

Application Comparison of the Lex Loci Delicti Commission Theory between the Oil Spill Case in the Gulf of Mexico and the Carbon Emissions Case in the Netherlands

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Abstract

The event of a disastrous oil spill from British Petroleum's offshore drilling installation on the 20th of April 2010 was caused by a leaking underwater pipeline, which polluted the waters of the Gulf of Mexico. Subsequently, there was the Carbon Emission Case in the Netherlands, which required Shell to reduce their carbon emissions by 45% by 2030 from the carbon emissions generated in 2019. Both events were deeply concerning and directly effected the citizens of the respective countries. In the first case, the spill of approximately 5,000 barrels or 210,000 gallons (795,000 liters) of crude oil spread extensively due to ocean currents where the contaminated area ended up covering 9,933 square kilometers of ocean (77 x 129km). This oil spill, which was a result of British Petroleum's negligence, lead to legal action taken against the company for violations of international environmental laws, due to environmental pollution. In the second case, Shell, was deemed to have contributed significantly to climate change in the Netherlands. The company was responsible for twice the amount of greenhouse gas emissions than the Netherlands. The research method employed in this journal uses a normative juridical research approach, focusing on legal norms within the decisions for Case MDL No. 2179 and the Verdict issued by the Hague District Court. In this journal, the author concludes that both British Petroleum and Shell have been proven to commit unlawful acts against the international environment laws through environmental pollution.

Abstrak

Musibah tumpahnya minyak dari instalasi pengeboran lepas pantai milik British Petroleum terjadi pada 20 April 2010 yang mencemari perairan Teluk Meksiko, terjadi akibat kebocoran pada pipa bawah laut yang menyebabkan anjungan pengeboran minyak Deepwater Horizon. Kemudian Kasus Emisi Karbon di Belanda yang mengharuskan *Shell* untuk mengurangi emisi karbon yang dihasilkan hingga 45% pada tahun 2030 dengan membandingkan jumlah emisi karbon yang dihasilkan pada tahun 2019. Kejadian tersebut dinilai sangat meresahkan warga negara secara langsung seperti halnya dalam kasus pertama semburan minyak mentah sekitar 5.000 barel atau 210.000 galon (795.000 liter) semakin merembet jauh akibat terbawa arus, saat itu luas area yang tercemar 9.933 km (77 x 129 km). Tragedi tumpahan minyak merupakan akibat kelalaian British Petroleum, sehingga British Petroleum menghadapi tuntutan terkait perbuatan melawan hukum terhadap lingkungan hidup internasional karena adanya pencemaran terhadap lingkungan. Kasus kedua juga dinilai *Shell* memiliki kontribusi yang besar terhadap perubahan iklim yang terjadi di Belanda dan juga bertanggung jawab atas produksi gas rumah kaca di dunia yang bahkan dua kali lebih banyak daripada gas rumah kaca di Belanda. Metode penelitian dalam penulisan jurnal ini menggunakan metode penelitian yuridis normatif, dimana penelitian ini menitikberatkan pada norma atau kaidah hukum yang berada di dalam putusan Perkara MDL No. 2179 dan Putusan yang dikeluarkan oleh *The Hauge District Court*. Melalui penulisan ini, penulis menyimpulkan bahwa *British Petroleum* dan *Shell* terbukti telah melakukan perbuatan melawan hukum terhadap lingkungan hidup internasional karena adanya pencemaran terhadap lingkungan.

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1. INTRODUCTION

A. Background

In recent years, there have been significant developments in the understanding of the dangers faced by the international environment. One of the most widespread causes of international environmental disputes is due to environmental pollution. The environmental pollution that is discussed in this writing is marine pollution. Marine

pollution or marine pollution is pollution that has a direct or indirect impact by substances or energy into the marine environment (including estuaries), thereby endangering resources, endangering human health, impacting marine activities in this case such as fisheries, decreasing sea water quality and reduction in facilities. This pollution occurs due to expeditions/shipping, waste disposal at sea, exploitation activities on the seabed, and the effects of pollution entering the ocean.

