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Principle of Responsibilities and Sanctions in Pollution of the Marine Environment by Offshore Mining

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In a period of 5 (five) years of pollution of the marine environment caused by exploration and exploitation on the continental shelf and the area (the seabed) is increasing. Like the marine pollution in the Timor Sea which transnational pollution, because it involves three countries, namely Australia, Timor Leste, and Indonesia. Settlement efforts to revolve the impact caused by too have done well by the Australian Government nor by the Indonesian Government. Pollution of the marine environment also occurs in blasting offshore mining that pollute the Gulf of Mexico. As mentioned in the 1982 UNCLOS, Article 208 that one of the sources of marine pollution is from the exploration and exploitation under the jurisdiction of a country. For that, if there is contamination and pollution, then the polluter is responsible and obliged to recovery the environment as soon as possible, so that ecosystems and the biota in the ocean can be saved. In addition to several conventions in 1982 UNCLOS also provides for compensation and the responsibility for restoring environmental pollutants, such as the Stockholm Declaration of 1972, Agenda 21 Global and Offshore Pollution Liability Agreement, 1975. The principle used to sue the polluter polluter pays principle, liability based on fault principle, and the precautionary principle.

Keywords: *pollution of the marine enviromental, offshore, UNCLOS 1982, responsibility, sanctions*

I. Background

Oil platform explosion about 80 miles from Louisiana's Coastal Trans Ocean Ltd., under contract British Petroleum (BP) has been polluting the Gulf of Mexico. Every day of this oil field pumping 8000 barrels of crude oil, equivalent to 336 000 gallons of oil into the surrounding waters. Oil platform fire, causing a number of missing workers and injured after trying to jump from a height of 100 meters into the sea to save themselves.

Attention of the world community against the oil refinery explosion in the Gulf of Mexico it is very unusual, even the President of the United States-Barack Obama took the time and attention to the oil pollution, and

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asked BP immediately to address and prevent the spread of pollution in the Gulf of Mexico. This is not comparable to similar events when the oil refinery owned by Australia Montara (The Montara Well Head Platform) in the Timor Sea, Western Atlas Block that leak in the Timor Gap on August 21, 2009 up to the waters south of Indonesia, particularly in East Nusa Tenggara Province (NTT). After the events of the Post-explosion oil fields, each day spewing of 500,000 liters of crude into the waters of the Timor Sea, or about 1200 barrel. (Source: Antara, October 2009) Indonesian government's reaction is very slow, and involves the lives of thousands of farmers and fishermen on the south coast of Belu regency, East North Central, South Central Timor, Rote Ndao, Sabu Raijua and Sumba. Navy has conducted monitoring in the southern island of Rote, while the Au[illegible]ian Maritime Safety Authority (AMSA / Australian Maritime Safety Authority) recognizes the existence of contamination.

AMSA has conducted similar measures to be undertaken by spraying dispersant liquid called crude oil to sink the lumps on the surface to the seabed. But in fact such action would threaten marine life and ecosystem balance, because the lumps of crude oil that sunk to the seabed, drawn in the bottom of the ocean currents into Indonesia waters. Proved that the fishermen in the District and County Sabu, Rote Ndao Raijua, found attached to the concentrated liquid seaweed which they cultivated, which is a source of income of the population. Until now, the beaches on Rote and Sabu Raijua Ndao, yet sterile from crude oil, so that the cultivated seaweed does not grow normally and produce maximum.

Australian owned Montara oil wells located in the border waters of the Timor Gap between East Timor and Australia, and in the event of pollution not only two countries that loss of society, but also Indonesia. The Australian Government acknowledges that there are lumps of crude oil due to the explosion of Montara oil fields in the Timor Gap, have entered Indonesian waters. Spillage is now approaching 51 nautical miles from the island of Rote, located in the southernmost region of Indonesia and threaten marine life in Indonesian waters, including sea grasses that are cultivated on a large scale in Rote Ndao. Crude oil seepage that also resulted in the cultivation of seaweed along the coast south of the island of Timor, Rote Ndao, Savu and Sumba and Alor crop failure. Marine environmental pollution is also threatening the lives of 17 000 Timorese coastal community. Losses due to contamination of the Timor Sea, also experienced by the perpetrators of the traditional fisheries of East Nusa Tenggara (NTT), which threatened

their livelihoods due to spillage of oil fields in Australian waters. A number of environmental activists urged the Australian government immediately cease and those responsible for pollution.

