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Pollution of the Marine Environment in Southeast Asian Region in Perspective of International Environmental Law

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Abstract: Marine environmental pollution has emerged as a critical issue in Southeast Asia, a region known for its rich marine biodiversity, strategic maritime routes, and rapid economic development. The combination of dense maritime traffic, industrial expansion, and inadequate regulatory enforcement has intensified the vulnerability of this region to marine pollution, including oil spills, plastic waste, and chemical discharge. This paper examines the legal framework governing marine environmental protection under international environmental law, with a particular emphasis on its application and enforcement in Southeast Asia.The study analyzes key international conventions such as the United Nations Convention on the Law of the Sea (UNCLOS) 1982, the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), the London Dumping Convention 1972, the Oil Pollution Preparedness, Response and Cooperation Convention (OPRC) 1990, and the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969. These instruments are critically reviewed in terms of their relevance, ratification status, and domestic implementation across Southeast Asian countries. Using a normative research methodology, this paper is supported by a case study of the Montara oil spill in the Timor Sea, which significantly impacted Indonesia's marine ecosystem and highlighted deficiencies in cross-border environmental governance. The study underscores the shared responsibility of both state and non-state actors in preventing and mitigating marine pollution and stresses the urgent need for enhanced regional cooperation, legal harmonization, and institutional capacity-building. Despite the presence of robust international legal frameworks, challenges persist in enforcement due to legal fragmentation, technical limitations, and political sensitivities. This paper recommendas strengthening regional legal instruments, improving state compliance, and fostering collaborative mechanisms to ensure sustainable marine environmental governance in Southeast Asia.

Keywords: Marine Pollution; International Environmental Law; Regional Cooperation; Oil Spill Dispute; Legal Liability.

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I. INTRODUCTION

The degradation of the marine environment is a pressing global concern, particularly in Southeast Asia—one of the most biodiverse and economically critical maritime regions in the world. International environmental law has evolved in recent decades as a distinct and dynamic branch of international law, providing frameworks to address transboundary environmental harm, including marine pollution. Within this field, international marine environmental law has emerged as a specialized domain focusing on the protection and preservation of marine ecosystems against threats such as oil spills, ship scrapping, and illegal waste dumping.

The sources of international environmental law—both customary international law (CIL) and conventional law—have been instrumental in shaping state behavior and obligations in marine environmental governance. Conventions and treaties serve as legally binding instruments that guide state practice in pollution prevention, environmental protection, liability, and cooperation. These include, most notably, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which establishes the legal framework for the use and protection of the world's oceans and their resources[1].

Southeast Asia, encompassing marine areas such as the Andaman Sea, Malacca Strait, Singapore Strait, South China Sea, Arafura Sea, and the Celebes Sea, holds immense ecological and economic value. Spanning approximately 8.94 million km²—or about 2.5% of the global ocean surface—this region is home to over 7% of the world's coastal population. Intense maritime activity, unregulated exploitation, and weak enforcement mechanisms have rendered Southeast Asia particularly vulnerable to environmental degradation, especially from marine pollution.

Oil pollution poses a particularly severe threat. Each year, an estimated three to four million tons of oil are discharged into the ocean, disrupting marine biodiversity, damaging coastlines, and undermining the livelihoods of coastal communities. For instance, the 2009 oil spill in the Timor Sea, caused by the operations of an Australian company, contaminated over 16,000 square kilometers of Indonesian waters. The incident not only caused significant ecological damage but also sparked international concern regarding corporate accountability and cross-border environmental responsibility[2].

The urgency to address marine pollution in Southeast Asia necessitates a comprehensive legal approach grounded in international environmental law. Several international conventions have been developed to tackle marine pollution and assign responsibilities to states and non-state actors, including:

1) United Nations Convention on the Law of the Sea (UNCLOS) 1982, which provides the foundational framework for ocean governance and environmental obligations of states[3].

[1] United Nations, United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations Treaty Series, vol. 1833, p. 3.

[2] Lee A. Kimball, "Institutional Linkages between the Convention on Biological Diversity and Other International Conventions," *Review of European Community & International Environmental Law* 3, no. 1 (1994): 36–44

[3] Lee A. Kimball, "Institutional Linkages between the Convention".

2) International Convention on Civil Liability for Oil Pollution Damage (1969), which outlines compensation mechanisms for damage caused by oil spills[4].
3) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention, 1972), addressing ocean dumping[5].
4) International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, 1990), which fosters international collaboration in responding to oil pollution incidents[6].
5) International Convention for the Prevention of Pollution from Ships (MARPOL, 1973/78), the primary international convention aimed at preventing marine pollution from ships due to operational or accidental causes[7].