In 2010, an offshore oil leak occurred in the Gulf of Mexico. The Gulf of Mexico is a part of the Caribbean Sea bordered by Mexico to the west and south and the United States to the north and west. This leak causes extensive pollution of the marine environment and causes significant material losses. Oil began to pollute gulf waters after an explosion on the Deepwater Horizon, an oil drilling rig 66 kilometers off the coast of Louisiana, USA.

Gulf of Mexico Case is a case of environmental pollution, especially regarding marine pollution arising from oil drilling in the Macando Prospect of the Gulf of Mexico. In this case, British Petroleum (BP) is the main party and actor responsible for the oil spill case. Seeing that climate change is getting worse, one of the entities that produce the largest carbon emissions in the world comes from companies in the oil, gas and electric power industries. Royal Dutch Shell plc (SHELL), a multinational oil and gas company headquartered in the Netherlands, has been in the public spotlight. If you look at its revenues, Shell is the fourth largest company in the world and also the sixth largest oil and Gas Company in the world.

In 2021, The Hauge District Court or the Dutch District Court issued a decision requiring Shell to reduce the carbon emissions produced by up to 45% by 2030 by comparing the amount of carbon emissions produced in 2019, this condition requires Shell to cut carbon emissions twice double their initial target of 20%. After this decision is issued, Shell will appeal this decision.

This decision was made because in 2019, a number of Non-Governmental Organizations (NGOs), which focus on environmental preservation, consisting of Milieudefensie, ActionAid NL, Both Ends, Fossielvrij NL, Greenpeace NL, Waddenvereniging and Jongeren Mileu Actief, filed a lawsuit against Shell in court. Dutch District. According to the plaintiff, which consists of several NGOs, Shell has made a major contribution to climate change in the Netherlands and is also responsible for the production of greenhouse gases in the world which is twice as much as greenhouse gases in the Netherlands combined. The plaintiffs also say that Shell is fully aware of this, but still consciously refuses to make a proportionate contribution to preventing such harm.

The plaintiff based the lawsuit on 2 grounds, firstly, Shell has an obligation to guarantee security or a duty of care under Dutch civil law not to endanger the public through negligence. This is similar to the Dutch "Cellar Hatch Doctrine" where a bar owner endangered his customers by leaving the cellar hatch open, Shell negligently endangered, not only the plaintiff, but also all living things by refusing to adopt proportionate climate policies.

Second, Shell has an obligation to guarantee security or a duty of care in connection with human rights provisions, in particular, Articles 2 and 8 of the European Convention on Human Rights (ECHR). The plaintiff also strengthened his lawsuit by referring to the Paris Agreement and also several soft laws such as the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and other principles compiled by the UN Global Compact. Based on the description above, the author is interested in discussing the comparison of the

application of the Lex Loci Delicti Commissi theory between the oil spill case in the Gulf of Mexico and the case of carbon emissions in the Netherlands.

B. Formulation of the problem

1. How can the lex loci delicti commissi theory be applied to the oil spill case in the Gulf of Mexico and the case of carbon emissions in the Netherlands?
2. How does the lex loci delicti commission theory apply in the case of the oil spill in the Gulf of Mexico and the case of carbon emissions in the Netherlands?

2. RESEARCH METHODS

Method approach used in this research is normative juridical. The normative juridical approach is a legal research approach method that refers to applicable laws and regulations.

The research specification used by the author is analytical descriptive, that is, research which aims to provide a picture of the actual situation of the object under study based on existing facts, by collecting, processing and analyzing various kinds of data so that a conclusion can be drawn.

The data collection technique used in this research to obtain secondary data is data collection carried out by means of literature study and document review. The data collection method is based on the data sources obtained in this research, data was collected through library research.

The method used in this research is a qualitative data analysis method. Qualitative data is data in the form of sentences, not in the form of numbers, numbers or symbols. This method was carried out in the author's research where the data was secondary data, where this secondary data was obtained/obtained through literature review. The data that has been obtained will then be collected and then processed and analyzed where the data that has been obtained will then be checked again to ensure that the data is correct and guarantee that the data can be accounted for in the future.