Based on the above two cases, that the pollution caused by exploration activities in offshore requires handling really well by the government or the polluted state of pollution. State pollutant responsible for pollution should be undertaken in accordance with the applicable provisions of international law and domestic law. This paper will discuss the principles of responsibility and sanctions that must be borne by polluters in pollution caused by activities in offshore exploration.

II. International Marine Environmental Law

Increasingly realized that sea besides functioning as a means of transportation, connecting the region with one another, as well as the wealth contained in it can be used as a source of a country's economy. Various marine use by mankind has grown along with the development of science and technology. Res Communis concept that the sea is used for the benefit of mankind and the concept of Res Nullius that the sea can not be owned by anyone is also experiencing a shift in the consciousness of a country of its natural resources in the sea increased, and the sovereignty of a country at sea is increasing.

Marine biological resources in addition to containing and non-biological but also used as a dumping ground of industrial products, agriculture, even as a place of war. (Patricia Birnie ed.all, 2009, p.379) Natural resources in the sea to secure its sustainability, among others, with due regard to the marine environment on the condition and essence of the sea as a source of livelihood of mankind, as well as the management system in pursuit of resources. Thinking that leads to the prevention of marine pollution and environmental damage is necessary, in addition to the control or supervision of both the sectoral, regional, or by international bodies.

Increasingly recognized the importance of environmental conservation in maintaining and managing the marine environment, in 1972 the United Nations (UN) environmental conference held in Stockholm in the background thinking that (1) disposal of waste into the sea is not controlled can take effect Severe damage to the marine environment, (2) pollution caused by accidents such as the giant tanks Torrey Canyon in 1967 and the

Amaco Cadiz in 1978 to take effect damage to the marine environment. Growth regulation of the marine environment is already there since the marine pollution problems arise at the beginning of 1929. Countries that have been concerned and aware of the marine environment held a conference on marine pollution from ships which became known as the Washington Convention on Pollution from Ships. In addition to the growing international awareness of the environment, many international agreements both bilaterally, regionally or internationally produced, such as protection of the biota and marine mammals (seals, whales), as well as restrictions on fishing certain species.

After World War (PD) II ended, many countries are trying to improve his country's economy, one of the efforts is the exploitation of natural resources both on land and at sea. So until the late 1960s, exploration and exploitation activities in the sea has over exploitation of resources, resulting from damage to the marine environment.

Particular attention to the marine environment followed by the International Maritime Organization (IMO), an international organization composed of maritime countries in the world, with its first conference and produce an agreement in the London Convention for the Prevention of Pollutionof the Sea by Oil, 1954. The development of means of transport and trade by sea is growing very rapidly, so that it runs significantly with damage to the marine environment. At this time there are more than 70,000 units ship with a capacity of more than 4,400 million gross tons that operate in various world cruise. Various types and sizes of ships that increasingly complex and large, such as container ships, giant tankers, bulk vessels and transport chemicals and other types of cargo with an increasingly complex and dangerous even has brought a new dimension , not only on safety aspects of ships and shipping, but also to the marine environment. Although this development is essentially the impact of development progress, particularly industry and commerce of the world, but along with that recognized also by the nations that the safety of the marine environment nor should be sacrificed. (Husseyn Umar, 2001, p.116) For that we need provisions and international cooperation in maintaining order at sea is an appropriate effort. Such cooperation not only between governments, but also by involving the owners of ships, shipbuilding, insurance, shipping industry, and mining industries (Offshore).

On the basis of the approach, born of the Sea Convention on the Prevention of Pollution from Ships or the International Convention for the

Prevention of Pollution from Ships (MARPOL) in 1973, and then refined with MARPOL 1978. Full implementation of the convention would require an extensive review of the implications of technically and financially, both government and the mining industry, shipping and ports. The more widespread dangers of marine pollution caused the government coastal countries around the world who have the attitude and awareness is increasing, so the required completeness of the devices international arrangements to prevent and overcome them. Action disposal of certain substances that are considered to cause pollution of the sea set in a convention in 1972, namely the Convention on the Prevention of Marine Pollution by Dumping Wastes.

