courts of state parties can hear and decide for oil spill damage compensation claims and how it should be recognized and enforced by other state parties, this section will primarily examine the CLC and Bunker Convention from the perspective of private international law.

#### **1. The Difference of CLC and Bunker Convention**

While CLC and Bunker Convention principally deal with hazardous oil spills from sea-going vessels and seaborne crafts, CLC and Bunker Convention have subjected different types of oil, sea-going vessels and seaborne crafts, limit of liability, and compulsory insurance that is required for ships. CLC Convention, in specific, applies to the type of persistent oil carried as cargo or in the

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<sup>5</sup> As of 2023, the CLC Convention has 146 Contracting States and the Bunker Convention has 106 Contracting States. See on: "Status of Conventions", International Maritime Organization, accessed 10 December 2023, <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>.

bunker of the ship,<sup>6</sup> while Bunker Convention refers only to the bunker oil that is used or intended to be used for the ship.<sup>7</sup> It implies that the CLC Convention specifically applies to the types of ships that carry oil in cargo or the bunker, such as tanker ships,<sup>8</sup> while the Bunker Convention applies to every possible kind of ship that uses oil to operate.<sup>9</sup>

It should be noted that these differences further imply a distinct regulation for the limit of oil spill damage liability and the requirement of compulsory insurance for the ship. The amount of liability in the CLC Convention is limited to, in consideration of the Fund Convention as a supplementary convention to the CLC Convention, an aggregate amount of 4.510.000 units of account for a ship with tonnage under 5.000 units, and a ship with excess tonnage each additional unit of tonnage adds 631 units of account to the amount of 4.510.000 previously mentioned.<sup>10</sup> Bunker Convention, however, decides that the limit of liability is based on the applicable national or international law, for example, the Convention on Limitation of Liability for Maritime Claims 1976.<sup>11</sup>

In the context of insurance, both the CLC Convention and Bunker Convention provide for mandatory insurance requirements according to the type of vessel. CLC Convention's policy states that the ship owner is obliged to have insurance or any financial security for any ship that carries more than 2.000 tons of oil in bulk or cargo.<sup>12</sup> Bunker Convention, in this case, requires insurance or any financial security for a ship with a gross tonnage of more than 1.000 tons.<sup>13</sup>

## **2. CLC and Bunker Convention: The Procedure of Claim**

While the scope and relevant things mentioned above are different for the CLC and Bunker Convention, both of the conventions require the same procedure method to claim compensation as a result of oil spill damage. For illustration, when a ship (the carriage type of ship or all kinds of ships) lets tons of oil spill into a sea in a territory, any person, a legal entity, or a state who experiences loss from oil spill damage may sue the liable owner of the ship to pay compensation. This claim should be addressed to the court(s) of any State that is part

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<sup>6</sup> CLC Convention 1992, Art. 1 No. 5.

<sup>7</sup> Bunker Convention 2001, Art. 1 No. 5.

<sup>8</sup> CLC Convention, Art. 1 No. 1.

<sup>9</sup> Bunker Convention 2001, Art. 1 No.1.

<sup>10</sup> CLC Convention 1992, Art. 5.

<sup>11</sup> Bunker Convention 2001, Art. 7.

<sup>12</sup> CLC Convention 1992, Art. 6.

<sup>13</sup> Bunker Convention 2001, Art. 6.

of the CLC and Bunker Convention, who expend their resources to take preventive measures over the damage caused by the oil spill.

CLC and Bunker Convention then offer each state that is competent to adjudicate the case to apply its national procedure law. In technicality, CLC and Bunker Convention do not meddle with the process of court procedure from the moment the lawsuit is registered until the final judgment is made. The Conventions regulate matters before the occurrence of a claim such as the funding of the compensation and the required insurance, matters outside the judgment of the claim, appointing a court of competent jurisdiction to settle the claim, and regulating the recognition and enforcement of the judgment. Other distinction of each Conventions are implies on **Table 1.**

**Table 1.** Comparison of CLC Convention 1992 and Bunker Convention 2001

	CLC Convention 1992	Bunker Convention 2001
Type of Ship	Any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo	Any seagoing vessel and seaborne craft, of any type whatsoever
Type of Oil	Persistent hydrocarbon mineral oil carried on board a ship as cargo or in the bunkers of such a ship	Hydrocarbon oil used or intended to be used for the operation or propulsion of the ship, and any residues of such oil
Amount of Limit of Liability	The aggregate amount of 4.510.000 units of account for a ship under 5.000 units of tonnage; an additional 631 units of account will be added to the 4.510.000 units for any excess of tonnage	The limit of liability is based on the applicable national or international law
Compulsory Insurance	A ship that carries more than 2.000 tons of oil in cargo or bulk	A ship with a gross tonnage of more than 1.000 tons.

Liable Parties	The person or persons registered as the owner of the ship	The owner, including the registered owner, bareboat charterer, manager, and operator of the ship.
Liability	Strict Liability	Strict Liability
Claim Procedure	Civil lawsuit in the competent court	Civil lawsuit in the competent court

## B. Cases Related to Oil Spill Damages Compensation

We chose three relevant cases to measure the effectiveness of the convention. Having said that, due to the lack of cases in which the Bunker Convention has been applied as the legal basis for oil spill proceedings, all of the cases are solely related to the CLC Convention. The first case is the MV Amoco Cadiz case, where the claimant did not base their claim on the CLC Convention, despite the convention having jurisdiction over the matter. The second is the MV Prestige case, which is among the well-known cases where the CLC convention was used as the applicable law. The last case is the MT Princess Empress case, which is under the scope of the CLC Convention but was never litigated. Three of the cases chosen were selected because they each chose a different set of laws and dispute settlement forums. We shall be able to evaluate from each of these cases why the relevant case selected the CLC Convention as the legal basis and procedure or chose not to, as well as an overview of the convention's benefits and drawbacks.