This study examines marine environmental pollution in Southeast Asia through the lens of international environmental law. It aims to assess how effectively existing international legal instruments have been implemented in the region and to evaluate the legal responsibilities of states and non-state actors in preventing and responding to marine pollution. By doing so, this paper contributes to the discourse on strengthening regional legal cooperation and enhancing compliance with international environmental standards.

II. METHODS

This study employs a normative legal research method, focusing on the analysis of international treaties, conventions, and customary international law related to marine environmental protection. Legal instruments such as UNCLOS 1982, MARPOL 1973/78, and the OPRC 1990 are examined to assess their implementation in Southeast Asia. The research is based on secondary legal sources, including international legal documents, scholarly literature, and case studies such as the 2009 Montara oil spill. A statute-based and comparative approach is applied to evaluate legal obligations and state compliance within the region[8].

III. ANALYSIS AND DISCUSSION

United Nations Convention on the Law of the Sea (UNCLOS, 1982)

The 1982 Convention on the Law of the Sea is the culmination of the work of the United Nations on the law of the sea, which was approved at Montego Bay, Jamaica on December 10, 1982.[1] The 1982 Convention on the Law of the Sea fully regulates the *protection and preservation of the marine environment* in Articles 192-237.

Article 192 reads: which affirms that every State has an obligation to protect and preserve the marine environment. Article 193 outlines an important principle in the utilization of resources in the marine environment, namely the principle that each State has the sovereign right to exploit its natural resources in accordance with its

[4] International Maritime Organization, International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969), United Nations Treaty Series, vol. 973, p. 3.

[5] London Convention (Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, 29 December 1972).

[6] International Maritime Organization, International Convention on Oil Pollution Preparedness, Response and Cooperation (London, 30 November 1990).

[7] *Op Cit*

[8] Borthwick Commission, Report of the Montara Commission of Inquiry (Canberra: Australian Government, 2010).

environmental policy and in accordance with its obligation to protect and preserve the marine environment[9].

The 1982 Convention on the Law of the Sea requires each State to make efforts to *prevent*, *reduce* and *control* pollution of the marine environment from every source of pollution, such as pollution from the disposal of hazardous and toxic waste originating from *land-based* sources, dumping, from ships, from exploration and exploitation installations. In various efforts to prevent, reduce and control environmental pollution, each State must cooperate both regional and global cooperation as regulated by Articles 197-201 of the 1982 Convention on the Law of the Sea. States parties to the 1982 Convention on the Law of the Sea have an obligation to comply with all provisions of the Convention regarding the protection and preservation of the marine environment, which include the following:

1) The obligation to make laws and regulations on the protection and preservation of the marine environment that comprehensively regulate including the prevention of pollution of the marine environment from various sources of pollution, such as pollution from land, ships, dumping, and others. The legislation includes law enforcement, i.e. the court process.
2) Obligation to make efforts to prevent, reduce and control pollution of the marine environment,
3) The obligation to carry out regional and global cooperation, if regional cooperation means cooperation at the level of ASEAN member countries, and global cooperation means with other countries involving countries outside ASEAN because now the problem of marine environmental pollution is a global problem, so the handling must be global as well.
4) Countries should have regulations and equipment as part of the *contingency plan.*
5) These laws and regulations are accompanied by a process of accountability mechanisms and compensation obligations for parties harmed by marine pollution.

In carrying out the obligation to protect and preserve the marine environment, each State is required to cooperate both regional and global cooperation. The obligation to conduct regional and global *co-operation* is regulated by Articles 197-201 of the 1982 Convention on the Law of the Sea. Article 197 of the Convention reads: "States shall cooperate globally and regionally directly or through international organizations in formulating and elaborating international provisions and standards and recommended procedures and practices in accordance with the Convention for the protection and preservation of the marine environment with due regard to regional circumstances"[10].

Such regional and global cooperation can take the form of cooperation in the notification of marine pollution, joint mitigation of the hazards of marine pollution, the establishment of contingency plans against pollution, studies, research, exchange of information and data as well as establishing scientific criteria to regulate procedures and practices for the prevention, reduction and control of pollution of the marine environment as confirmed by Articles 198-201 of the 1982 Convention on the Law of the Sea. In addition, Articles 207-212 of the 1982 Convention on the Law

[9] Handl, Günther. "National Uses of Transboundary Air Resources: The International Entitlement Issue Reconsidered." *Natural Resources Journal* 26, no. 2 (1986): 405–41.

[10] Morgera, Elisa, and Kati Kulovesi, eds. *Research Handbook on International Law and Natural Resources*. Cheltenham: Edward Elgar, 2016

of the Sea require each State to make laws and regulations governing the prevention and control of marine pollution from various sources of pollution, such as *land-based* sources, pollution from *sea-bed* activities within its national jurisdiction, *pollution from activities in the Area*, *pollution by* dumping, pollution from *vessels*, and pollution from *or through the atmosphere*[11].

