



# Indonesia's Concrete Efforts to Ensure Australia's Accountability for Marine Pollution Resulting from the Montara Oil Spill

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**Abstract:** The marine pollution caused by the Montara oil spill in Australian waters have posed significant challenges to the marine environment, particularly affecting Indonesian waters. This issue remains unresolved as Australia has yet to fulfill its obligations under the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This study aims to examine Indonesia's firm and concrete measures to hold Australia accountable for the environmental and economic impacts of the pollution, as well as the appropriate forms of accountability that Australia should undertake in response to Indonesia's claims. This research employs a normative legal methodology, also known as library research, utilizing a legislative approach and an analysis of relevant legal regulations. The results indicate that Indonesia can pursue a combination of diplomatic initiatives, legal actions through international judicial bodies, and expressly acknowledge the economic and political challenges and in compelling Australia's compliance with its obligations. Indonesia should emphasize Australia's accountability by invoking international legal provisions that mandate appropriate compensation for the affected regions and stakeholders. By leveraging an analysis of diplomacy, regional cooperation, and legal approach, this study contributes to a deeper understanding of international legal frameworks and strategies for addressing environmental harm and preserving the sustainability of global marine environment.

**Keywords:** Montara oil spill; marine pollution; UNCLOS; oil spill

## 1. Introduction

The ocean plays a vital role in providing humanity with vast natural resources, offering immense opportunities for economic benefits. However, the management of marine environments often comes with consequences that jeopardize the sustainability of these ecosystems. Pollution remains one of the most pressing global concerns in marine conservation. This arises from the fact that the activities of one state in marine resource management can significantly disrupt coastal resources within its jurisdiction and beyond (Elvina, 2017).

One severe example of marine pollution is the oil spill caused by the explosion at the PTTEP (PTT Exploration and Production Public Company Limited) oil field on the Montara platform in Australian waters, which severely damaged marine ecosystems in Indonesia. This incident attracted significant attention from various stakeholders, including coastal communities in Timor-Leste, the Environmental Observatory NGO, and the governments of Indonesia and Australia. The spill had detrimental socio-economic and environmental impacts, affecting fisheries, coastal livelihoods, coral reef fisheries, protist plants, seagrass beds, mangroves, and coral reef ecosystems. These ecosystems serve as critical breeding grounds for fish and other marine organisms, and their degradation disrupts essential ecological services provided by mangroves and coral reefs. Indonesian government responded by submitting diplomatic claims to Australia, seeking acknowledgment of responsibility and compensation for the damages caused, in line with international legal norms (Ambarwati, 2021).

Indonesia and Australia initiated negotiations, facilitated by coordination between Indonesian ministries, to address the Montara oil spill and the resulting environmental crisis. These discussions included compensation claims ranging from IDR 1 trillion to IDR 140 trillion, with claims from entities such as the West Timor Care Foundation (YPTB) and the Indonesian government itself. Despite the submission of scientific evidence by Indonesia and the signing of a Memorandum of Understanding (MOU) on August 2, 2011, progress stalled following leadership changes at PTTEP in June 2011 (Astuti et al., 2019). The peaceful resolution process faces significant challenges, particularly due to the focus of international maritime law, such as UNCLOS 1982, on "state responsibility" without specific provisions for mandatory compensation. While UNCLOS outlines the rights and responsibilities of states in managing marine resources, its application to the Montara case remains uncertain, especially regarding the determination of specific compensation values.

This dispute has heightened tensions between Indonesia and Australia and drawn international attention to marine environmental protection. The oil spill has severely impacted Indonesian communities, particularly on the island of Timor, affecting livelihoods and economic stability. Although Indonesia has demanded compensation for the spill's impacts, Australia has rejected the claims, asserting that Indonesian waters were not significantly affected, despite evidence of heavy and light oil traces in Indonesian waters (Meinarni, 2016). Australia's non-compliance with its obligations under UNCLOS 1982 raises concerns, especially given the lack of significant progress in resolving the Timor Sea pollution case after more than a year. This situation has also raised questions about the Indonesian government's competence in protecting its citizens and marine resources. The Timor Sea pollution is reported to have caused twice the damage of the Gulf of Mexico oil spill, emphasizing the need for decisive action by the Indonesian

government. This includes pursuing comprehensive compensation through negotiations or legal mechanisms. However, Indonesia's position on the issue has yet to be articulated clearly, underscoring the urgency of more concrete actions to address Australia's non-compliance with UNCLOS 1982 (Ambarwati, 2021).