A. Law of the Sea Convention 1982 (The 1982 - UN Convention On The Law Of The Sea / UNCLOS)

Protection and Preservation of Marine Environment specifically provided for in Chapter XII of Section 192-237, and noted that the sources of marine pollution under UNCLOS in 1982 include: (1). toxic, harmful or noxious substances, (2). land-based sources, (3). through the atmosphere, (3). vessels, (4). from installation and devices Used in exploration or exploitation of the natural resources of the seabed and subsoil. While the definition of marine pollution is the introduction of living things, matter, energy, and / or other components in to marine environment by human activities so that its quality decreases to a certain level that causes the marine environment no longer in accordance with quality standards and / or function .

To prevent and protect the marine environment from various sources of pollution, then there are obligations of states to the protection and preservation of the marine environment. Such obligations are: (1) taking the necessary measures against pollution in the area either individually or jointly. (All types of pollution and habitat types are rare), (2) action should be within the jurisdiction and oversight, (3) not transfer damage or hazards or change of a type of pollution into another type of pollution, (4) take action necessary due to the use of technology causing marine pollution.

Meanwhile, to support the implementation of policies and regulations or international agreements will require cooperation among countries in an effort to minimize pollution at sea, both within territorial waters, EEZ or high seas, with bilateral cooperation, global or regional cooperation. Such cooperation is not it (1) To determine / formulate the standards, regulations

and scientific criteria for marine pollution, (2) To inform other countries when there is disaster or pollution, (3) To develop and improve emergency response to pollution in its territory or in other countries, (4) Always do the assessment, scientific research programs and exchange of information / data about marine pollution.

Such cooperation would be very helpful for developing countries because of lack of safety facilities and infrastructure marine pollution prevention or the lack of funding for efforts to increase knowledge / softskil society to care about the marine environment. There is special treatment for developing countries provided by the UNCLOS 1982, which obliges developed countries to provide technical assistance in the form of: (a). Programs of scientific, educational, scientific and technical manpower training, (b). Provide advice and develop facilities for research, monitoring, education and other programs, (c). Equip with the equipment and facilities for the prevention of environmental pollution, (d) Inform technical assistance on environmental assessment. Similarly, monitoring and analysis of other environmental assessment (on land), then to activities at sea also must meet criteria set by UNCLOS in 1982, namely: (1) Observe, manage, assess and analyze based on the scientific method about the risk or due to contamination , (2) Supervise all activities are allowed in a country, (3) Each state activities related to monitoring should be reported regularly to the competent organizations in the marine environment.

B. Agenda 21 Global 1992

Marine development with due regard to the marine environment as a whole, which is an important component of global life support system both on land and sea. Provisions concerning the importance of protection and preservation of the marine environment to support the development of marine set in Chapter XII of UNCLOS in 1982, on the Protection and Preservation of Marine Environment (Protection and Preservation of The Marine Environment), Article 192 until Article 237. The importance of sustainable development, by balancing or harmonizing between economic development with environmental carrying capacity refers to Principle 1 of The Rio Declaration on Environment and Development, 1992, that: "*Human Beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature* " The legal based on (soft law) to the ocean a sustainable marine development

based on Agenda 21, Chapter 17 as a result of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992

Protection and management of coastal and marine implicitly provided for in Chapter 17 of Agenda 21 under the title Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of Their Living Resources . In the "Introduction" - last paragraph stated that: "*The marine environment Including the Oceans and all Kinds of Seas and adjacent coastal areas-forms an integrated whole-That is an essential component of the global life support system, and a positive asset That presents opportunities for sustainable development.* (Nicholas A. Robinson, 1993, p.307)

Furthermore, in Chapter 17 of Agenda 21 at the mention that: "*International law, as reflected in the provisions of the United Nations Convention on the Law of the Sea Referred to in this chapter of Agenda 21, sets forth rights and obligations of States and the international Provides based upon the which to pursue the protection and sustainable development of the marine and coastal environment and its resources.* " While in the last paragraph "Introduction", Chapter 17 of Agenda 21, implemented in programs as follows:

> *"This requires new approaches to marine and coastal area management and development, at the national, subregional, regional and global levels, approaches That are integrated in content and are precautionary and anticipatory in ambit, as reflected in the Following programmed areas":*
>
> 1. *Integrated management and sustainable development of coastal areas, Including exclusive economic zones;*
> 2. *Marine environment protection;*
> 3. *Sustainable use and conservation of marine living resources of the High Seas;*
> 4. *Sustainable use and conservation of marine living resources under national jurisdiction;*
> 5. *Addressing critical uncertainties for the management of marine environment and climate change;*
> 6. *Strengthening international, regional cooperation and coordination including;*
> 7. *Sustainable development of small islands.* "

New approaches in the development of coastal and marine areas is an integrated approach to managing marine and coastal areas in both the local scale, national, sub-regional, regional and global, which is known to the concept of integrated coastal management, as stated in Principle 4 of the Rio Declaration, 1992 that: "*In order to achieve sustainable development, environmental protection constitute an integral Marshall part of the development process and can not be considered in isolation from it*".