3. DISCUSSION

1. The Application of the Lex Loci Delicti Commission Theory Can Be Applied to the Oil Spill Case in the Gulf of Mexico and the Carbon Emissions Case in the Netherlands.

1.1 The Shape of United States Losses

The US states of Louisiana, Mississippi, Florida, Alabama and Texas are areas affected by the oil spill disaster in the Gulf of Mexico, which caused environmental pollution and had negative impacts and resulted in losses for residents around the coast and these losses can be divided into two parts, namely losses material and immaterial losses as follows:

a. Material Losses

The oil spill tragedy in the Gulf of Mexico is the worst environmental pollution history that has ever occurred in the United States. In this incident, there were losses and bad impacts on the environment around the coast, the material losses that occurred were:

- a. Oil spill causes 11 workers to die;
- b. Louisiana, Mississippi, Florida, Alabama, Texas are some of the states in the United States that have been heavily impacted by oil spills;
- c. Fishermen, cafe owners and hotel owners are among the people who have been harmed and affected by the oil spill and all economic activities have stopped, resulting in the loss of livelihoods due to environmental pollution;
- d. There are complaints from residents around the coast and workers who are directly involved in efforts to clean up oil spills, generally because they

experience irritation to the skin, nose, eyes and throat and even respiratory problems due to the chemicals contained in crude oil. Then nausea, headaches and emotional anxiety arise. Children are also affected by this case and are at very high risk because children have relatively high respiratory and metabolic rates compared to adults so they tend to breathe more toxic air.

b. Immaterial Losses

The emergence of discomfort and fear and trauma in the communities around the coast as a result of the Mexican oil spill which polluted the water and environment with toxic oil, disrupted tourism resulting in reduced visitors, fear that emerged and caused deep trauma, Fishing areas are also closed for safety reasons, and testing of seafood needs to be carried out to ensure that the seafood is safe for consumption.

1.2 Form of United States Claims against British Petroleum

The US demands against BP in the oil spill case in the Gulf of Mexico so that BP is responsible for the damage and losses suffered by the US. The first step for the US is to seek complete information about the oil spill case and find out what the real cause of the spill was so that the accident at Deepwater Horizon could occur. .

US President Barack Obama began forming a commission to study the oil spill in the Gulf of Mexico and the commission was named commission seven, consisting of seven people, including:

The names of the seven commission members are:

1. Bob Graham as chairman is a former Democratic senator and former Governor of Florida.
2. William Reilly is the former head of the US Environmental Protection Agency.
3. Donald Boesch is a biologist and oceanographer.
4. Terry Garcia is vice president of programs for the National Geographic Society.
5. Cherry Murray is an academic in the engineering and applied sciences faculty at Harvard University.
6. Frances Ulmer is a former Governor of Alaska who has 30 years of experience in public service and the environment.
7. Frances Beinecke is former President of the Natural Resources Defense Council (NDRC).

The commission that was formed has an important role in making innovations in the future of offshore oil drilling in the US, then its task is to find the cause of the explosion of British Petroleum's Deepwater Horizon offshore oil refinery, one of which is by visiting the location of the incident and hearing directly complaints from residents affected by the spill the oil.

President Barack Obama said that the British Petroleum company should be held responsible for the oil spill that occurred in the Gulf of Mexico and would be prosecuted if it was proven to have violated the law. United States President Barack Obama said that the extensive oil leak in the Gulf of Mexico had a negative impact on the economy. Obama wanted British Petroleum to act quickly and responsively to the demands of local residents who were economically suffering as a result of the oil spill. Then speed up all actions so that the Gulf of Mexico could be clean returning from oil puddles that threaten the survival of fishermen and other business owners.