This study aims to explore specific actions Indonesia can take to compel Australia to fulfil its responsibilities for the marine pollution caused by the Montara oil spill. Additionally, it seeks to identify fair and sustainable solutions to mitigate environmental impacts, restore economic losses, and prevent the recurrence of similar incidents in the future.

## 2. Methods

The normative legal method (normative research method) was employed in this study. This research focuses on analysing and explaining how principles or norms are applied within the framework of positive law. It involves a legal research methodology that relies on library sources for data collection, using them as the foundation for analysing real-life cases, particularly those involving disputes or interactions between Indonesia and other nations. The research primarily utilizes library materials or secondary data as the key sources of information. The data analysis was carried out using a qualitative descriptive approach, which involves interpreting and describing the problem based on extensive data. The analysis integrates various perspectives relevant to the research topic and examines facts observed in the field (Purwati, 2020). This research was conducted from February to May 2024, during which the authors analysed the data from their respective residences.

## 3. Results and Discussion

### 3.1. Indonesia's Concrete Efforts to Ensure Australia's Compliance with Accountability Obligations Under Applicable Law

As stipulated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), "Every State is obliged to undertake efforts to prevent, reduce, and control pollution of the marine environment from any source of pollution, such as pollution from hazardous and toxic waste disposal originating from land-based sources, dumping, ships, and exploration and exploitation installations" (Huala, 2024). In line with this, under Presidential Regulation Number 109 of 2006 on Emergency Response Management, the Indonesian Minister of Transportation, as Chair of the National Oil Spill Response Team (National Team), has implemented various measures to mitigate the impacts of oil spills in Indonesian waters. These measures include activating regional oil spill response command posts and the National Command and Control Center for Oil Spill Response Operations (Puskodalnas). Actions taken include monitoring and sampling seawater for subsequent laboratory analysis, ensuring accurate data collection (Astuti et al., 2019).

In addressing the pollution in Indonesian waters, Indonesia did not carry out preventive measures as mandated by UNCLOS 1982. Due to the failure of drilling operations conducted by PTTEP Australia at Montara, Indonesia's response was delayed and lacked urgency, despite the significant impact on its population and natural resources (Amarin, 2016). This delay has made it challenging for Indonesia to bring the case to the International Court of Justice, as prompt action was not taken following the initial spill.

To address this, Indonesia can pursue other concrete steps to ensure Australia complies with the rulings and obligations. A diplomatic approach involving sustained negotiations with Australia, supported by other nations with shared environmental interests, could be effective. Several methods can be employed to resolve this case diplomatically, including:

- Negotiating with PTTEP Australia to address damages caused by the oil spill;
- Engaging in good offices diplomacy;
- Facilitating a mediation process between Indonesia and Australia;
- Establishing facts related to the case;
- Utilizing conciliation mechanisms;
- Resolving the issue through the United Nations;
- Addressing the matter via regional organizations.

Additionally, Indonesia can involve international organizations such as the United Nations (UN) or the International Environmental Protection Agency to highlight the negative impacts of Australia's actions. These organizations can assist in monitoring and intervening to address violations promptly (Anggara, 2016). If diplomatic efforts fail, Indonesia can file a legal claim with the International Court of Justice to legitimize its case and raise global awareness. Both Indonesia and Australia are signatories to international law, making Australia subject to its provisions. As an archipelagic state, Indonesia can utilize its national laws to hold Australia accountable for pollution within Indonesia's Exclusive Economic Zone (EEZ). Strengthening national environmental and marine pollution laws, along with setting clear standards and sanctions, would bolster Indonesia's position in seeking compensation from Australia (Geraldj, 2017). Economic pressure could also compel Australia to comply with legal rulings, such as imposing sanctions or trade restrictions. The Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), which facilitates bilateral economic cooperation across sectors like education, tourism, finance, mining, and energy, provides a mechanism to address non-tariff barriers. Firm action by Indonesia, supported by other affected nations, could influence Australia's political and economic decisions (Ambarwati, 2021).

### 3.2. *The Form of Accountability Steps That Should Be Taken by Australia Towards Indonesia*

In the theory of sovereignty, there is a principle which is also reflected in the Stockholm Declaration of 1972, namely the Principle of *Sic Utere Tuo Ut Alienum Non Laedas*, or commonly referred to as "All activities that occur in a country must not cause harm to other countries" and also has another meaning that "Every country has the sovereignty to manage its natural resources without harming other countries." Thus, each country involved in the international community is expected to recognize and respect this principle, because a country has limits to its sovereignty. In short, a country's responsibility arises if its actions harm another country, to the extent that such actions can violate international law. If a violation is proven, remedial efforts are needed, such as an official apology and material compensation.