Liability and Indemnification Obligations

The 1982 Convention on the Law of the Sea addresses the issue of responsibility and liability for compensation in relation to the protection and preservation of the marine environment. Article 235 of the Convention confirms that each State is responsible for implementing international obligations regarding the protection and preservation of the marine environment, so all States must assume the obligation of compensation in accordance with international law.

Each State should have legislation on prompt and adequate compensation for *damage* caused by pollution of the marine environment by a natural or juridical person within its jurisdiction. Therefore, States should cooperate in implementing international law governing liability and indemnification obligations for compensation of losses due to pollution of the marine environment, as well as payment procedures such as compulsory insurance or compensation funds[12].

Responsibility and indemnification obligations of the State or so-called *state* responsibility (*state sovereignty*) is a fundamental principle in international law, so that if there is a violation of international obligations will arise the responsibility of the State. Violation of international obligations such as not implementing the provisions contained in the 1982 Convention on the Law of the Sea that are binding on the state. There is no treaty that specifically regulates State responsibility in international law. So far, the issue of State responsibility refers to the *Draft Articles on Responsibility of States for* International *Wrongful Acts* made by the *International Law* Commission *International Law Commission* (ILC) which states: every internationally wrongful act of a state imposes obligations *on* the State concerned[13].

1. International Conventions on Civil Liability for Oil Pollution Damage 1969 (Civil Liability Convention)

International Convention on Civil Liability for Oil Pollution Damage. The 1969 CLC is a convention that regulates compensation for marine pollution by oil due to tanker accidents. This convention applies to pollution of the marine environment in the territorial sea of participating States. In terms of liability for compensation for pollution of the marine environment, the principle used is the principle of absolute liability.

1) Scope of Applicability

The Convention applies only to pollution damage from spilled persistent oil and tank vessel cargo. The Convention covers pollution damage of locations including the waters of the convention member states of the flag State of the vessel and the

[11] United Nations, *United Nations Convention on the Law of the Sea*, Montego Bay, December 10, 1982, *United Nations Treaty Series*, vol. 1833, 3, arts. 198–201, 207–212

[12] Daud Hassan, *Protecting the Marine Environment from Land-Based Sources of Pollution: Towards Effective International Cooperation* (London: Routledge, 2006).

[13] International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969. United Nations Treaty Series, vol. 973, p. 3.

nationality of the owner of the tank vessel not covered by the scope of application and the CLC Convention. The notation "pollution damage", including efforts to prevent or reduce pollution damage in the territorial waters of the convention member state, (Preventive measures).

The Convention applies only to damage caused by the spillage of oil cargo from a tank vessel and does not include oil spills that are not cargo or purely preventive measures taken where no oil is spilled from the tank vessel at all. The Convention also applies only to ships carrying oil as cargo i.e. oil carriers. Spills from tank vessels in "Ballast Condition" voyages and spills from bunker oil or vessels other than tank vessels are not included in this convention, Damage caused by "Non-persistent Oil" such as gasoline, kerosene, light diesel oil, etc., is also not included in the CLC Convention.

2) Absolute Responsibility

The owner of a tank vessel is liable to compensate for pollution damage caused by an oil spill and his vessel as a result of an accident. The owner may be relieved of such liability only on the grounds of :

a) Damage as a result of war or natural disaster.
b) Damage as a result and sabotage of other parties, or
c) Damage caused by the authorities not properly maintaining aids to navigation.

The reasons for the aforementioned exceptions are very limited, and the owner may be said to be obliged to compensate for pollution damage in almost all accidents that occur.

3) Limitation of Liability

Under certain conditions, the shipowner provides compensation for damages with a limit of 133 SDR (Special Drawing Rights) per tonne of ship tonnage or 14 million SDR, or approximately US$ 19.3 million, whichever is less. If the claimant can prove that the accident occurred due to the actual fault of privity of the owner, then the limit of his liability for the shipowner is not given.

4) Request for Indemnification (Channeling of Liability)

Claims for pollution damage under the CLC Convention can only be made against the registered shipowner. This does not preclude victims from claiming compensation for damages under the Convention from persons other than the shipowner. However, the Convention prohibits making claims to the shipowner's representative or agent. The shipowner must address the issue of claims from third parties under applicable national law[14].

2. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Dumping Convention).

The London Dumping Convention is an international convention to prevent *dumping,* which is the dumping of hazardous waste from ships, aircraft or industrial plants. Convention countries are obliged to take notice of such dumping. Dumping can cause marine pollution that poses a threat to human health, damages ecosystems and disrupts the comfort of sea travel.