1.3 Form of Application of the Lex Loci Delicti Commissi Theory on Environmental Pollution Acts by British Petroleum

On the EPA's official website, two companies were found guilty and responsible for the oil explosion incident in the Gulf of Mexico. The two companies are Transocean, LTD and British Petroleum. In an investigation carried out by the EPA, it

was found that there was an element of deliberate negligence in oil refining activities at the Macondo well, Gulf of Mexico. In addition, it was discovered that the Macondo well was no longer safe to use because it had emitted a burst of oil and gas from the well before the explosion occurred.

On November 15, 2012, BP was found guilty of killing eleven employees in the 2010 oil pipeline explosion in the Gulf of Mexico. BP was charged under rule 18 of the United States Court (1855), Clean Water Act {33 U.S.C 1319(c)(1)(a) and the Migratory Bird Treaty Acts {16 U.S.C. 703}. The BP oil spill case was handled in eastern Louisiana state court. BP was found guilty of three things, namely manslaughter for the deaths of eleven employees in the Gulf of Mexico, environmental crimes in terms of pollution and obstructing the US Congress in conducting an investigation into the explosion incident.

There are two BP employees who are also responsible for the oil explosion incident at the Macondo Well. The two employees are Robert M. Kaluza and Donald J. Vidrine, both of whom were BP supervisors who were at the scene of the incident on April 20 2010, as well as David I. Reiney, who was a former executive leader in the deputy department at the time the incident occurred. Kaluza and Vidrine were charged with deliberate work negligence which resulted in the deaths of eleven BP employees at the oil refinery pipe site. Kaluza and Vidrine are charged with committing a crime without premeditation. Then in this case there were also several workers who were charged and found guilty by the judge on charges of giving false statements and information accompanied by elements of obstruction of investigations carried out by the congress which was formed to investigate the oil pipeline explosion case.

Furthermore, Transocean Ltd. As a company that provides oil drilling pipes where the pipes they own explode and sink to the bottom of the sea, Transocean Ltd is also held responsible for the incidents that occur and is subject to a fine of US\$ 1.4 billion as a fine for environmental crimes and compensation costs to residents countries affected by environmental pollution. In the BP case, of course, the principle of resolution used in this case is to use the principle of *lex loci delicti*. In terms of resolving this case, the principle of *lex loci delicti* is considered to make it easier to find the law that must be treated and used. The principle of *lex loci delicti* is considered very effective to be used if there is a legal conflict in the place concerned. This case was assessed using this principle because the law used and the court appointed to resolve it was the place where the case occurred. Specifically, the United States plays an important role in this case. Another reason is that BP, as a violator of the applicable rules of order, is subject to financial demands.

1.4 Form of Application of the Lex Loci Delicti Commission Theory for Environmental Pollution Acts by Royal Dutch Shell

Based on an unwritten duty in tort law in the Netherlands, the Court recognized that Shell had an obligation, namely to reduce CO₂ emissions produced as a result of the activities carried out. In fact, this decision also requires the Dutch government to be able to make policies and reduce emissions resulting from various aspects of economic activities carried out. This is intended solely to make efforts to prevent climate change which is very dangerous for life.

In 2019, a class action lawsuit was filed against shell by Milieudefensie (Friends of the Earth Netherlands) and six other Dutch non-governmental organizations (NGOs), along with 17,000 individual complaints. This was concluded as a failure in the steps taken by Shell to reduce carbon emissions. According to Dutch legal regulations, this is specifically stated in Article 6:162 of the Dutch Civil Code as a form of serious action as this is further regulated as a right to life and the right to respect the lives of

other people as regulated in Articles 2 and 8 of the European Convention on Human Rights. Human (ECHR).

The court presented its substantive findings in three steps, namely:

1. It is recognized that Shell has an obligation to be able to reduce its emissions;
2. The court also concluded that Shell must reduce its emissions usage by 45% by 2030, with the benchmark reduction being taken by 2019 usage;
3. *Shellare* required to be able to carry out all obligations and immediately correct any violations committed.

The decision issued by the Dutch Court did not impose regular fines or penalties on the shell, or compensate for the damage incurred. New fines and penalties will be determined when Shell is deemed to have failed to comply with its emission reduction obligations and any decisions that have been made.

