

## THE ROLE OF INTERNATIONAL LAW AND NATIONAL LAW IN HANDLING MARINE PLASTIC LITTER

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### Abstract

*The spread of marine plastic litter is increasing and dangerous for habitats and marine living such as the discovery of plastic in fish, sea turtles, whale mammals and even seabirds. To suppress and reduce plastic waste in the sea, one of them is to strengthen the role of law both international, regional and national law. The research objective is to analyze international, regional and national law in the perspective of international law sources to deal with marine plastic litter. The research method in this study is an analytical description based on a normative juridical approach. The results of the study show that international law in the perspective of international law sources has attempted to regulate plastic waste in the sea even though it is limited. Handling of marine plastic litter does not yet have comprehensive regulations or regulated separately. In the other hand, national law becomes important in handling at the respective jurisdiction boundaries, although limited in the application of rules due to the existence of national jurisdiction. Provisional conclusions show that international law still has an important role to play especially in relation to marine plastic litter that crosses national borders or outside national jurisdiction.*

**Keyword:** *Marine Plastic Litter, International Law, Soft Law, National Law.*

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### A. Introduction

UNEP has a definition about the marine litter that is any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment.<sup>1</sup> But different from the European Commission has a definition of marine litter consists of items that have been deliberately discarding, unintentionally lost, or transported by winds and rivers into the sea and on beaches.<sup>2</sup>

Sources and pollutants in the sea come from various activities produced in the form of waste, garbage or debris. The main pollutant sources can come from land-base and sea. The organic or non-organic pollutant can form the ingredients of waste, garbage or debris. Pollutant sources from the land-based such as industrial activities that produce liquid waste in the form of heavy metals or non-heavy metals and solid waste such as plastic garbage. While from oil and gas activities both from rigs and tankers has polluted by crude oil, processed oil or other types of oil. Pollutant sources from various activities of vehicles of the sea are various types of vessels, such as garbage from ships, oil waste and ballast. Whereas pollutant sources in the sea outside the activities mentioned above, starting from domestic waste in the form of paper waste, plastic garbage, kitchen waste, or other household materials from various materials or liquid waste from agricultural activities such as pesticides and acid water from mining.

In fact, there is plastic garbage that is not managed and directly thrown into the sea as it is found in the form of used beverage bottles, plastic bags, plastic wrap, plastic cups, buckets, plastic nets, etc. Plastic

<sup>1</sup> UNEP (2005) Marine Litter: An Analytical Overview and <https://www.unenvironment.org/explore>

<sup>2</sup> European Commission. 2010. Marine Litter : Time to Clean Up Our Act, European Union in <https://www.ec.europa.eu>

garbage can last a very long time in the sea, but some are destroyed gradually becoming micro-plastic. Plastic garbage that is still intact like a shopping bag from clear plastic which is dumped into the sea moves like a jellyfish, often being the target of predators to eat. As a result, there is plastic in the stomach which is also found in turtles and some marine mammals such as whaling. If plastic garbage is in the form of plastic which can decompose into small plastic or micro-plastic, it can be swallowed and eaten by fish, shrimp or other mammals such as whale. As a result, the stomach contents of these marine mammals contain a lot of plastic and microplastic, which can quickly or slowly cause death.<sup>3</sup> Recently the case of the discovery of dead whale, then the contents of their stomachs were found plastic and micro-plastic waste.<sup>4</sup>

Conversely, the danger of plastic waste is increasingly spreading in the Arctic to Antarctica<sup>5</sup>, which also affects daily life, especially in food consumed by humans from the sea. Without realizing it, this dangerous impact must, of course, be tightly regulated, especially from the source of good impacts starting from planning, process and production until disposal of plastics to the sea in various ways including setting standards and regulations.

International law, especially international law of the sea, has international customs law, principles of international law, international agreements or conventions, doctrines and even judicial decisions regarding cases of the sea. In the other hand, in the past thirty years, states have established numerous international bodies and arrangement with competence over the marine environment, thereby increasing the opportunities for international action, including cooperation.<sup>6</sup>

In this paper, we will discuss how international law seeks to deal with new issues, especially the presence of products from modern industries and technologies such as plastic which becomes marine plastic litter in the ocean. Plastics are a product of industry and modern technology that has many benefits for humans, turned out to have a negative impact if they are thrown away and become waste, especially those that enter the ocean. Oceans that are so vast and have state jurisdiction or that are outside the jurisdiction of the state have been threatened with marine plastic litter.