Some types of hazardous waste containing prohibited substances regulated under the London Dumping Convention are mercury, plastics, synthetic materials, oil residues, radioactive mixtures and others. The exception to this dumping action is

[14] Koh, Kheng-Lian, ed. *Criminal Liability of Corporations for Environmental Pollution: Comparative Analysis of Law and Practice in Asia*. Singapore: Asia Pacific Centre for Environmental Law, 2001

when there is *"foce majeur",* which is where there is a situation that endangers human life or a situation that can result in safety for ships[15].

3. The International Convention on Oil Pollution Preparedness And Cooperation 1990 (OPRC)

OPRC is an international cooperation convention to deal with marine pollution due to oil spills and hazardous toxic materials. From the existing understanding, we can conclude that this Convention quickly provides assistance or help for victims of marine pollution, such assistance by providing assistance equipment so that recovery efforts and evacuation of victims can be addressed immediately.

Marine pollution by oil spills is not a new thing for Southeast Asian countries, especially in Indonesia, from 2003 to 2009 marine pollution due to oil spills repeatedly occurred in the Thousand Islands, the victims are coastal communities and fishermen, the impact of marine pollution by oil is very broad, the sea polluted by oil will cause disruption of ecosystem functions in coastal seas, coastal aquatic life such as coral reefs, mangrove forests and fish will be disrupted. On the economic side, catches such as shrimp and fish will certainly smell of oil which has an impact on low selling value and quality or quality decreases. With waves, currents and the movement of tidal water masses, oil residues will spread quickly. If not handled immediately, this oil waste pollution will bring health impacts to people who consume polluted fish.

Indonesia also has regulations regarding marine pollution caused by oil spills in the sea. For perpetrators of marine pollution by oil spills, in this case tankers are obliged to cope with the occurrence of oil spill emergencies originating from their ships, which are listed in Presidential Regulation Number 109 of 2006 concerning Emergency Management of Oil Spills at Sea.

4. International Convention for the Prevention of Pollution from Ships 1973 (Marine Pollution).

Marpol 73/78 is the international convention for the prevention of pollution from ships, 1973 as amended by the 1978 protocol. MARPOL 73/78 was designed with the aim of minimizing marine pollution, and preserving the marine environment through the complete elimination of pollution by oil and other harmful substances and minimizing the accidental discharge of such substances[16].

Pollution Of The Marine Environment In Southeast Asian Waters

In the last decade the symptoms of pollution of the marine environment (the pollution of the marine environment)10 increasingly attract the attention of various parties, both realized in the form of cooperation of States located in certain regions and research conducted by the State itself. In line with this, M. Daud Silalahi said that pollution can be interpreted as a form of environmental impairment, disturbance, change, or destruction.

In fact, the presence of foreign objects in it causes environmental elements to be unable to function properly (reasonable function)11 while in the 1982 Convention on the Law of the Sea it is stated that:

[15] International Maritime Organization, *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (London, December 29, 1972), 1046 U.N.T.S. 120.

[16] Cihat Asan, "Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (OPRC-HNS Protocol) and Its Effects in Turkey," *Journal of ETA Maritime Science* 8, no. 4 (2020): 253–268, https://doi.org/10.5505/jems.2020.24629.

Pollution of the marine environment means the direct or indirect introduction by humans of materials or energy into the marine environment including quas which causes or may cause adverse effects in such a way as damage to the richness of the liver and life in the sea, danger to human health, interference with activities at sea including fishing and other legitimate uses of the sea, a decrease in the quality of the usefulness of sea water and reduce comfort.

From the above understanding, we can see that pollution of the marine environment is caused by several factors that result in a decrease in the quality of the sea water itself, related to the matter of oil pollution in Southeast Asia which is a very productive area of pollution that is very detrimental to the Southeast Asian region which every year 3 to 4 million tons of oil pollute the marine environment, the pollution is cross-border so that not only the victimized country is affected but all countries whose beaches are close together must be affected.

There are various sources of marine pollution as the author has mentioned in the background above, namely tanker operations, tanker accidents, ship scrapping (cutting ship bodies to become scrap metal), and offshore oil and gas leaks.

Overcoming Marine Environmental Pollution In The Southeast Asian Region In The Perspective Of International Environmental Law

The cases of marine environmental pollution that the author has described in Chapter III above are problems that must be addressed together by the countries that are members of the ASEAN organization because the impact is not only felt by the State that is the victim of the pollution but the States whose seas border the State are also affected such as the case of the showa maru aground where it is not only Indonesia that feels the impact of the pollution but Singapore and Malaysia are also affected by the pollution, this is the nature of the characteristics of the environment that is always connected as a whole.