In the lawsuit filed by Shell, there are many counter-arguments, as the first counter-argument comes with criticism of the causes and consequences of the actions taken. Shell admits that its emissions do contribute to global warming and climate change in the Netherlands, but Shell denies that global climate change is of course caused not only by the business activities they carry out but also by many other factors. This is considered inappropriate if Shell should bear the responsibility just because of their small contribution.

In the author's view, every person living in a country must participate in social interactions, and must pay attention to the various rules that have been determined to regulate order in society. This hope and these rules of life must be protected appropriately. That it is right for Dutch courts to use the principle of *lex loci delicti* in resolving disputes involving multinational companies. This is certainly not wrong if the legal rules used are in accordance with the locus. The court's decision was also considered to still consider aspects of justice because there were no financial demands imposed.

In the author's view, in this shell case, the Court in The Hague was held not relying much on the rules of international law but rather using the dispute resolution law regulated in the Netherlands. If you look at the scope of the size of shell companies, it is considered that many of their subsidiaries are located in various countries, for example in Nigeria, but if you refer to the principles used, of course there will be many discrepancies due to the differences in locus that occur and the application of other laws that apply where the locus occurs. It is believed that the Hague court decision only applies to the Dutch shell case. This incompatibility is assessed by the clash of rules or norms in the life of the Dutch order with the life of the order in which the shell subsidiary was established, this is proven by the lawsuit that was filed against shell Nigeria after the shell lawsuit in the Netherlands was carried out. The results obtained were actually different because the Nigerian Court stated that environmental damage caused by emissions was considered a form of sabotage which was then appealed and resulted in Shell being acquitted of all accusations and accusations.

2. How does the application of the *lex loci delicti commissi* theory applied in the case of the oil spill in the Gulf of Mexico and the case of carbon emissions in the Netherlands compare?

In principle, the case resolution of the two cases above has quite a lot in common, including that they both use a green theory approach as according to Jill Steans, namely rejecting anthropocentric beliefs and views or the assumption that humans dominate, and always taking an important role in viewing world conditions in the context of destruction environment, green theory believes that there is human intervention in nature whose impact also affects the non-human world (animals, plants and the environment). Adherents

of this thinking emphasize problem solving on the responses and actions of each country. This view prioritizes local rather than global action which is considered to be in line with the *lex loci delicti* commission theory which prioritizes a locus or place where a problem occurs.

As previously explained, the green theory view focuses on environmental sustainability as the main topic of discussion, so this of course has a lot of impact on international relations. Examples and facts are the occurrence of industrial practices which often contribute to problems of environmental damage and exploitation.

In these two cases, it is felt that there is not much difference in the application of the *lex loci delicti* commission theory, where both use solutions according to the law of their own country. This of course has many positive aspects, especially regarding the ease in choosing which law to use to resolve the case. As if looking at the case that occurred, it is certainly very possible for there to be a collision and conflict in terms of resolution, regardless of whether the company that is being tried to be used as an aspect of the research regarding this problem is a foreign company established in another country. The difference that may appear significant is that in the case of shells in the Netherlands, many doctrines, rules and principles of international law are tried to be used due to the fact that the results of decisions handed down on shell companies do not have an impact on companies established in the Netherlands but rather cover all shell subsidiaries. Of course, this is a significant difference from the picture of the BP Case, where the results of the decision were only imposed on offshore oil mining activities in the Gulf of Mexico and the aspects of the financial demands submitted were limited to returning the environment to its original state, replacing the community who had a direct impact on the incident and compensation to the US as the country that suffered losses due to this phenomenon.