Development in coastal and marine areas by various user communities of interest areas, so that an integrated approach to coastal and marine areas should consider precautionary principle and anticipatory in ambit of any impacts of development activities as efforts to save natural resources. Principle 15 of the Rio Declaration 1992 states that: "In order to protect the environment, the precautionary approach widely applied by Marshall several States according to on their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty Marshall not be Used as a reason for postponing cost-effective measures to Prevent Environmental Degradation. ".

Recognizing the importance of marine resources, especially in overcoming the economic crisis, (Sugeng Budiharsono, 2001, P.1) arising awareness to make the development of marine resources based on land next to the natural resources as the mainstream national development, and gain a better place and footing strong. For Indonesia, to optimize the value of the benefits of coastal and marine resources for the development of coastal and marine areas in a sustainable and ensure broad public interests, policies and special handling required by the government to manage coastal and marine areas, namely a policy of integrated strategic and anticipatory and for sustainable coastal and marine areas as stipulated in Agenda 21 Indonesia.

C. The Offshore Pollution Liability Association (OPOL)

The world economy needs increased since the end of World War II, this is marked by exploration and exploitation of natural resources in all aspects, including the exploration under the sea. As an example of that since the beginning of the year 1970 there has been a huge increase in exploration, and production of oil from sources in the seabed Northern and Western Europe. But at the same time developing public awareness of the world against any possible environmental damage from these activities. To minimize the protests of environmentalists, for all parties involved in the

exploration and production offshore to take precautions to ensure that the risk of oil pollution will be minimized, and compliance with safety standards to be primary. However, the possibility of an accident could happen, for it made an agreement to ensure that, if there is spillage or accidents in these production activities, the parties can not escape the responsibility for environmental damage claims and meet all costs as compensation for damage environment.

According to The Offshore Pollution Liability Association, dated 4 September 1974, as amended from time to time, (referred to as OPOL), a company that operates shall be liable for damage or pollution, and bear the cost of repairs up to a maximum of U.S. $ 120,000,000 per pollution / damage. The parties should be responsible and pay / cover claims arising in accordance with OPOL by showing proof of insurance, or other means. if it is a joint effort, the parties agree to contribute proportionately to cover claims.

OPOL originally implemented to provide protection for offshore facilities within the jurisdiction of the United Kingdom, but later expanded into force in other countries, this case and are intended:

1. To provide a means of settlement of claims arising from damage caused by the operation of offshore oil exploration.
2. To speed up remedial action as soon as possible by the parties.
3. To ensure the responsibility of paying compensation from the parties in fulfilling their obligations.
4. Provides a mechanism to ensure that claims are met up to a maximum liability under the terms of OPOL.
5. To avoid the complexity of the issues of jurisdiction.

III. Dispute Resolution For Marine Environmental Pollution

In accordance with Article 235 (1) of the 1982 UNCLOS, States are responsible for compliance with their international obligations regarding the protection and preservation of the marine environment. They should bear the compensation liability in accordance with international law. In addition, in Subsection (2) it is mentioned that the state must ensure that there is an effort by the prevailing system of invitation for obtaining redress and adequate immediately caused by individuals or legal entities which are under the jurisdiction of the country. It also sought the settlement of disputes

to the damage inflicted by the state of pollution, the individual or entity. Furthermore, in Article 279 the UNCLOS 1982, the State is expected to resolve the dispute by peaceful means, namely by means of holding bilateral cooperation, regional or multilateral, or form a committee or appoint the competent institutions for settling disputes. In Article 287 UNCLOS, countries to the dispute may choose the manner / procedure through the International Court of Law of the Sea, International Court, a Court of Arbitration established by participating countries Arbitration Convention or a Special Court, for one kind of dispute/more .