Habitat of the fishes and marine mammals is in the sea; the presence of plastic waste has affected the cycle of living things that depend on the sea. The existence of global, regional and national international law will be beneficial, especially in regulating, supervising and reducing the presence of marine plastic litter in the sea to endanger life at sea. At the very least, if global and regional international law has not regulated, national law is expected to provide solutions and alternatives in the framework of reducing marine plastic litter.

This article will at least see the dangers of marine plastic litter and the need for regulation through global international law, regional international law and national law to be an urgent matter to be addressed so that the marine environment is restored. It takes a long time and must be done now to recover of the marine environment. The research method in this study is qualitative analysis research with a normative juridical approach. Data collection is based on previous research and international statute and documents both hard law and soft law as well as national legislation, especially Indonesia. The data is then analyzed based on the objectivity in accordance with the title and purpose of this paper.

## B. Discussion

### 1. The Danger of Marine Plastic Litter

In modern life, almost all products contain plastic. They were beginning with synthetic plastic found since 1907, which then quickly became a plastic industry in the 1950s.<sup>7</sup> Until 2014, the production of plastics

<sup>3</sup> <https://ourworldindata.org/plastic-pollution#impacts-on-wildlife>, accessed on June 30, 2019.

The wreck of the Sperm Whale was found by residents of Kapota Island, Wakatobi on November 18, 2018. World Wide Fund for Nature (WWF) and the management of Wakatobi National Park found 5.9 kilograms of plastic waste in the whale's stomach. In detail there are at least 115 plastic glass bins, four plastic bottles, 25 plastic bags and thousands of other plastic waste. See <https://www.brilio.net/duh/7-kasus-satwa-laut-makan-sampah-plastik-paling-mengenaskan-181214w.html#>

<sup>4</sup> UNEP, *Marine Plastic Debris dan Microplastic: Global Lesson and Research to inspire Action and Guide Policy Change* (Kenya: UNEP Nairobi, 2016)

<sup>5</sup> <https://ourworldindata.org/plastic-pollution#impacts-on-wildlife>, accessed on June, 30, 2019

<sup>6</sup> Philippe Sand, Jacqueline Peel, Adriana Fabra and Ruth Mac Kenzie, *Principle of International Environmental Law*, Third Ed (UK, Cambridge University Press, 2012) 343

<sup>7</sup> J. Boucher, and Friot D, *Primary Microplastics in the Oceans: A Global Evaluation of Sources* (Gland, Switzerland: IUCN, 2017) 43. <https://doi.org/10.2305/iucn.ch.2017.01.en>.

had reached 311 million tons, and estimates in 2010 reached 4.8-12 million metric tons of plastic found in the sea.<sup>8</sup>

Nowadays, plastic products are an important part of daily life and are widely used need. As one of the products of modernization, plastic materials are used for household until the industrial process and products. Plastic products can be found every day such as buckets, plates, glasses, plastic wrappers, plastic bags etc. The benefits of plastic for human life are important, and consequently, dependence on plastic materials is quite large.

But on the other hand, plastic that has not been utilized will be disposed of as garbage. Plastic waste is generally used on land, then discarded to the river or canal and partially reaches to the sea. Apart from those originating from land, plastic waste can also come from activities on the coast directly to the sea. There is also plastic waste originating from water vehicles such as ships operational whose garbage is sometimes thrown away at sea. However, plastic waste is the most difficult to decompose. If the plastic waste which decomposes will become a fraction, it can even become micro-plastic which can not be seen. While some plastic waste that has not been decomposed or colourless, which has a certain shape, it can affect several species of marine mammals that are considered as food. For example, plastic bags used as shopping bags are clear or white, as like sea animals that move and cause some species of turtles to try to approach or even eat plastic waste. Colourful plastic will also attract like a fish that cause several marine mammals that can be considered as food. For example, red or orange will attract seabirds to eat it because it is considered a shrimp or crab.

“Plastic Cups Found in Fish” is representative title among the many scientific publications on marine debris ingestion. In a study of various types of fish and marine mammals, various plastic parts have been found in the digestive tract of his body. Ranging from intact plastic, micro-plastic to nano-plastic which enters the digestion of fish or other marine mammals has caused in various diseases and even death. Because of that plastic waste that circulates in the ocean, of course, will endanger living things in the sea. Below are some researches data on fish and marine mammals where plastic waste is found.