Countermeasures against pollution of the marine environment is not easy as turning the palm of the hand. It takes the coordination of all countries, especially countries in the Southeast Asian region to cooperate regionally to overcome the impact of pollution, as mentioned in UNCLOS 1982 as follows:

> *States shall cooperate on a global basis and where necessary, on a regional basis directly or through competent international organizations, in formulating and elaborating provisions, standards and internationally recommended practices and procedures consistent with this convention for the purpose of protection and preservation of the marine environment, having regard to distinctive regional characteristics*[17].

From the provisions of the article above, we can see that environmental law in this case international environmental law provides recommendations for cooperation to overcome marine environmental pollution both at the global level and at the regional level. Judging from the cooperation of Southeast Asian countries at the regional level where the cooperation began in 1977 when the ASEAN paper was prepared regarding the sub-regional environmental program (ASEP) assisted by UNEP (*United Nations Environment Programme*) to discuss environmental issues,[18] where the priorities of

[17] United Nations, *United Nations Convention on the Law of the Sea*, Montego Bay, December 10, 1982, *United Nations Treaty Series*, vol. 1833, 3, art. 197.

[18] Yen-Chiang Chang, Xiaonan Zhao, and Yang Han, "Responsibility under International Law to Prevent Marine Pollution from Radioactive Waste," *Ocean & Coastal Management* 227 (2022): 106294, https://doi.org/10.1016/j.ocecoaman.2022.106294.

the cooperation program in the field of environment include 6 (six) sub-discussions, namely:

1. Environmental Management including *Environmental Impact Assessment.*
2. Nature Conservation and Terrestrial ecosystems,
3. Industry and environment
4. Marine environment
5. Environmental education and training
6. Environmental information

Related to the cooperation of Southeast Asian countries in the field of marine environment is implemented through three regional bodies, namely

1. The coordinating body on the seas of east east (COBSEA)
2. The ASEAN Experts Group on the Environment (AEGE)
3. The working Group on marine science (WGMS)

This is an illustration of the efforts of Southeast Asian countries to tackle the problem of marine environmental pollution that is transboundary in nature. In addition, bilateral and multilateral cooperation is needed, such as tripartite cooperation between Indonesia, Singapore and Malaysia in tackling marine pollution in the Malacca Strait. In general, there are three factors that are used as a basis for overcoming marine environmental pollution, namely aspects of legality, aspects of completeness and aspects of coordination[19].

A. Legality aspect

If we look at the national aspect, Benny Hartono, quoting Husseyn Umar, said that a good regulation is one that not only fulfills the formal requirements as a regulation, but also creates a sense of justice and propriety and is implemented or enforced in reality. Law No. 23 of 1997 replaced by Law No. 32 of 2009 on Environmental Management clearly regulates aspects of management and sanctions for perpetrators of pollution at sea, but the facts in the field sometimes the authorized officials actually play dirty with the perpetrators of pollution in addition to the difficulty of finding evidence to bring them to justice. From an international aspect, in 1945 the International Maritime Organization (IMO) produced an international convention on the prevention of pollution at sea by oil, then this convention was renewed in 1973, which was the beginning of overcoming the impact of marine pollution, it is the duty of countries that are members of the IMO to enforce these regulations.

B. Equipment Aspect

We know that countermeasures against oil pollution are very difficult to do for example the showa maru oil spill where more than 30 military and civilian ships took part in efforts to save the west coast of Singapore in addition to efforts to save the sea from oil pollution requires a lot of money. For this reason, bioremediation is needed, such as spraying nitrate and phosphere to the oil spill to accelerate the work of oil-degrading bacteria. In this aspect, the most important thing is the importance of mastering the procedures and techniques of oil spill countermeasures by field implementation officers must be owned by countries affected by environmental

[19] Boyle, Alan. "Developments in the International Law of Environmental Impact Assessments and Their Relation to the Espoo Convention." *Review of European Community & International Environmental Law* 20, no. 3 (2011): 227–31.

pollution.

C. Coordination Aspect

In terms of overcoming oil spill pollution in the sea, the coordination aspect plays an important role considering that marine pollution is pollution that is cross-border so that there needs to be cooperation between countries, especially neighboring countries whose beaches are close together must work together to overcome environmental pollution. Thus, marine pollution can be resolved completely.

It is the obligation of all countries not only Southeast Asian countries but all countries in the world to enforce their rules in order to minimize and prevent more severe environmental pollution because the largest contributor of animal protein comes from the sea, to enforce environmental pollution must meet the aspects that the author has described above.