In connection with efforts to prevent pollution of the marine environment in the waters of NTT, the Governments of Indonesia and Australia on October 21, 2009 has held meetings to address the contamination further. In the meeting it was stated that the Australians through the Australian Maritime Safety Authority (AMSA) has formally recognized that an oil spill from The Montara Well Head Platform has entered the territorial waters of East Nusa Tenggara (NTT), approximately 51 nautical miles southeast of the island of Rote, Rote Ndao Regency, and will make two attempts to overcome the problem of oil spills.

The first effort is to blockage of the fields that burst and leak, but for that it takes about 52 days. While both efforts are likely to do the spraying of crude oil lumps which appear on the surface of the water to be drowned. Meanwhile, according to the Government of NTT, Australia perform spraying action to sink the oil spill would be very dangerous for marine life in the waters of Indonesia, especially those close to Rote Island and its environs. (Sea and Us, Blog Scientific, Sunday, January 3, 2010) Result analysis of the Regional Environmental Agency of East Nusa Tenggara (NTT BLHD) showed that the Timor Sea has been polluted by crude oil positively (crude oil) is sourced from gas fields Montara that exploded on 21 August. NTT BLHD analysis draws on two of the four samples taken from the waters of the Timor Sea. *The first* sample taken at the point of coordinates 11.31.213 122.59.530 LS and BT, about five miles from the island of Rote in the district Landu Ndao. *The second* sample taken at the point of coordinates 11.09.372 122.56.960 LS and BT which is located approximately 10 miles from Ndana Island, also in the region Rote Ndao. *The third* sample at the point of coordinates 11.31.797 123.24.999 LS and BT in the location of Exclusive Economic Zone (ZEE), Indonesia, about 10 miles from Sand Island (Ashmore Reef). *The fourth* sample point coordinates in latitude and 10:43:01 123.51.27 Kolbano BT in the

territorial waters, the south coast district of South Central Timor (TTS). Until now, efforts to stop the oil leak from the gas fields of Australia's PTTEP, a Thai oil company to process the gas fields, have not succeeded despite using sophisticated technology tools. With reference to international conventions on the laws and regulations governing pollution of the marine environment, such as the Environment Act No. 23 of 1997, Government Regulation No. 19 of 1999 on Pollution Control and / or destruction of the Sea, especially Article 9 , 13, 15, and Law No. 17 of 1985 concerning Ratification of UNCLOS in 1982, the marine environmental pollution disputes in the Timor Sea can be completed in accordance with applicable regulations, both national and international. In the Protocols to the Civil Liability and Fund Conventions, 1992, states that the polluter is obliged (*strict liability principle)* to provide compensation to the high price for the recovery of the marine environment.

In London Convention Protocol, in 1996 used *the precautionary approach and Polluters bear the cost of pollution* that "prevention measures appropriate to be taken first, when there is a reason that the waste or other materials incorporated into the marine environment causing a loss even when there is no convincing evidence to prove a causal relationship between inputs and impacts. "

In accordance with compensation and the 'polluter Pays principle', then the Indonesian Government is entitled to claim /compensation and mitigation of environmental restoration as quickly as possible to avoid a wider losses into other regions and social redress against Australia in accordance with the regulations- existing laws and relevant international conventions. London Protocol further explained that, in principle, polluters should bear the costs of pollution and ensure that no transfer of pollution from one part of one environment to another environment.

Referring to OPOL, the company that operates shall be liable for any damages caused by pollution and provide cost of repair / restoration of the environment up to a maximum of U.S. $ 120,000,000 per incident. Although the actual OPOL originally used only for the UK, but by agreement the parties may be agreement about the number of compensation claims. The operator may file an insurance claim and the Government provides a mechanism to ensure that claims can be fulfilled up to a maximum liability.

IV. Conclusion

Pollution of the marine environment from year to year shows a huge increase marked by increased activity in the sea, good shipping, fishing or underwater exploration. This shows a lack of public awareness and government indifference to the marine environment. Legislation concerning the protection and preservation of the marine environment in Indonesia has not applied maximally, as well as the implementation of international conventions relating to pollution of the marine environment. For that we need government to enforce the firmness of the legislation is there to save the marine environment. The principle of liability and sanctions used by the precautionary principle, polluter pays principle, liability strict principle, and Polluters bear the cost of pollution.