MV Amoco Cadiz is one of the most significant cases related to environmental damage caused by oil spills from ships. It is the first case that fell within the scope of the CLC Convention since its enactment. The incident began when MV Amoco Cadiz was chartered by Shell International Petroleum in February 1978 to transport 200,000 metric tons of crude oil from Kharg Island in Iran to Rotterdam.<sup>14</sup> On March 15, 1978, the ship was hit by an extreme storm as it sailed to Western Europe but experienced no problem and decided to continue despite the weather. The very next day the steersman reported that the steering gear had failed and the captain ordered the crew to stop the engine and informed nearby ships about their condition. The crew were unable to repair the damage whilst the ship kept drifting towards the French coast due to the heavy

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<sup>14</sup> James W. Bartlett II., "In re Oil Spill by the Amoco Cadiz - Choice of Law and a Pierced Corporate Veil Defeat the 1992 Civil Liability Convention," *Maritime Lawyer* 10, no. 1 (Spring 1985): 1.



wind. Finally, a tugship named Pacific, owned by *Bugsier Reederei und Bergungs S.A.*, was called by the captain. However, after a couple of attempts, they were unable to pull the ship out to safety and it was grounded on the Portsall Shoal by the evening. The wind had driven the ship onto rocks on the shoal which ripped it apart and eventually broke it into three different compartments. The entire crude oil cargo was spilled into the Brittany Coast causing one of the greatest oil spill ecological disasters.<sup>15</sup>

MV Amoco Cadiz was an oil tanker registered in Liberia, the ship was built by a construction contract between Astilleros Espanoles, a Spanish shipbuilder company, and Amoco Tankers Company (“**Tankers**”) which did not exist until 4 days after the contract was signed in July 30, 1970. Tankers was a subsidiary corporation wholly owned by another wholly-owned subsidiary of Standard Oil Company (“**SOC**”) which is an American corporation based in Indiana with its principal office in Chicago. The daily operation of the vessel is fully controlled and overseen by another SOC subsidiary, Amoco International Oil Company (“**AIOC**”), a Delaware corporation that has its principal office in Chicago. The AIOC was also responsible for the maintenance and repair of the vessel. However, the registered owner of the ship was yet another SOC subsidiary, Amoco Transport Company (“**Transport**”), a Liberian corporation.<sup>16</sup>

From the PIL perspective, the case was extremely complex as it had a lot of connecting factors, consequently, several different laws could govern the incident. The incident not only caused massive losses to the French Government due to the costs of the cleanup operations but was also detrimental to French individuals, businesses, municipalities, and administrative departments (“**Cotes du Nord parties**”) due to the disruption of tourism, amenities, and marine resources along the northern west coast of France.<sup>17</sup> At the time, France had already ratified the CLC Convention<sup>18</sup> which implies that pollution damage had occurred in the territorial sea of a Contracting State thus, based on Article 2, the convention shall apply exclusively as the governing law of the incident.<sup>19</sup>

According to Article 3 of the CLC Convention, the owner of the ship shall be solely held liable for any pollution damage caused by the ship unless the damage resulted from another personal act with the intention to

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<sup>15</sup> Linda Rosenthal and Carol Raper, “Amoco Cadiz and Limitation of Liability for Oil Spill Pollution: Domestic and International Solutions,” *Virginia Journal of Natural Resources Law* 5, no. 1 (Fall 1985): 261-262.

<sup>16</sup> James W. Bartlett II., “In re Oil Spill by the Amoco Cadiz”, 2-3.

<sup>17</sup> *Ibid.*

<sup>18</sup> “Status of Conventions”, International Maritime Organization, accessed 10 December 2023, <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>.

<sup>19</sup> CLC Convention, Art. 2.

cause such damage.<sup>20</sup> In this case, the registered owner of MV Amoco Cadiz is a Transport, Liberian corporation. Furthermore, Article 9 states that action to seek compensation may only be brought in the Courts of the Contracting State or States where the incident has caused pollution damage in its territory or preventive measures have been taken to minimize pollution damage.<sup>21</sup> It could be said that the convention, in contrast with the *lex loci delicti commissi* principle of ordinary tort, adheres to the principle of *lex loci damni* or the law of the place where damage occurred. Therefore, pursuant to the convention, the Claimants should file their claim in the court of France and the claim should be filed against Transport.

Despite that, both the Republic of France (“**France**”) and Cotes du Nord parties had chosen to not apply the CLC Convention as the ground of their claims but to use the United States domestic law (“**American Law**”). Against the convention’s principles, The Claimants had filed separate lawsuits against the Amoco Group in the United States District Court for the Southern District of New York and not in the French court. France opted to file a claim against SOC as the parent company and AIOC as the one who is responsible for the daily operation of the ship. Meanwhile, the Cotes du Nord parties named SOC, Transport, AIOC, Astilleros, the American Bureau of Shipping as the classification society for the ship, and Claude Philips, an employee of AIOC, as defendants.<sup>22</sup> We have identified two main reasons why the Claimants chose to apply American Law rather than the CLC Convention, namely that the convention did not offer adequate compensation and the liability claims can only be sought against the shipowner.

The United States District Court for the Southern District of New York declared that it has jurisdiction over the case based on the United States Constitution Article III Section 2 and 28 United States Code Section 1333(1). However, the Court stated that since the incident and damages occurred in France, based on the *lex loci* approach, the applicable law would have been French. Nevertheless, the Claimants had chosen the United States domestic law as the ground of their claim and since the French law did not differ from American Law, the Court decided to apply American Law.<sup>23</sup> As the United States is not a party to the CLC Convention, the CLC’s standards and limitations didn’t apply to the case. Moreover, the Court stated that even though the convention stated that only ship owners should be held responsible for damages, the CLC Convention did not prohibit action in tort against other parties besides the owner of the ship.<sup>24</sup>

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<sup>20</sup> CLC Convention, Art. 3.

<sup>21</sup> CLC Convention, Art. 9.

<sup>22</sup> James W. Bartlett II., “In re Oil Spill by the Amoco Cadiz...”, 3-4.

<sup>23</sup> Linda Rosenthal; Carol Raper, “Amoco Cadiz and Limitation of Liability for Oil Spill Pollution”, 262-263.

<sup>24</sup> James W. Bartlett II., “In re Oil Spill by the Amoco Cadiz”, 21.