Settlement of the Montara Case Dispute

In connection with the settlement of the Montara Oil Case in the Timor Sea, the Governments of Indonesia and Australia have taken peaceful means, prioritizing negotiations between the parties. Basically, the Governments of Indonesia and Australia have realized that both countries have interests and linkages in the field of marine environmental management. Therefore, the Governments of Indonesia and Australia since 1996 have had a legal framework in resolving various cases in the marine environment, namely a *Memorandum of Understanding (MoU) between the Governments of Australia and Indonesia on Oil Pollution Preparedness and Response 1996*.[20]

As we all know that oil pollution cases are an emergency. This is because the causes of occurrence are unpredictable and take place very quickly while the resulting impact takes place quickly and randomly. So that no first prevention can be done other than responding to the impacts that have been caused. For this reason, it is important to be able to implement the 1996 MoU.

One form of Australia's responsibility and good faith in addressing the pollution that occurred is by seeking the responsibility of the company that caused the pollution, PTTEP Australasia. And these efforts resulted in several steps that have been taken by PTTEP Australasia since the spill until after the spill. Starting from actions categorized as emergency response to pollution to subsequent continuous monitoring[21].

As a result of the oil spill in the Timor Sea in 2009, PTTEP Australasia accepted responsibility for funding a long-term pollution impact monitoring program under a joint agreement with the Department for Sustainability, Environment, Water, Population and Communities (DSEWPaC).

And several world-class independent research groups/institutions are taking part in the monitoring program, including the research group :

a. Some of Australia's leading Universities (Quensland, Curtin, Monash and Charles Darwin)
b. Asia Pacific ASA
c. CSIRD

[20] *Op Cit.*

[21] M. N. M. Pasya, "International Dispute Settlement of Montara Oil Spill on Timor Sea Pollution," *Legal Brief* 13, no. 1 (2024): 50–56.

d. Australian Institute of Marine Science

This monitoring program aims to find and measure the level of pollution in the Timor Sea. The results of the research show that hydrocarbons have contaminated or disrupted marine life and marine ecosystems in some areas, but have had little or no impact on health or some marine species and habitats. A scientific review of the research showed that no oil from Montara reached Australian or Indonesian waters.

The Australian government established a commission of investigators called the Borthwick Commission Inquiry to investigate and describe matters relating to the causes of the Montara incident, as well as efforts to prevent similar disasters from occurring. During the inquiry, all PTTEP Australasia employees and contractors from *Seadrill and Halliburton*, who were on the West Atlas rig at the time of the incident, were interviewed. The commission's report, published on November 24, 2010, contained 100 findings and 105 recommendations, most of which were adopted by the federal government. It found several root causes of the Montara oil spill:

a. Failure in the supervision of the two Montara platforms
b. Failure in platform verification
c. Lack of management control
d. Lack of competence of personnel leading to poor decision-making.

Based on the above, the relevant ministry announced in February 2011, that PTTEP Australasia's operating license was not revoked but the company was only permitted to operate under the most comprehensive and stringent monitoring regime ever seen in the Australian oil and gas industry[22].

PTTEP began by developing the Montara Action Plan (MAP) immediately following the incident in November 2009[23]. The MAP focuses on short, medium and long-term actions from the incident, as well as lessons learned from the incident with 4 key areas of coordination:

- Government
- Relevant organizations and their capabilities
- Technical systems
- Safety, security, health and environmental culture and management.

In October 2009, an agreement was reached between PTTEP and the Australian Government to develop an environmental monitoring program on several long-term aspects of the spill[24]. This monitoring program is jointly conducted by the company and DSEWPaC. All scientific findings were reviewed by an independent body from DSEWPaC before being finalized as an official report. All research results are transparent and officially published on the DSEWPaC website. In this case PTTEP agreed to the Australian Government to finance the entire research, at least for approximately 2 years. And it is possible to continue the research for up to 10 years.

In the Montara Oil case, the method used in the settlement is negotiation with the possibility of using other methods in accordance with the agreement of the parties. Negotiation is the most basic and oldest means of dispute resolution used by

[22] Ryan Richard and Emily Parry, "The Montara Class Action Decision and Implications for Corporate Accountability for Australian Companies," *Business and Human Rights Journal* 6, no. 3 (2021): 599–606.

[23] Ryan Richard and Emily Parry, "The Montara Class Action Decision".

[24] Ryan Richard and Emily Parry, "The Montara Class Action Decision".

mankind. Many disputes are resolved every day through this means without any publicity or public attention. One of the positives is that it allows the parties to monitor the dispute resolution procedure and any settlement is based on the agreement or consensus of the parties[25].

Negotiation is the first way to go when the parties are in dispute. Negotiations take two main forms, namely bilateral and multilateral. Negotiations can be conducted through diplomatic channels at international conferences or within an international institution or organization. This method can also be used to resolve any form of dispute, whether it is economic, political, legal, territorial, family, ethnic, and other disputes. Even if the parties have submitted their dispute to a particular judicial body, the process of resolving disputes through negotiation is still possible[26].