**Table 1:<sup>9</sup>**  
**Peer-Reviewed Studies Demonstrating Evidence of Impacts of Plastic Marine Debris**

<b>STUDY</b>	<b>ANIMAL</b>	<b>ENCOUNTER TYPE</b>	<b>PREDOMINANT DEBRIS TYPE</b>	<b>IMPACT (RESPONS)</b>
Brandao et al., 2011	Penguins	Ingestion	Plastic, fishing gear, other debris	Perforated gut, death
Carey et all. 2011	Seabirds	Ingestion	Plastic particle, pellets	Perforated gut,
Allen et all. 2012	Grey Seals	Entanglement	MF Line, Net, Rope	Constriction
Goldstein et all. 2012	Marine insect	Interaction (substrate)	Micro-plastic	Increased Population Size
Von Moos et al. .2012	Mussell (laboratory)	Ingestion and Gill uptake	Micro-plastic	Biochemical/Cellular
Cedervall et all. 2012	Fish (laboratory)	Ingestion	Nanoparticles	Biochemical/Cellular
Pham et all. 2013	Gorgonian	Entanglement	Fishing line	Damage/Breakage
Velez-Rubio et all. 2013	Sea Turtles	Entanglement	Fishing gear	Death
Browne et all. 2012	Lugworms (laboratory)	Entanglement	Micro-plastic	Biochemical/Cellular, death
The Stephanis et all. 2013	Sperm Whale	Ingestion	Identifiable litter items	Gastric rupture, death

<sup>8</sup> UNEP 2016, *Op.Cit.*, X.

<sup>9</sup> Anonymous. “Plastic Cups Found in Fish”, *Marine Pollution Bulletin* 6, no. 10: 148 (1975). [https://doi.org/10.1016/0025-326x\(75\)90178-2](https://doi.org/10.1016/0025-326x(75)90178-2). in Arie Trouwborst, “Managing Marine Litter: Exploring the Evolving Role of International and European Law in Confronting a Persistent Environmental Problem in MERKOURIOS,” *Utrecht Journal International Law and European Law* 27, no. 73 (2011): 4-18. <https://doi.org/10.5334/ujil.an>.

Lee et al. .2013	Copepods (laboratory)	Ingestion	Micro-plastic and nano-plastic	Death
Oliveira et all. 2013	Fish (laboratory)	Ingestion	Micro-plastic	Biochemical/Cellular

Sources: Rochman CM, Browne MA, Underwood AJ, van Franeker JA, Thompson RC, Amaral-Zettler LA. 2016.

From the above of this research between 2011-2013, it appears that various types of fish and marine mammals have been affected by the presence of plastic, micro-plastic to nano-plastic. The impact is felt in fish and animals when swallowing, which results in digestive disorders, biochemical disorders of body cells, gastric disorders, intestinal disorders, and death. The fish and animals studied range from small species (species of marine insects) to large mammals (whales).

In facts, the discovery of the amount of plastic garbage in the sea is increasing year by year. The large amount of pollutants that enter the sea, especially plastic waste, comes from various activities which until now plastic pollution has reached 9.5 million tons per year.<sup>10</sup> Even the discovery of Pacific Garbage Patch has shown that plastic garbage in the ocean is increasingly dangerous for international interests such as international shipping. The danger of increasing plastic garbage in the sea will endanger the life cycle of living things. Existing plastic waste, partly ingested by fish and marine mammals, will then endanger humans, especially those who depend on food from the sea. In addition, fisheries, shipping, tourism industry and activities will be disrupted, which of course will hinder the sustainability process of economic and social and environmental development. So the role of international, regional and national law in handling plastic waste in the sea is very much needed as a direction to achieve sustainable development, especially the Goal 11, Goal 12 and Goal 14 according to the Sustainable Development Goals (SDGs).

## 2. International Law Perspective in Handling Marine Plastic Litter

According to Mochtar Kusumaatmadja, international law is divided into global and regional international law.<sup>11</sup> Global international law regulates globally and applies throughout the world. Meanwhile, regional international law only regulates in certain regions and only applies in the region. In connection with the regulation in the sea, international law of the sea applies both global international law of the sea<sup>12</sup> and regional international law of the sea<sup>13</sup> and special international law of the sea<sup>14</sup>.