After years of litigation, the court issued on April 18, 1984, that SOC and two of its subsidiaries, AIOC and Transport, were liable for damages caused by the incident without limitation.<sup>25</sup> The case later inspired the International Maritime Organization (“**IMO**”) to amend the convention in the same year to raise its liability limitation but in exchange included the “manager or operator of the ship” as parties who can’t be held liable for damages. However, the parent company remains exposed to unlimited liability for oil pollution damages caused by its subsidiary company.<sup>26</sup>

The next case, the Prestige spill, took place in November 2002. Motor Tanker Prestige (“**MT Prestige**”) sailed from Ventspils, Latvia to Singapore carrying 76,972 tons of heavy oil fuel. The ship encountered a winter storm near Spain’s Costa del Muerte. Captain Apostolos Mangouras, a Greek national, heard a loud bang from the side of the ship, and water started rushing into the ship. The ship’s engines were shut down and Mangouras called for help. However, the Spanish government instructed Mangouras to restart the ship’s engines and steer the ship away from the Spanish coastline. Mangouras refused to do so, claiming that the ship needed to be harbored as soon as possible to confine the leaking oil.<sup>27</sup> On November 19, 2002, the ship sank and snapped in two at the bottom of the Atlantic Ocean, two hundred kilometers away from the Spanish coastline after several attempts to tow it. Only 14,000 tons of the total cargo were salvaged.<sup>28</sup>

The incident caused 3,000 kilometers of European coastline to be contaminated by an extremely hazardous and carcinogenic substance, polynuclear aromatic hydrocarbons. The cleaning up cost of the oil pollution is estimated to exceed billions of euros due to the persistent substances.<sup>29</sup> At the time of the incident, Spain had already ratified the CLC Convention. The case had undergone two separate attempts of litigation in which both of them used the CLC Convention as the applicable law. The first litigation ensued in the United States District Court for the Southern District of New York, and the second one later in the High Court of Galicia, Spain. Similar to the MV Amoco Cadiz case, the MT Prestige case is a relatively complex case due to the amount of connecting factors present. MT Prestige is an oil tanker with a Bahamian flag, owned by a Liberian company. The ship was operated by a Greek corporation named

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<sup>25</sup> Linda Rosenthal; Carol Raper, “Amoco Cadiz and Limitation of Liability for Oil Spill Pollution”, 259.

<sup>26</sup> James W. Bartlett II., “In re Oil Spill by the Amoco Cadiz...”, 21.

<sup>27</sup> “Frontline/World. Spain - the Lawless Sea. The Story.” PBS, accessed December 11, 2023, <https://www.pbs.org/frontlineworld/stories/spain/thestory.html>.

<sup>28</sup> Robin F. Hansen, “Multinational Enterprise Pursuit of Minimized Liability: Law, International Business Theory and the Prestige Oil Spill,” *Berkeley Journal of International Law* 26, no. 2 (2008): 415-416.

<sup>29</sup> *Ibid.*: 415-416.

Universe Maritime Ltd. and the ship was chartered by Crown Resources Inc., a Swiss corporation.<sup>30</sup>

At the first attempt of the litigation, the Kingdom of Spain (“**Spain**”) filed a claim against American Bureau Shipping Inc. (“**ABS**”), an American ship classification society in the United States District Court for the Southern District of New York. The ABS was responsible for the classification, certification, and inspection of the ship and was the issuer of the certification that stated MT Prestige as fit to carry fuel cargo.<sup>31</sup> The claim however was dismissed by the Court for two main reasons, i.e. 1) According to Article 3(4) of the CLC Convention, ABS shall be qualified as “other person who without being a member of the crew, performs services for the ship”. It means that the ABS is exempted from liability and can not be sought after for compensation unless Spain can prove that the damages of the incident had resulted from ABS's personal act deliberately done with the intent to cause such damage, or recklessly and with knowledge that such damage is likely to occur. However, Spain was not able to do so therefore the ABS is not liable. 2) Article 9(1) of the convention, limits the choice of forum for action to claim compensation from damages. The claim shall be brought in the court of the state where the incident occurred or where precautions were taken to reduce pollution damage. Moreover, The United States is not a State party of the convention and the claim may only be adjudicated by a court of a State party. Following the dismissal, Spain did not appeal.<sup>32</sup>

In 2012, Spain attempted to file a claim in its High Court of Galicia, where the civil liability claims were accompanied and grouped with criminal claims in a single procedure and resolved by the criminal court. Spain joined by France pursued civil liability claims against the owner of the ship which is Mare Shipping Inc., London Steam-Ship Owners' Mutual Insurance Association (“**London Club**”) as the ship insurer, and International Fund for Compensation for Oil Pollution Damage (“**IOPC Fund**”). Meanwhile, criminal claims were brought against Mangouras and several other crews.<sup>33</sup> Article 5 of the CLC Convention allows claims for compensation to be brought directly against the insurer or

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<sup>30</sup> *Ibid.*: 419.

<sup>31</sup> Thomas J. Schoenbaum, “The Deepwater Horizon Oil Spill in the Context of the Public International Law Regimes for the Protection of the Marine Environment: A Comparative Study,” *University of San Francisco Maritime Law Journal* 25, no. 1 (2012-2013): 20-21.

<sup>32</sup> “Reino de Espana v American Bureau of Shipping Inc: CML Cmi Database.” Reino de Espana v American Bureau of Shipping Inc, National University of Singapore, Updated February 1, 2008, <https://cmlcmidatabase.org/reino-de-espana-v-american-bureau-shipping-inc>.

<sup>33</sup> “Spain v. Apostolos Mangouras & Others (‘prestige’ Case).”, Climate Case Chart, Climate Change Litigation, updated September 16, 2022, <https://climatecasechart.com/non-us-case/spain-v-apostolos-mangouras-others-prestige-case/>.

person/institution that provides financial security for the ship owner's liability<sup>34</sup> thus it is lawful for Spain and France to name the London Club and IOPC fund as defendants. The convention also does not prohibit Spain from pursuing criminal liability.

