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5 State Responsibility

5.1 Conditions for International Responsibility

International responsibility or state responsibility is an act of state that is detrimental to another state, and cause liability on the acts that cause injury to other states. The underlying concept of State liability in international law comes from the thought that no state can enjoy its rights without respecting the rights of other states. There are a number of indicators under international law to qualify the invoking of state responsibility, such as the existence of an international legal obligation in force as between two particular states; the occurrence of an act or omission which violates that obligation; which is imputable to the responsible state; and that loss or damage has resulted from the unlawful act or omission.

In this context, action or inaction of the state can be qualified as an internationally wrongful act if it contains 2 (two) elements, as follows:

1. Breach of an international obligation.
   It means that breaches against international law can be distinguished into violation of International Law sourced from the international treaty in general, customary of international law, or general principles of international law; and violation of international law sourced from specific international law such as bilateral or multilateral treaty.
2. Attribution of conduct to a state.
   The actions of the state are conducted by the organs/instruments of the state.

Indonesia refers to international practices regarding state responsibility derives from both delictual liability and contractual liability. In terms of delictual liability, it can be said that delictual liability can be born from any error or omission of a state against the foreigners in its territory or territory of another state. Some acts that can lead to such state responsibility are:

1. Outer space exploration as stipulated in the Convention on International Liability for Damage Caused by Space Objects, 1972 ("Liability Convention 1972"). Indonesia has ratified through the Presidential Decree Number 20 the Year 1996 on Ratification of the Convention on International Liability for Damage Caused by Space Objects, 1972. The 1972 Liability Convention embraced absolute liability and liability based on fault. Of course, the form of state responsibility has also been adopted by Indonesia, even though its implementation is still very difficult to apply for Indonesia. One of the cases was the discovery of a mysterious object as big as a pinky finger, discovered by two children in the District Sawahlunto, West Sumatra. It was glowing and shiny like a diamond. The objects were estimated to pieces of Cosmos 1402 belonging to Russia which fell on 24th January 1983 in the oceans surrounding Indonesia. When the piece of Cosmos was taken by a two-person child, it caused burn wounds.
2. Nuclear exploration is under the Convention on Nuclear Safety, the Convention on the Physical Protection of Nuclear Material, the Convention on Third Party Liability in the Field of Nuclear Energy, and the Vienna Convention on Civil Liability for Nuclear Damage. That Convention emphasizes that nuclear energy is to be used for the sake of peace. The Convention on Third Party Liability in the Field of Nuclear Energy and the Vienna Convention on Civil Liability for Nuclear Damage prescribes an absolute liability form of state responsibility. In Indonesia, nuclear regulation has been

governed in Law Number 10 the year 1997 concerning Nuclear Energy. Indonesia uses Nuclear energy for peaceful purposes only. There have been no cases of nuclear radiation found in Indonesia.

3. National Transboundary Activities.
   In general, the form of state responsibility adheres to absolute liability and liability based on fault. Some of the activities of cross-boundary states like pollution which includes land, sea, and air also adopt the two kinds of responsibility. Its regulation is subject to the various provisions of international law, such as the Stockholm Declaration of 1972, the Convention on the Long-Range Transboundary Air Pollutants in 1979 (Geneva Convention 1979), and the United Convention Law of the Sea, 1982.

In practice, activities that cross the boundary can be seen in the case of air pollution, particularly in forest fire cases. In such a case, Indonesia refers to Law No. 32 Year 2009 concerning the Protection and Management of the Environment (PPLH), Law No. 41 Year 1999 concerning Forestry, Law No. 18 Year 2004 concerning Plantations, Law No. 5 Year 1990 concerning Conservation of Living Natural Resources and Ecosystems, and the Law No. 45 Year 2004 concerning Forest Protection. It refers also to some derivative laws such as the Government Regulations (PP) No. 4 the year 2001 concerning Forest Fires and the Government Regulations No. 45 the year 2004 concerning Forest Protection strictly prohibits the burning of forests.

In the context of state responsibility, then, absolute liability and liability based on fault can be applied by referring to the 5-state legislation concerning state responsibility on forest fires. However, until this time, the form of state responsibility on forest fires is "satisfaction" as stipulated in Article 37 Draft Articles on State Responsibility for internationally wrongful acts. It is highly influenced that there is no claim of damages from the country's neighbors such as Malaysia and Singapore for Indonesia to pay compensation to those countries suffering from forest fires.

Regarding contractual liability, one state can be held responsible for violating treaties under international law. This state responsibility can happen to a state when it violates an agreement or contract. Indonesia's respect for the agreement refers to the provision of Article 11 of the 1945 Constitution of the State of the Republic of Indonesia (UUD 1945) and Law No. 24 Year 2000 concerning International Treaties.

Regarding treaty in practice, Indonesia must respect the principle of *Pacta Sunt Servanda* which states that the state shall comply with all provisions stipulated in international treaties, in which the principle is always linked with the principle of good faith both in agreement. Indonesia, in carrying out its international obligations and commitments, applies 2 (two) perspectives, namely the perspective of national law and the perspective of practice in Indonesia.

In the context of national law, the principle of good faith can be seen in Article 4 Law No. 24 Year 2000, and the practice can be seen in the case of Navigation Maritime Bulgare (NMB) vs. PT. Niswar, which was a dispute over the implementation of the London Arbitration Award between PT Nizwar, who was subject to Indonesian law, and NMB who was subject to Bulgarian law. Indonesia and Britain were the parties to the agreement. In this case, the Central Jakarta Court did not recognize the London Arbitration Award and therefore the award could not be executed.

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5.2 Acts of State – Attribution, Responsibility & Defenses

International law is a distinctive part of the general structure of international relations. States as a subject of international law voluntarily obey international law. Indonesia as a subject of international law has the legal capacity to conduct various kinds of actions and cooperation with other states. Indonesia has sovereignty and equal