



Claiming Environmental Pollution Compensation: The Case of Oil-Leakage in Indonesia

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Abstract

Cases of oil-leakage are more frequent happened today in Indonesia, following by damaging other environmental issues. Pipe gas exploded, oil-leakage onshore or offshore, forest fires, and many more incidents. Recently since mid of 2019, a pipeline of oil-leakage happened again in Indonesia and remain a big question on how to quantify compensation fairly and equally. This opinion to inspire how to measure such compensation based on comparison with other cases previously occurred.

Opinion

The case of Pertamina YYA-1 gas pipeline leakage made pollution on the Offshore North West Java (ONWJ) block since July 2019 began to be compensated by the SOE. The initial phase of compensation was disbursed Rp 18.54 billion (US\$ 1.32 million) from the Pertamina Hulu Energy (PHE) ONWJ for 2 villages namely Desa Sadari for 1,245 residents and Desa Tambaksari for 780 residents. Each compensation is Rp 900,000 (US\$ 64.29) for every resident/month for the 2 months impacted from July to August 2019.

There are still many villages affected by the Ministry of Marine Affairs and Fisheries of Indonesia (KKP) based on data on 28 August 2019, at least 14,721 residents affected in West Java and the Jakarta. Specifically, in Banten, the affected areas are in 7 cities/regencies namely Karawang, Bekasi, Kepulauan Seribu, Serang, City of Serang, Tangerang, and the City of Cilegon. The other socio-structural directly affected namely the salt farmers, fish farmers and small fishermen also have not received compensation.

The Source of the Problem

In the case of the oil spill on the ONWJ YYA-1 block, the oil spill reached 3,500 meters and almost $\frac{3}{4}$ circle around the platform and continues to grow. This pollution originated from the Rig Soehanah owned by the Limited Company (PT) Apexindo Pratama Duta which leaked around the beginning of July 2019. Closure of the well is predicted to take a maximum of 3 months but so far failed. The

depth of 1,000 meters, the diameter of 30 inches, drilling angled have done by the Boots & Coots. Leaks have so far affected 10 villages. the 8 villages spread across Karawang and 2 villages in Bekasi and 7 beaches.

The main contractor of the Pertamina Hulu Energy (PHE) has not been able to overcome the incidents. the YYA-1 production is 23 million cubic feet of gas per day (mmscf) and 3,000 barrel per day (bpd). The settlement with relief wells and cement injected to stop leakage. If successful, stop leaking within 8 weeks to 10 weeks of an emergency on July 15, 2019. Collaboration with experienced the US Boots & Coots has also not yet produced results. The YYA has 3 wells. A leak occurred when re-entry of the YYA-1 well. A gas bubble appeared on the YY platform from the Ensco-67 rig, the ONWJ area. The YYA-1 well that was leaked was a YYA-4 exploration well in 2011. A layer of oil has appeared in the sea since July 16, 2019, around the bridge.

Benchmarking

When compared with British Petroleum (BP) which became a polluter of the Gulf of Mexico due to oil spills from the Deepwater Horizon bridge in April 2010, the amount of the lawsuit filed by the US government was US\$ 20 billion (Rp 172 trillion). BP lost money, the oil lost reached 4.9 million barrels, the total loss reached US\$ 61.6 billion (Rp 862.4 trillion). In Indonesia, the case of compensation for environmental pollution is complicated and

the solution cannot be found. The problem of Lapindo victims until the fourteen years is also not finished, let alone expect the completion of its natural damage, perhaps like hanging smoke. No one knows how long the Lapindo's case will be over. The National Budget (APBN) has been drained for at least Rp 11.5 trillion (US\$ 821.43 million) and will continue to grow because the problem has not been resolved.

According to Cooper (1997) to measure the appropriateness of compensation to the environment, the magnitude of the impact on the social and environment must be determined in the period after the corporation operates. The onset of flooding even though it did not occur before is a simple example, damage to physical facilities such as infrastructure and disruption of population health can be directly known and can be calculated immediately. Other excess flooding impacts such as destroying agricultural areas so that harvest failure must also be calculated. Another social report that logically has relevance to this flood event is the CSR worth costs of just one event. In this case, it seems that corporate social and environmental obligations seem large even though they are not because the value of psychological disorders such as fear, phobia, community depression, heart attacks to children who cannot go to school cannot be quantified. Damage to cultural values or disappearing valuable historical artefacts is another thing that also cannot be calculated.

This term of propriety and reasonableness is also very sectoral because of social and environmental issues for corporations operating in Java will certainly not be the same as the impact of corporate operations outside Java.

In the case of clearing tropical forests into oil palm plantations in Kalimantan, for example, they will also face different social and environmental problems. In this region if the destruction of certain animals can be quantified in a certain value, for example, the killing of an Orang Utan, then the value of these animals is tangible and intangible can be charged as CSR costs that should be returned by the corporation. It also becomes a social and environmental burden if the corporation removes certain vegetation populations and habitats.

However, it seems that the terminology of propriety and fairness will not be easily taken for granted by business actors and this will be a source of new conflicts between communities and corporations. The dragons if in the area there are a group of business actors together, then they will defend each other as a corporation rather than a business actor that has a negative social and environmental impact. The corporate employers will be busy evading and avoiding the risk of recovering social and environmental impacts which are certainly expensive. Potential areas of conflict due to intersection are for example bonded areas or areas with many types of industries close together. The government, business actors and the local community, in this case, must sit together to

take a middle ground. This is the only best solution and risk that can be taken because the Government Regulation (PP) Number 47/2012 provides a blank check that is not firm.