Problems arose when London Club, as the insurer of the ship, refused to participate in the proceeding on the basis of the insurance contract between Mare Shipping Inc. with London Club. One of the contract clauses clearly stated that "No Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any such difference or dispute unless he has first obtained an Arbitration Award". The High Court of England and Wales ("**English Court**") issued a decision that the claims were arbitrable hence Spain and France claims shall be brought into arbitration due to the valid clause in the insurance contract. The London Club initiated arbitration proceedings in London in which Spain and France refused to participate.<sup>35</sup> Nonetheless, the proceedings in the High Court of Galicia continued and later issued a decision that held Mare Shipping Inc., London Club, and IOPC Fund liable.<sup>36</sup>

According to Article 10 of the CLC Convention, the judgment shall be enforceable in each Contracting State without ordinary forms of review immediately as the formalities required have been complied with.<sup>37</sup> Both the United Kingdom and Spain are a Contracting State of the Convention<sup>38</sup> therefore, in theory, the judgment should be enforced immediately. On 25 March 2019, Spain made an application to the English Court on the basis of Article 33 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters which were later granted by the court on 28 May 2019. London Club appealed and argued that the judgment was contrary to public policy, inter alia the principle of *res judicata*. The English Court decided to put the proceeding on hold and refer to the Court of Justice of the European Union ("**CJEU**") ruling. In June 2022, the CJEU ruled that the arbitration clause and the subsequent English court rulings that gave effect to them could not prevent the Supreme Court of Spain's decision

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<sup>34</sup> CLC Convention, Art. 5.

<sup>35</sup> Erika Dixon, "When Sovereign Nations are Forced to Arbitrate: Spain and France and the Prestige Oil Spill," 6 *Y.B. Arb. & Mediation* 316 (2014): 316-319.

<sup>36</sup> "Spain v. Apostolos Mangouras & Others ('prestige' Case).", Climate Case Chart, Climate Change Litigation, updated September 16, 2022, <https://climatecasechart.com/non-us-case/spain-v-apostolos-mangouras-others-prestige-case/>.

<sup>37</sup> CLC Convention, Art. 10.

<sup>38</sup> International Maritime Organization, "Status of Conventions", accessed December 10, 2023. <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>.

from being recognized.<sup>39</sup> Nonetheless, the dispute remains unsolved in 2023.

The latest case related to an oil spill incident is the MT Princess Empress. The incident occurred on February 28, 2023, MT Princess Empress was en route to Ilioilo from Bataan, Philippines. The ship encountered severe weather conditions and the crew decided to abandon the ship due to engine trouble which eventually sank in Northeast of Pola Mindoro.<sup>40</sup> The oil spill spread to the most biodiverse sea area in the country, Verde Island Passage,<sup>41</sup> it's reported that at least 21 marine protected areas were affected by the oil spill.<sup>42</sup> Unlike the previous case, the MT Princess Empress did not involve many parties with different applicable law. The ship was an oil tanker with a Philippine flag, sailed in the territory of the Philippines, and owned by RDC Reield Marine Services, a Filipino corporation.<sup>43</sup> Despite the absence of foreign elements, the incident still fell under the scope of the CLC Convention since the Philippines is a State party to the convention. Regardless of the existence of the CLC Convention and national law as the legal basis of compensation claim, as per November 2023, the MT Princess Empress case was not brought into litigation.

The Shipowner's Club, the ship's insurance, instructed the victims of damages to file a direct claim to the insurance company. The lawyer representing the insurer, Valeriano del Rosario, even said that the oil spill's victims don't need to file individual civil lawsuits against the shipowner as it will take a long time to be compensated.<sup>44</sup> The victims who want to file direct claims have to provide sufficient evidence of cleanup cost and preventive measures, economic loss of those in fisheries and

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<sup>39</sup> Court of Justice of the European Union, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* No. C-700/20. Dated 20 June 2022. Accessed on 10<sup>th</sup> December 2023. <https://curia.europa.eu/juris/document/document.jsf?text=&docid=261144&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=576461>

<sup>40</sup> MT Princess Empress Incident Information Centre, accessed December 10, 2023, <https://www.princessempressinformationcentre.com/>.

<sup>41</sup> "Oriental Mindoro Oil Spill Threatens Philippine, Global Diversity", Rappler, updated November 1, 2023, <https://www.rappler.com/nation/luzon/oriental-mindoro-oil-spill-threatens-philippine-global-diversity/>.

<sup>42</sup> Gaea Katreena Cabico, "Oriental Mindoro Oil Spill Could Affect 21 Marine Protected Areas - DENR." Philstar.com, updated March 2, 2023, <https://www.philstar.com/headlines/climate-and-environment/2023/03/02/2248742/oriental-mindoro-oil-spill-could-affect-21-marine-protected-areas-denr>.

<sup>43</sup> Nicholas Yong, "Philippines Oil Spill: Residents Report Nausea and Dizziness in Affected Villages," BBC News, March 7, 2023, <https://www.bbc.com/news/world-asia-64871285>.

<sup>44</sup> Kenneth Araullo, "Revealed – Insurer Covering the Sunk Philippine Oil Tanker," Insurance Business Asia, March 28, 2023, <https://www.insurancebusinessmag.com/asia/news/marine/revealed-insurer-covering-the-sunk-philippine-oil-tanker-440985.aspx>.

mariculture, economic loss for those in the tourism sector and related business, or property damage.<sup>45</sup> The process in theory should take 30 days if the victims are able to complete the forms with supporting documents but in practice it took around three to six months to process the claim.<sup>46</sup> The Republic of Philippines was also reportedly to receive compensation from the IOPC Fund.<sup>47</sup>

We find the MT Princess Empress case to be interesting as it opens the possibility to resolve oil spill damages compensation cases outside of the court. It needs to be acknowledged that the process of litigation in court most of the time is very lengthy. It could take years or even decades of litigation proceedings to get a final and binding judgment and it didn't rule out the possibility that the judgment could not be enforced. However, Greenpeace Philippines made a statement that the insurer denied the victims from exercising their right to seek justice by discouraging them to not file a lawsuit against the shipowner. Not many of the victims are aware of their rights and consequences of their choices<sup>48</sup> Although, it is true that the victims can receive compensation in a relatively fast process through a direct claim to the insurance company, the seemingly "instant" compensation provided might not consider the long-term effect of the oil pollution. If later, new losses arise from the incident, the victims have waived their right to sought after compensation and can no longer sue the shipowner.