Then, if you try to look at the aspect of protection for the general public, the results of decisions caused by the application of the *lex loci delicti* commission theory do not seem to have much difference. The differences that exist are limited to the form of financial demands, the BP case focuses on compensation to the affected countries and communities, other than that the Shell case only asks for emissions reductions to be made. Finally, if we look at the prevention aspect, the results of the decisions in the BP and Shell cases really uphold this, for example in the BP case, a commission was formed which was given the task of preventing similar cases from happening again, investigating the case and finding a resolution to the case. In the case of Shell, the example of prevention shown is that emissions reductions are required to be carried out with a benchmark for use in 2019, which in 2030 will try to check again whether the emissions produced have decreased by 45%. From the description of these two cases, the author is of the view that the application of the *lex loci delicti* commission theory is considered very effective in resolving cases of international problems, especially in international civil matters.

2.1 The reasons for applying the *lex loci delicti* commissi theory are applied in both cases according to the expert's view

The reason why the *lex loci delicti* commission theory is widely used in several international civil cases according to international criminal law experts is because:

1. The reason is that it is easy to find the law used in resolving cases that occur

One of the reasons that is considered to be the oldest put forward by those who place themselves in a pro position towards this theory is that this principle is considered to make it easier to find laws that must be used and used as a tool for analysis and the basis for answers to cases that occur. Where this theory adheres to the place where the case occurred and where the incident is concerned so that, when a collision occurs, the legal rules used by the *lex loci delicti* commission are considered capable of simplifying the incident.

2.Reasons for protecting reasonable expectations for the general public

Another reason this theory is widely used in resolving international civil cases is because this theory requires the enforcement of rules and regulations that regulate social interaction in society. This is proven by the fact that when there is a violation of traffic order in society, it is very possible that there will be financial demands for this action in addition to other demands.

3.Preventive reasons

The use of locus law has a preventive purpose. The obligation to pay compensation is not solely for the benefit of the victim, but also focuses on the interests of the perpetrator. In this context, the victim will receive compensation for the losses he has suffered and the perpetrator will receive preventive action in the form of a warning not to commit unlawful acts. And this principle still takes into account the social interests of the country where the problem occurs.

4. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSION

The results of the analysis that the author has carried out in both cases, namely British Petroleum in the Gulf of Mexico and Carbon Emissions in the Netherlands, both use solutions using the *lex loci delicti* commission theory. In this case, the emphasis is on resolution using the law that applies to the location where a problem occurs. In another sense, it can be interpreted as a resolution that is carried out using the law that applies in the country where the conflict occurs (*locus*). The application of this theory is also considered capable of effectively and efficiently resolving international legal problems, especially international civil law. This is proven by the two cases described which were resolved through a trial mechanism carried out in the Netherlands and the United States using local state law. The *lex loci delicti* commission theory is also considered not only based on compensation for losses and imposition of punishment, but also on the existence of a preventive element which is very useful on an ongoing basis and in terms of preventing similar cases from occurring again in the future. In the midst of the many positive impacts arising from the application of the *lex loci delicti* commission theory, it turns out that there are several shortcomings that are still present and cannot be avoided, namely that in modern doctrine this theory is considered to be very rigid and gives the impression of imposing an effort or hard rules, then the preventive element that is produced is also assessed as being of a nature. is relative because the number of claims generated is limited to financial compensation only.

B. SUGGESTION

The author is in line with several expert views that are pro towards the application of the *lex loci delicti* theory. In the midst of the many positive impacts arising from the application of the *lex loci delicti* commission theory, it turns out that there are several shortcomings that are still present and cannot be avoided, namely that in modern doctrine this theory is considered to be very rigid and seems imposing an effort or hard rule and then also assessing the resulting preventive element is relative in nature because the number of demands generated is limited to financial compensation only. It has been proven that in the resolution of the BP case in the Gulf of Mexico, the results of the decision issued by the judge in court were limited to the element of replacement and financial demands only. The author suggests that the resolution of international cases that apply the *lex loci delicti* commission theory must prioritize an element of prevention so that in the future something similar does not happen a second time. As the settlement of the case carried out in the Netherlands is a good example because the form of punishment given is not only beneficial for the injured party but also has a sustainable

impact in the form of reducing emissions which is carried out slowly with a deadline of 2030, where the progress will be seen by Shell through benchmark for emission use in 2019.

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