Devotion and collaboration between countries are a priority in dealing with international problems, both in the form of conflict and crisis. According to international law, countries involved in a crisis must take appropriate accountability steps. In the case of the Montara oil spill, Australia must take accountability steps in accordance with international law. Australia should implement the principle of primary responsibility in addressing the Montara oil spill crisis. This principle requires that the country that caused the crisis must address and repair its impacts

completely. Australia should also implement the polluter pays principle in addressing the Montara oil spill crisis. This principle requires that the country or company that caused the pollution must bear the costs of recovery and repair of the consequences. In this case, Australia as an oil-producing country must bear the costs of recovery and repair of the Montara oil spill (Kusuma, 2016). Indonesia must take accountability measures in accordance with international legal norms, including the application of the principle of restoration to address the Montara oil spill crisis. In addition, Indonesia needs to implement the principle of cooperation with Australia and other related parties. Collaboration between countries is a priority to face international challenges such as this crisis, in accordance with international law. Respecting the principles of international law will increase security and justice in international waters, as well as provide benefits to parties around the area (Lestari, 2016). The principle of state responsibility in international law states that every state must be responsible for its actions that have a negative impact on other states. In the case of the Montara oil spill, Australia has an obligation to restore the situation and address the damage caused. UNCLOS (United Nations Convention on the Law of the Sea) is the legal basis for dealing with transboundary oil spills. Australia and Indonesia, as parties bound by UNCLOS, have the responsibility to prevent, control, and mitigate marine pollution (Puspitawati, 2017). UNCLOS emphasizes the importance of cooperation and consultation between countries in dealing with transboundary marine issues. Therefore, Australia is expected to cooperate with Indonesia in dealing with the Montara oil spill through regular consultations and exchange of information to ensure shared responsibility. Australia must be transparent in providing information to Indonesia and assist by providing the necessary data. Australia must also recognize the rights of Indonesian coastal communities to a healthy marine environment, provide adequate compensation, and assistance to affected communities (Ningsih, et al., 2016).

It is very clear that Australia needs to carry out its responsibility due to its actions. As written in the 1982 Law of the Sea Convention in Article 235, it states that "Every State is responsible for implementing international obligations regarding the protection and preservation of the marine environment" which requires that each country is obliged to carry out its obligations in the form of compensation based on what has been regulated in international law (UNCLOS 1982). In this article it is written that the state is obliged to compensate, but unfortunately in this article it is not explained implicitly how much or what form of compensation should be made by a country that violates international law (Parthiana, 2002).

Australia has fulfilled some of its responsibilities in handling the Montara oil spill, including the sea clean-up operation despite experiencing five initial failures, until the leak was finally closed with 3,400 barrels of mud. The Australian government continues to provide the latest information to Indonesia about prevention efforts. They also deployed the Australian Safety Agency (AMSA) to move equipment and spray dispersants to minimize oil in the sea (Maryanto, 2013). In addition, Australia conducts long-term environmental monitoring to ensure that the responsibility efforts are running well, including measuring water quality, marine biota health, and socio-economic impacts.

As explained, there is also a compensation claim filed by the West Timor Care Foundation (YPTB) regarding compensation of one hundred and forty trillion, but this was rejected by Australia because they argued that the evidence of oil pollution tests taken was different from

that taken by Australia. Therefore, in this case, both Indonesia and Australia should have been able to cooperate first, to negotiate first, which is in accordance with Article 197 of the Convention, namely, "States must cooperate globally and regionally directly or through international organizations in formulating and explaining international provisions and standards and recommended procedures and practices in accordance with the Convention for the protection and preservation of the marine environment taking into account the regional situation". Thus, both Indonesia can be more assertive in terms of handling prevention and protection of its marine environment, as well as Australia can comply and submit to applicable international law.

#### 4. Conclusions

Based on Presidential Regulation No. 109 of 2006 concerning Emergency Response to Oil Spills at Sea, Indonesia has made several efforts to handle the oil spill in the Timor Sea. However, the slow pace of preventive measures taken and non-compliance with the provisions of UNCLOS 1982 make it difficult for Indonesia to bring this case to the International Court. As an alternative, Indonesia can use national law to prosecute Australia for pollution in Indonesia's Exclusive Economic Zone. Although Australia has made several mitigation efforts, such as oil spill rescue and environmental monitoring, these efforts have not been enough to overcome the losses experienced by Indonesia. Indonesia's claim for compensation was rejected by Australia, making Indonesia unable to collect full compensation to date.

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