From the case studies above, we concluded that the CLC Convention serves as the unified regulatory framework for oil spill damage compensation. Contrary to the classic theory of the applicable law of tort, the convention pointed to the place of the injury (*lex loci damni*) as the competent Court and applicable law, not the place of wrong (*lex loci delicti commissi*). The use of *lex loci damni* aims to ensure adequate compensation to persons who suffer from damages and has taken preventive measures to minimize the pollution damages as stated in the preamble of the convention. The convention simplifies damage compensation mechanisms for both States and individuals in cases of cross-border or domestic oil pollution and the mechanism for recognition

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<sup>45</sup> Kenneth Araullo, "Insurance Lawyer Announces Claims Caravan for Oil Spill Victims in Philippines," Insurance Business Asia, March 23, 2023, <https://www.insurancebusinessmag.com/asia/news/marine/insurance-lawyer-announces-claims-caravan-for-oil-spill-victims-in-philippines-440536.aspx>.

<sup>46</sup> Kenneth Araullo, "Revealed"

<sup>47</sup> Kenneth Araullo, "Sunken Philippine Oil Tanker Payout Capped at US\$284M," Insurance Business Asia, April 26, 2023, <https://www.insurancebusinessmag.com/asia/news/marine/sunken-philippine-oil-tanker-payout-capped-at-us284m-444008.aspx>.

<sup>48</sup> Delfin T. Mallari Jr. "Greenpeace Hits Insurance Firm of Sunken Mt Princess Empress." INQUIRER.net, March 29, 2023, <https://newsinfo.inquirer.net/1749326/greenpeace-hits-insurance-firm-of-sunken-mt-princess-empress>.

and enforcement of judgment related to the convention. With the recognition and enforcement of judgment clauses and the high number of signatories, one can argue that convention could be more useful in cross-border cases. We discovered that the shortcomings of the convention regarding the limitation of liability have been resolved with the protocol. Moreover, we believe that the lengthy litigation process of the cases is not a direct result of the convention as many factors can contribute to it.

### C. CLC and Bunker Convention in Indonesia

CLC and Bunker Convention, as explained before, are established to bring together the mechanism of compensation claims caused by oil spill damage. Indonesia has since long ratified the CLC Convention with Presidential Decree Number 52 the Year 1999 and the Bunker Convention with Presidential Regulation Number 65 the Year 2014. With the ratification of these two conventions, the CLC and Bunker conventions became part of Indonesia's national positive law. However, far from the expectation of many, this ratification does not signify that these two conventions are often utilized by parties who face losses due to damage to claim compensation.

#### 1. Lex Loci Delicti Commisio vis-à-vis Lex Damni Principle

In the case of compensation for damage similar to oil spills, Indonesia recognizes the concept of civil liability with fault and civil liability without fault.<sup>49</sup> Civil liability with fault is known as Perbuatan Melawan Hukum (PMH), which is often translated to 'tort', despite several experts having argued that tort and PMH should be interpreted differently. The concept of PMH is based on Article 1365 Indonesian Civil Code<sup>50</sup> which says if a person commits an unlawful act that causes damages to another person, they are obliged to compensate for the damage.<sup>51</sup>

To determine whether PMH has occurred, an event is often deconstructed into five elements, that there should be an action; the action should be considered unlawful; there is damage done;

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<sup>49</sup> Andri G. Wibisana, "The Many Faces Of Strict Liability In Indonesia's Wildfire Litigation", *Journal Review Of European, Comparative & International Environmental Law* 28, (2019) : 190.

<sup>50</sup> Indonesia Civil Code is known as Kitab Undang-Undang Hukum Perdata or often simplified as KUHPerdata/KUHPPer. Indonesian Civil Code is a set of rules that was transitioned from the codification of Burgerlijk Wetboek, previously used during the era of Netherland colonialism, and it is partially still used and applicable in Indonesia.

<sup>51</sup> Indonesia. Kitab Undang-Undang Hukum Perdata (Indonesian Civil Code). Art. 1365.



between the action and the damage there is causality; and there is an element of fault.<sup>52</sup>

On the other hand, since oil spills are often found in a case that occurs between countries, the principles of private international law become relevant to decide which court has jurisdiction and which law of civil liability is applicable. Indonesia's private international law recognizes the rule of *lex loci delicti commissi* as one of the oldest existing rules to determine which law is applicable to a case. *Lex loci delicti commissi*, also known as *lex loci delicti*, is a principle in which the applicable law is where the unlawful act happens. This principle has been used to decide which law is the one governing a matter that needs to be settled between parties.<sup>53</sup> The usage of *lex loci delicti* principle in Indonesia is necessarily tied to the rule of Perbuatan Melawan Hukum (PMH) that has been explained above.

Meanwhile, civil liability without fault is known as strict liability, which in its nature erases the element of fault to be proven in a lawsuit for the compensation. The focus of strict liability then lies on the damage rather than the fault itself. This liability is important to be discussed considering that Indonesian Law, CLC, and Bunker Convention also recognize strict liability in relation to environmental damage which will be further explained in the next section. With CLC and Bunker Convention, there would come an issue in relation to the principle of *lex loci* in deciding which law is applicable. The reason comes from the fact that the CLC and Bunker Convention specifically offer to charge liability based on the pollution damage in the territory of a state or the exclusive economic zone. Article 9 of both conventions tends to show the principle of *lex loci damni*, or a principle in which law is applicable to settle the claim is the state that has been impacted by the pollution (the damage) or has taken preventive measures to prevent or minimize the damage.<sup>54</sup> This, of course, does not align with the concept of *lex loci delicti* in Indonesia that ties to the concept of PMH which emphasizes the applicable law is where the unlawful act happens.

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<sup>52</sup> Munir Fuady, *Perbuatan Melawan Hukum : Pendekatan Kontemporer (Act Against the Law: Contemporary Approach)*, (Bandung: Citra Aditya Bakti, 2002), 10-14.