The Ecoton Surabaya had ever sent a lawsuit of Rp 3.852 billion (US\$ 275.14 thousand) to the State-owned Plantation (PTPN) X, which is suspected to be the mastermind behind the recent Surabaya River pollution. Pollution from the Gempol Kerep sugar factory - a subsidiary of PTPN X - poisoned thousands of fish and other aquatic habitats. The cleanliness of the Surabaya River is very important for the citizens of Surabaya because 64 per cent is the main source of raw material for the PDAM to supply clean water for city residents. An interesting lesson from the Ecoton's lawsuit is that the quantification of losses due to environmental pollution have been carried out by corporations. This is perhaps the first lawsuit offense in Indonesia that has included environmental economic calculations. The latest PP regarding the obligation of the social and environmental responsibility (CSR) program Number 47/2012 which is mandatory from the Limited Liability Company Law Number 40/2007 article 74 does not clearly state how many figures are determined from a CSR program.

This figure is eagerly awaited by business actors to end the polemic about the value or size of CSR to the surrounding community that is appropriate and legal. But unfortunately, the value of corporate liability doing business in the field of natural resource processing (SDA) was not clearly and clearly stated. Its obligations are still limited to the amount of propriety and reasonableness. Social and environmental issues today are very serious and critical. Various problems that did not exist now have come into being after business entities have been declared allowed to operate in a region. These impacts include symptoms of global warming due to blind logging, floods, prolonged drought, susceptible to illness for the surrounding population, lost livelihoods such as barren fields, polluted waters and also the danger of air pollution to disturbance of comfort for example in terms of engine noise noisy factory engine. Surabaya River Pollution is the latest factual example in East Java. However, for the government, it seems difficult to refer to what is the proper value as a form of compensation for a corporation to social and environmental? This problem is indeed a dilemma because if the government applies a strict amount standard, then the other side is threatened such as tax revenues, unemployment and the economic system that has been built. But on the other hand, this blank check is no less a potential conflict, because corporations that claim to get minimal profits or losses are also entitled to not carry out their CSR obligations.

Environmental Losses

Take for example the case of a leaky oil and gas pipeline in Balikpapan which cost the country from the environment of US\$

8.27 billion but only claimed to only Rp 10.15 trillion (US\$ 725 million). The details are for compensation for environmental services of Rp 9.96 trillion (US\$ 711.43 million), recovery/restoration costs of Rp 184.05 billion (US\$ 13.15 million), and costs for resolving environmental disputes of Rp 868,628 million (US\$ 62.05 thousand). The Balikpapan case is because Pertamina is contaminating the Balikpapan bay, West Balikpapan, East Kalimantan (April 2018). Around 17,000 hectares of mangroves have been affected and died, young mangroves are vulnerable to death, many dolphins have died and moved upstream, and 162 fishing boats are not operating.

Indonesia is currently also in the process of verifying crude oil pollution in the Montara bay. The lawsuit to the Central Jakarta District Court was Rp 23.01 trillion (US\$ 1.64 billion). The Ministry of Environment and Forestry (KLHK) conducts final research into the impact of the Montara Block oil spill. The lawsuit is related to strict liability or the absolute responsibility of the environmental destroyer. The strict liability suit in Law Number 23/1997 concerning Environmental Management was changed to Law Number 32/2009 on Protection and Management of the Environment (PPLH). The government will sue PT PTTEP Australasia (Ashmore Cartier) Pty Ltd. PTTEP Australasia is a subsidiary of The Petroleum Authority of Thailand Exploration and Production Public Company Ltd (PTTEP).

However, the hearing on 23 Augustus 2017 in Jakarta District Court (PN Jakarta) held the first case of the Montara oil case in the

Timor Gap. The KLHK claims that PTTEP AA is based in Australia, PTTEP Thailand and PTT PCL Thailand. PTTEP AA was absent. Unsuccessful due to the absence of PTTEP. In the aftermath of the non-cooperation of PTT EP from Thailand over pollution complaints, it was coordinated by the Coordinating Ministry of Maritime Affairs so that Pertamina and SKK Migas prohibited doing business with PTT EP because of pollution of the Timor Sea 2009. PTT EP group PTT Australasia was sued Rp. 27.4 trillion. The planned acquisition of 3-4 oil and gas blocks in Java and Sumatra will be halted. EP PTT business activities are diverted to Malaysia. The Malunda block in the deep sea of West Sulawesi, the South Mandar block has been returned, both of which were obtained by PTT EP in 2010

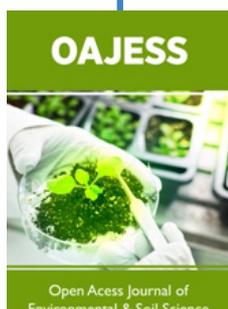
The EP PTT Block is currently in Natuna Sea with Pertamina at 11.5 per cent each. The value of PTT EP global assets is US\$ 19 billion, as much as 17.7 per cent worth US\$ 3.36 billion in Southeast Asia. The case occurred in 2009 of the explosions of the Montara refinery damaging mangrove forests, seagrass beds, coral reefs, and extensive marine ecosystems. Articles used by Indonesia are Articles 87 and 88 of Law Number 32/2009 on Environmental Management and Protection and require compensation of Rp 23.01 trillion (US\$ 1.64 billion). The details are mangrove damage of Rp 4.55 trillion (US\$ 325 million), seagrass damage of Rp 1.15 trillion (US\$ 82.14 million), damage to coral reefs of Rp 17.3 trillion (US\$ 1.24 billion) and recovery costs of Rp 4.46 trillion (US\$ 318.57 million).



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