The main drawback of using this method in resolving disputes is:

1) When the position of the parties is unbalanced. One party is strong, while the other party is weak. In this situation, the stronger party is in a position to pressure the other party. This often happens when two parties negotiate to resolve a dispute between them.
2) The process of negotiation is often slow and time-consuming. This is mainly due to the interstate issues that arise, especially those related to international economics. In addition, there is rarely a time-limit requirement for parties to settle their disputes through negotiation.
3) If a party is too rigid in its stance. This can make the negotiation process unproductive.

The positive aspects of negotiation are as follows:[33]

a. The parties themselves conduct negotiations directly with the other party.
b. The parties have the freedom to determine how the negotiated settlement is conducted according to their agreement.
c. The parties directly supervise or monitor the settlement procedure.
d. Negotiations avoid public attention and domestic political pressure.
e. In negotiations, the parties seek a settlement that is acceptable and satisfactory to the parties, so that there are no winners and losers but both parties win.
f. Negotiation may be used for any stage of dispute resolution in any of its forms, whether written, oral, bilateral, multilateral, and other negotiations.

The settlement of disputes related to marine pollution due to oil spills that occurred in the offshore oil exploitation activities of PTTEP Australasia is still in the process of negotiation. The countries involved in this oil pollution case are Australia, Indonesia and Thailand.

The Indonesian government plays an important role in the process of resolving this oil pollution dispute. As previously stated, due to this oil pollution case, Indonesian waters around East Nusa Tenggara Province have been polluted, which has an impact on the economic sector and the marine environment of the surrounding community. Therefore, the Government coordinated with the Regional Government of East Nusa Tenggara Province to take steps related to proving the occurrence of pollution ranging from surveys to calculating the estimated impact of pollution.

[25] J. F. Bagaskara, N. Nancy, and K. C. Ivanov, "International Environment Policy: Dispute of Indonesia's Timor Sea due to the Montara Oil Spill (Australia)," *Journal of Global Environmental Dynamics* 2, no. 2 (2021): 11–13.

[26] J. F. Bagaskara, N. Nancy, and K. C. Ivanov, "International Environment Policy": 12-13.

Based on Presidential Regulation No. 109/2006 on Emergency Response to Oil Spills at Sea, in Article 3, it is stated that in order to integrate the implementation of emergency response to oil spills at sea tier level, a National Team for Emergency Response to Oil Spills at Sea is formed, hereinafter referred to as the National Team. The National Team consists of relevant ministries in Indonesia.

The National Team is chaired by the Minister of Transportation, Vice Chair, Minister of Environment, and its members consist of the Minister of Energy and Mineral Resources, Minister of Home Affairs, Minister of Foreign Affairs, Minister of Maritime Affairs and Fisheries, Minister of Health, Minister of Forestry, Minister of Finance, Minister of Law and Human Rights, Commander of the Indonesian National Army, Chief of the Indonesian National Police, Head of the Upstream Oil and Gas Business Activities Implementing Agency, Head of the Regulatory Agency for the Supply and Distribution of Fuel Oil and Natural Gas Transportation Business Activities through Pipelines and Governors, Regents/Mayors whose territories partially cover the sea[27].

The Central Government also conducted negotiations with the Australian Government, this was done because the source of pollution was within Australia's EEZ. In addition, Indonesia's cooperation was also carried out because the two countries were the parties harmed by the oil pollution of PTTEP Australasia, which is a private company from Thailand.

Negotiations conducted by the Government of Indonesia and Australia are the implementation of the MoU between the Government of Australia and Indonesia on Oil Pollution Preparedness and Response 1996, which contains points of cooperation that can be applied in resolving the oil pollution case, namely: cooperation in the exchange of information on oil pollution incidents at sea, field inspections at the location of oil incidents at sea that are occurring for mutual cooperation between the two parties and emergency response cooperation such as mobilization of personnel, logistics and other equipment needed in emergency situations, and others. The Indonesian and Australian governments jointly conduct information exchange, inspections and other activities required in such emergency situations.

The Indonesian government has also prepared a lawsuit against Australia and the Montara oil field operator PTTEP Australasia to compensate for the losses suffered by Indonesia due to the pollution. The compensation claim is based on the provisions contained in the International Convention On Civil Liability For Oil Pollution Damage 1969 (now replaced by the CLC 1992), which Indonesia and Australia have ratified, respectively Indonesia on July 6, 1999 and Australia on October 9, 1995. The convention consists of 21 articles and aims to ensure appropriate compensation for parties who suffer losses due to oil pollution at sea[28].