<sup>53</sup> Sudargo Gautama, *Hukum Perdata Internasional Indonesia (Indonesian Private International Law)*, (Bandung: Penerbit Alumi, 2002), 119.

<sup>54</sup> CLC Convention 1992 and Bunker Convention 2001, as stated in Article 9 of respective convention.

## 2. Interpreting Strict Liability Principle

An oil spill at the sea is a specific, particular case of environmental pollution that damages a large area in one's territory. While the CLC and Bunker Convention apply to environmental pollution caused by oil spills, Indonesia's national law has regulated environmental pollution in a general manner. Environment damage is regulated specifically in Law Number 23 Year 1997 regarding the Environmental Protection and Management Act (*Perlindungan dan Pengelolaan Lingkungan Hidup*) amended by Law Number 6 Year 2023 regarding Job Creation (*Cipta Kerja*).

Previously, the liability of environmental pollution was charged to every person (person or legal entity) whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or pose a serious threat to the environment is responsible for the losses incurred without the need to prove the fault.<sup>55</sup> Government Regulation Number 22 Year 2021 explained B3 as a 'Bahan Berbahaya dan Beracun' which is directly translated as hazardous and toxic material. It is defined as substances, energy, and/or other components which due to its nature, concentration, and/or amount, either directly or indirectly, can directly or indirectly, may pollute and/or damage the Environment, and/or endanger the Environment, health, and the survival of humans and other living beings.

In the Article 88 of the Law Number 23 Year 1997, the clause of 'is absolutely responsible for the losses incurred without the need to prove the fault' is interpreted as the principle of strict liability. Yet this Article is amended by the Job Creation Act that every person whose actions, business, and/or activities use 'B3', produce and/or manage 'B3' Waste, and/or who poses a serious threat to the environment is absolutely responsible for the losses incurred from their business and/or activities. This amendment causes several interpretations regarding the existence of strict liability in terms of environmental damage compensation.

One is the interpretation that states, that the removal clause of 'without the need to prove the fault' indicates that strict liability is also erased, thus one's fault should be proven first on the court to be decided as liable. On the other hand, few also explain that the removal of the clause does not mean the principle of strict liability is also discarded. Andri Gunawan Wibisana explained that the Job Creation Act did not erase the strict liability principle despite

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<sup>55</sup> Indonesia. House of Representatives, Environmental Protection and Management Act of 2009, adopted October 03, 2009, Art. 88, as amended by Job Creation Act of 2023, <https://peraturan.bpk.go.id/Details/38771/uu-no-32-tahun-2009>.

removing the obvious clause of the principle. He argued that the explanation of Article 88 Environmental Protection and Management Act is not amended, reciting that the clause of 'absolutely responsible' is interpreted as a strict liability principle that is a special provision from the general unlawful act regardless of the removal of 'without the need to prove the fault'.<sup>56</sup> In this case, he argued that the strict liability principle does not have to be directly stated with strict liability or similar clauses to be incorporated.<sup>57</sup>

This becomes a preliminary condition that determines whether the principles of CLC and Bunker Convention are aligned or not with Indonesian law and regulations. It should be also noted that the strict liability principle disposition in Indonesia towards environmental damage is constructed without any limit. Meaning, that all actions using, producing, and/or managing 'B3', or posing a serious threat to the environment can be sued to the court without exception. Meanwhile, the CLC and Bunker Convention both state to implement strict liability principles in a limited manner.

The limit of the strict liability principle in CLC and Bunker Convention could be seen from Article 3, which mentions 1) damage resulting from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; 2) damage caused by an act or omission done with the intent to cause damage by a third party; and 3) damage wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids; are exceptions to the strict liability principle.<sup>58</sup> This limitation concept towards strict liability in CLC and Bunker Convention is not known nor regulated by the strict liability in the Environmental Protection and Management Act. This, of course, poses a question of whether the CLC and Bunker Convention can provide a better situation for both parties in the dispute or not. Or is it that the Environmental Protection and Management Act provides a better basis for the claim to compensate for the damage due to the oil spills?

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<sup>56</sup> Andri Gunawan Wibisana, "Undang-Undang Cipta Kerja dan Strict Liability (The Job Creation Act and Strict Liability)", *Jurnal Bina Hukum Lingkungan* 5, no. 3 (2021): 498.

<sup>57</sup> Andri Gunawan Wibisana, "Undang-Undang Cipta Kerja...", 505.

<sup>58</sup> CLC Convention 1992 and Bunker Convention 2001, as stated in Article 3 of respective convention.

**a. Finding of the Practice and Law Enforcement Against Oil Spills in Indonesia**

There have only been a few cases of oil spills in Indonesia documented in which fewer are investigated by authority, while most of them fall under the radar of the authorities. Moreover, there has yet to be an oil spill case recorded to be settled in civil proceedings in Indonesia, especially one that is concluded based on the CLC and/or Bunker Convention.

Based on the reports below, it is shown that the shipping trade in Malacca Strait and Java Sea face high-density belts caused by oil pollution from ships.<sup>59</sup> This report shows that amongst 4 (four) categories of sources of pollution which divides into natural seeps, pipelines, platforms, and anthropogenic sources (ships and land-based discharges), the category of anthropogenic sources is the highest with the percentage of 91.7%.<sup>60</sup>

Based on a report from Indonesia Ocean Justice Initiative, on the case of MT AASHI, a tanker ship registered with a Gabon flag owned by AASHI Shipping Inc. located in Liberia which sank near Nias Island, shows the improvement that Indonesia government needs in terms of response and support co-operations.<sup>61</sup> The report mentions that the Indonesian government did not attempt to make an optimal effort to clean up the spill, which damaged the ecosystem and impacted the livelihoods of around 641 fishermen.<sup>62</sup> This case, as of now, has yet to be investigated further nor be brought to any court in Indonesia as a legal measure against the ship owner.

The lack of enforcement was also shown in the case of oil pollution caused by ships in the coast of Bintan. The report explains that the regulation and coordination were split among the institutions and the authority related to oil spills in the sea is dispersed, leading to a lack of optimization and effectiveness in

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<sup>59</sup> Yanzhu Dong, et al., "Chronic Oiling in Global Oceans", *Science* 376, (2022), 1300-1304. See further information on the distribution of oil spills (oil slick) in the world, particularly the images of oil spills distribution in Malacca Strait and Java Sea, in the report.

<sup>60</sup> Yanzhu Dong, et al. "Chronic Oiling in Global Oceans", 1300-1304.

<sup>61</sup> Indonesia Ocean Justice Initiative, *IOJI Maritime Security Threats Analysis Paper*, January to March 2023, <https://oceanjusticeinitiative.org/2023/04/30/deteksi-dan-analisis-gangguan-keamanan-laut-di-wilayah-perairan-dan-yurisdiksi-indonesia-periode-januari-hingga-maret-2023/>.

<sup>62</sup> Indonesia Ocean Justice Initiative, *IOJI Maritime Security Threats Analysis Paper*, January to March 2023, <https://oceanjusticeinitiative.org/2023/04/30/deteksi-dan-analisis-gangguan-keamanan-laut-di-wilayah-perairan-dan-yurisdiksi-indonesia-periode-januari-hingga-maret-2023/>.

handling oil spill cases, especially in consideration to the bureaucracy and overlapping authority. It urges a proper role of governance and policy to tackle oil spills in Indonesia, in which Indonesian government still lacks.<sup>63</sup>

Another recent case of oil spill damage in Indonesia in 2023 was MT Pablo, another ship with a Gabon flag owned by Pablo Union Shipping based in Marshall Island, that caught on fire around the territorial sea of Malaysia. MT Pablo was a tanker ship which passed the Malacca Strait (Selat Malaka) with the destination of China-Singapore.<sup>64</sup> The damage on the shoreline around Batam, Kepulauan Riau in Sumatra island was presumably caused by the waste of marine fuel oil from the ship. The oil was spilled in three locations with the area estimated to be 13,70 km.<sup>65</sup> Based on the satellite result, the oil spill damage that caused the tourism and fishing spot to be heavily affected<sup>66</sup> in Melayu Batu Besar Nongsa Beach<sup>67</sup> was connected to the area of Outer Port Limit where the oil spills are located.<sup>68</sup> The case has not been brought to be resolved by any party in Indonesia, to criminal proceeding nor civil proceeding, as similar situation also happens in Malaysia's courts.

The explanation above shows that there are challenges in applying CLC and Bunker Convention. The first one is related to the principles applied in the case of liability of oil spills, which shows the difference between how the Environmental Protection and Management Act regulates environmental damage compensation and how the CLC and Bunker Convention regulate compensation for oil spills in specific environmental damage cases. While we can derive from explanation above that CLC and Bunker Convention is a *lex specialist* of the Environmental Protection and Management Act, the specific characteristics of CLC and Bunker Convention create the need for law enforcers to

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<sup>63</sup> Hartuti Purnaweni, et al., "Oil Spill Governance: Evidence from Bintan Island, Indonesia", *Sustainability*, 14, (2022), 13.

<sup>64</sup> Sam Chambers, "Exclusive Satellite Images Of Wrecked Pablo Tanker Cast Dark Light Over Shadow Fleet", June 21, 2023, <https://splash247.com/exclusive-satellite-images-of-wrecked-pablo-tanker-cast-dark-light-over-shadow-fleet/>

<sup>65</sup> Kang Ajang Nurdin, "Kebakaran Kapal Tanker di Malaysia Timbulkan Limbah Minyak Hitam di Pesisir Batam (Tanker Fire in Malaysia Generates Black Oil Waste on Batam Coast)", May 3, 2023, <https://www.terasbatam.id/kebakaran-kapal-tanker-di-malaysia-timbulkan-limbah-minyak-hitam-di-pesisir-batam/>

<sup>66</sup> SINDOnews, "Pantai di Batam Tercermar Tumpahan Minyak dari Kapal Tanker (Beaches in Batam are Being Affected by Oil Spills from Tankers)", May 4, 2023, <https://www.youtube.com/watch?v=e417OLGMCrk>.

<sup>67</sup> *Ibid.*

<sup>68</sup> Kang Ajang Nurdin, "Kebakaran Kapal Tanker...".

learn CLC and Bunker Convention to utilize it in the face of compensation claims. The second one is the practice and enforcement of law, which shows that Indonesia has yet to have effective law enforcement that is adequate to investigate and adjudicate the oil spill issues.

We believe that this is the reason why CLC and Bunker Convention are yet to be utilized despite cases of oil spills that have harmed the community on the coastline and the country that has long been overdue to be settled in a way that is favorable to restore the damage done to the environment.

#### **D. Why is it necessary for us to utilize the CLC/Bunker Convention?**

As positive law, the CLC and Bunker Convention ought to be used in cases of oil spill damage compensations. Article 9 of the CLC and Bunker Convention regulates that any Contracting State suffering from oil spill pollution damages may take action for compensation.<sup>69</sup> Indonesia as an archipelagic country has a high number of international maritime activities. In 2022, there were a total of 258.703 domestic and international ship calls in 25 Strategic Ports.<sup>70</sup> This number is an increase of 16,33% compared to a year prior, with little reasonable grounds to believe there will not be an even bigger increase in the upcoming years.<sup>71</sup> Indonesia is not showing any signs that transfer of goods via the sea and water travel will decrease any time soon. With this amount of activity in its territorial seas, Indonesia possesses a high risk of both causing and being affected by oil spills in the ocean.

Based on a report by the Ministry of Energy and Mineral Resources released in 2022, a total of 461.36 barrels of oil was spilled upstream in Indonesian waters.<sup>72</sup> Though the statistics are not quite consistent throughout the last five years, the oil spill number each year generally ranges from a few hundred to a few thousand barrels of oil.<sup>73</sup> Except in 2018, when there were 1,566.94 barrels of oil spilled upstream and 51,488.63 barrels downstream, resulting in a whopping sum of 53,055.63 barrels of spilled oil.<sup>74</sup> The statistics show that

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<sup>69</sup> CLC Convention 1992, Art. 9. Bunker Convention 2001, Art. 9.