Based on an interview with Rayyanul M. Sangadji, the ongoing negotiation process is between Indonesia and PTTEP. Until now, there has been no meeting point between Indonesia and PTTEP Australasia regarding the provision of compensation

[27] Akhavan, Payam. "Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism with Political Realism." *Human Rights Quarterly* 31, no. 3 (2009): 624–54

[28] N. S. Rahayu, N. I. Rasaf, G. A. Septiani, and P. R. Yurisa, "Policy on Maritime Border Disputes between Indonesia and Australia: Stephen M. Walt's Neorealism Perspective," *Journal of Islamic World and Politics* 7, no. 1 (2023): 80–93.

demanded by Indonesia. PTTEP Australasia also does not fully base its compensation obligations only on claims submitted by the Government of Indonesia. Thus, PTTEP conducted its own investigation through a team that had been formed by PTTEP. The length of the compensation process has caused unrest among the people of East Nusa Tenggara Province who are directly affected by the Montara oil pollution. Until now there has been no meeting point between the Indonesian government and the Australian government.The Indonesian government through the Timor Sea Advocacy Team (TALT) negotiates compensation for the impact of the fisheries, agriculture and environmental sectors in the area.The worst pollution is in Rote Ndao district, harming more than 21,000 coastal residents in 48 villages there.This negotiation has been going on since July 27, 2010[29]. Not only the fisheries sector has been affected by oil pollution in the Timor Sea, seaweed cultivation on the south coast of Timor Island in the western part of NTT as well as on the coast of Rote Island to Sabu Island, has completely failed because the coastal waters where seaweed cultivation is carried out are contaminated with oil[30].

The Indonesian government in terms of prosecuting compensation experienced by the people of the coastal area of Kupang has pursued diplomatic means. This was done because Indonesia upholds the principle of good neighborliness and seeks the implementation of Article 33 of the UN Charter to prioritize the peaceful settlement of disputes. Diplomacy was chosen because it has become a vital part of state life and is the main means of dealing with international problems[31].

Diplomacy as a way of communication carried out by various parties including negotiations between recognized representatives orwhat is also defined as negotiations when it is not possible to find a bright spot, one party or both countries that consider it necessary, can choose another path in dispute resolution[32]. When all negotiation and diplomacy channels are closed, the international legal channel under the umbrella of ITLOS is open for the settlement of the oil spill case at the Montara well[33]. If ITLOS is considered too early to be chosen as a dispute resolution route, because indeed states rarely choose ITLOS as a place of dispute resolution, as evidenced since entry into force (between 1994 and 2006), only 13 cases handled by ITLOS72 in UNCLOS still allows a judicial option that is more flexible and more attractive to countries, namely Arbitration.

IV. CONCLUSION

The degradation of the marine environment in Southeast Asia, driven by transboundary oil pollution and ineffective legal enforcement, presents an urgent and complex challenge requiring a concerted regional and global response. This study highlights the critical role of international environmental law, particularly

[29] N. S. Rahayu, N. I. Rasaf, G. A. Septiani, and P. R. Yurisa, "Policy on Maritime" 87–93.

[30] United Nations, *United Nations Convention on the Law of the Sea*, Montego Bay, December 10, 1982, *United Nations Treaty Series*, vol. 1833, 3

[31] United Nations, *United Nations Convention.*

[32] E. K. Purwendah, D. G. S. Mangku, and A. Periani, "Dispute Settlements of Oil Spills in the Sea towards Sea Environment Pollution," in *First International Conference on Progressive Civil Society (ICONPROCS 2019)*, May 2019, 245–248 (Paris: Atlantis Press, 2019). https://doi.org/10.2991/iconprocs-19.2019.51

[33] E. K. Purwendah, D. G. S. Mangku, and A. Periani, "Dispute Settlements".

instruments such as UNCLOS 1982, MARPOL 73/78, and the OPRC 1990, in shaping state responsibilities and fostering cooperation in marine environmental protection. Although regional efforts such as ASEAN-led initiatives and bilateral cooperation—exemplified in the Montara oil spill case—demonstrate progress, significant legal, technical, and institutional gaps persist.

Effective implementation of international legal norms must be complemented by robust national regulations, technical preparedness, and inter-state coordination mechanisms. Furthermore, states must ensure that liability and compensation regimes are enforceable, transparent, and capable of delivering justice to affected communities. As marine pollution knows no borders, regional solidarity and adherence to international environmental standards are essential for sustainable ocean governance and the protection of coastal livelihoods. Strengthening legal frameworks, fostering compliance, and ensuring accountability are thus imperative steps toward a resilient and pollution-free marine environment in Southeast Asia.

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