<sup>70</sup> BPS Statistics Indonesia, "Sea Transportation Statistics 2022," *Sea Transportation Statistics* 8 (2023), 24.

<sup>71</sup> BPS Statistics Indonesia, "Sea Transportation Statistics 2022", 24.

<sup>72</sup> Directorate General of Oil and Gas Ministry of Energy and Mineral Resources, *Statistics: Oil and Gas Semester I 2022* (Jakarta: Ministry of Energy and Mineral Resources, 2022), 74.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

although oil spills do not happen out of deliberation, it could be seen as an inevitable incident that happens once every while. Other than focusing on the cause of the problem, Indonesia ought to rely on a steady mechanism to handle the situation, especially if the responsible parties for the incident can be identified.

In the event of oil spills by vessels within Indonesia's territory, the CLC and Bunker Convention could serve as a legal base for lawsuits, particularly regarding compensation. Even in cases where the actual spill – the *locus delicti* – does not happen in Indonesia, Article 9 of the Conventions rule that as long as there is proof of pollution damage, Indonesia can still sue responsible parties for the spill.<sup>75</sup> The Conventions do not limit the claimants to governments exclusively, in fact, it is ruled that any party suffering damages can claim compensation. This provision shows that the people of Indonesia and other Indonesian legal entities, such as fishermen, people working near the shore, companies whose businesses are closely related to the sea, as well as other affected entities, are entitled to receive compensation.

The recognition and enforcement of judgments based on the CLC and Bunker Convention are regulated in Article 10 of both conventions.<sup>76</sup> The provision is worded the same way – that all judgment consistent with the provisions of the conventions shall be recognizable in every Contracting State and all recognized judgment shall be enforceable in such States. Article 10 of the CLC and Bunker Convention also rules that the merits of the case will not be questioned by the court of the requested State.<sup>77</sup>

Recognition and Enforcement of foreign judgments in Indonesia, including the ones regarding environmental damages, are regulated in Article 436 of Indonesia's civil procedural law, the *Reglement op de Rechtsvordering* ("RV").<sup>78</sup> Article 436 of RV rules that foreign judgments cannot be recognized and enforced in Indonesia unless otherwise clearly regulated by law or matters covered by Article 742 of the codified trade law ("WvK").<sup>79</sup> Any foreign judgments seeking to be enforced in Indonesia have to go through a relitigation process and be retried by an Indonesian court. This provision extends the process of a case by twofold, resulting in a delay in providing compensation.

Indonesia's ratification of the CLC and Bunker Convention demonstrates a form of exception to the Article 436 provision. As there have not been any reservations made upon the ratification, it is

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<sup>75</sup> CLC Convention 1992, Art. 9. Bunker Convention 2001, Art. 9.

<sup>76</sup> CLC Convention 1992, Art. 10. Bunker Convention 2001, Art. 10.

<sup>77</sup> CLC Convention 1992, Art. 10. Bunker Convention 2001, Art. 10.

<sup>78</sup> Indonesia, *Reglement op de Rechtsvordering* (1847), Art. 436.

<sup>79</sup> Indonesia, *Reglement op de Rechtsvordering* (1847), Art. 436.

understood that Article 10 of the CLC and Bunker Convention apply. To take it further, Indonesia's latest draft of the Private International Law Bill as *ius constituendum* does not rule against this idea.<sup>80</sup> The Private International Law Bill regulates that foreign judgments may be enforced so long as it does not contradict the Bill's provisions.

It is also worth noting that the Bill emphasizes the reciprocity principle when it comes to the recognition and enforcement of foreign judgments.<sup>81</sup> Such provision is consistent with the CLC and Bunker Convention as it is imperative that both the State of origin of the judgment and the State in which the judgment is to be recognized and enforced are Contracting Parties of the convention.

As a Contracting Party, the Article 10 provision is highly beneficial for Indonesia as it allows judgments to be recognized and enforced in foreign States.<sup>82</sup> Should Indonesia ever need to enforce a judgment regarding oil spill damages in other Contracting States, Article 10 of the CLC and Bunker Convention allows it to happen. Should other States need to enforce a judgment in Indonesia, the Conventions provide grounds for it to be granted.

Although there are other legal grounds which may be utilized in cases of oil spill damage compensation, as elaborated above, CLC and Bunker Convention cover some unique conditions that the Environmental Protection and Management Act has yet to cover. Furthermore, although the limitation concept which rules for shipowners to not be burdened by strict liability seems to benefit shipowners and responsible parties, the implementation of the Conventions offers loose criteria to claim compensation, allowing more parties in wider jurisdictions to receive compensation for their losses.

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<sup>80</sup> Indonesia. House of Representatives, *Private International Law Draft Bill* (2023), Art. 64.

<sup>81</sup> Indonesia. House of Representatives, *Private International Law Draft Bill* (2023), Art. 64.

<sup>82</sup> CLC Convention 1992, Art. 10. Bunker Convention 2001, Art. 10.



### III. CONCLUSION

The CLC Convention 1992 and Bunker Convention 2001 have been ratified for quite a considerable amount of time now and become Indonesia's positive law. Yet, despite the high risk of oil spill cases in Indonesia, the CLC and Bunker Convention have reportedly never been utilized to file a lawsuit. The Conventions, indeed, face a challenge related to the implementation of the principle of strict liability of the Environmental Protection and Management Act amended by the Job Creation Act and the principle of strict liability that is limited in the CLC and Bunker Convention. Other than that, there's a notable principle of *lex loci delicti* as one of existing rules in Indonesia's private international law while the CLC and Bunker Convention use the principle of *lex loci damni*. This shows that CLC and Bunker Convention is a special rule from the Environmental Protection and Management Act. Advantageously, the Conventions offer a way out to simplify compensation claims, especially for international oil spill cases which involve Indonesia as the affected party. As both Conventions apply the reciprocity principle, the recognition and enforcement of judgments based on CLC and Bunker Convention do not contradict Indonesia's current rules on the recognition and enforcement of foreign judgments.

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