On the other hand, the existence of sources on international law is important, especially related to the regulatory perspective in the ocean.<sup>15</sup> International customary law has affirmed that the sea, including its natural resources, belongs to humanity.<sup>16</sup> In addition, countries which exploit natural resources must not pollute other countries.<sup>17</sup> The customary law not to disturb other countries will be related to the principle that is often referred to as the no-harm principle and a good-neighbourhood principle. On the other hands, there are also several principles of international law developing if later it will be associated with marine plastic litter such as the international cooperation principle, sustainable development principles, precautionary principle, the polluter pays principle.

Meanwhile, international agreements that deal with issues at sea such as the United Nations Convention on the Law of the Sea (UNCLOS) 1982 regulate comprehensively, including the protection of the marine environment. For which this provision is stipulated in articles 145 to 147 in the area jurisdiction known as Area and Section XII Section I-XI Article 192-297. In Section V, Articles 207-212 confirm that pollution

<sup>10</sup> J. Boucher, and Friot D, *Op.Cit.*, 43.

<sup>11</sup> Mochtar Kusumaatmadja, *Pengantar Hukum Internasional* (Bina Cipta: Bandung, 1976)

<sup>12</sup> For example UNCLOS 1982.

<sup>13</sup> For example UNEP Regional Sea Conventions.

<sup>14</sup> For example Convention on the Prevention of Marine Pollution (MARPOL) 1973/1978.

<sup>15</sup> Article 38 (1) Statuta of the International Court of Justice

<sup>16</sup> ICJ Case United Kingdom v. Iceland (1972)

<sup>17</sup> Principle of the 21 Stockholm Declaration 1972. In the 1992 Rio Declaration Principle 2 relating to pollution is also stated that states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources in accordance with their own environmental and development policies, and responsibility responsible for ensuring that activities within their jurisdiction or control do not cause damage to the environment of other countries or areas outside the national jurisdiction.

originating from land, the land below it, activities in the area, dumping, originates from ships and from the atmosphere.<sup>18</sup>

As a continuation of UNCLOS 1982, there is agreement such as the Agreement on the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10 1982 has been held by the United Nations Fish Stocks and Highly Conservation and Management of Straddling Fish Stocks. Confirms in Article 5 (f) to reduce pollution, waste disposal and disposal of fishing nets. The international agreement which provides a ban on polluting the sea, especially dumping in the sea, is regulated in the Convention on Marine Pollution by Dumping of Wastes and Other Matter 1972 or London Dumping Convention (LDC 1972) came into force in 1975. For pollutant sources, one of them was plastic materials, Stockholm Convention on Persistent Organic Pollutants (POPs) 2001, which include several types of POPs that can harm humans and other living things. Whereas plastic and plastic waste, especially the movement of waste, are regulated through the Basel Convention 1989.<sup>19</sup> In terms of plastic pollution, it has had a detrimental impact on fish and various marine mammals regulated through international agreements such as the International Whaling Convention 1946, Convention Migratory Species (CMS) and United Nations Convention. Biological Diversity (UNCBD) 1992.

The international agreements have been contributed a lot and as an important role in the prevention of pollution in the sea, including the handling of marine plastic litter. International agreements are one of the strong instruments of international law to be implemented because they are an agreement or consensus between countries that are parties of the international agreement. The existence of the principle of *pacta sunt servanda* in the international agreement will be able to provide a strong commitment to be implemented for the parties in the international agreement.

As a secondary international law source, the doctrine in the law of the sea it has also developed like the hot pursuit doctrine.<sup>20</sup> This doctrine is used in other ways, especially by non-governmental organizations in chasing ships that catch whale mammals. It is possible to one day dispose of plastic waste by a water vehicle such as a ship to be pursued by non-governmental organizations on the grounds of this doctrine. On the other hand, the decisions of several international justice bodies including the International Court of Justice (ICJ), the International Tribunal Law of the Sea (ITLOS) or the Permanent Court of Arbitration (PCA) have become important international law sources related to the international law of the sea.

Nowadays, plastic waste has become the concern of international law experts, especially the experts of the law of the sea. This principle emphasizes that although every country has sovereignty, it must not damage or pollute other countries and must be responsible for pollution or damage. Thus the plastic waste is under the jurisdiction of a country must be controlled so that it does not enter the territory of the sea jurisdiction of another country, including area beyond the national jurisdiction.

The UNCLOS 1982 regulates the sea comprehensively, is a very important marine constitution which regulates the territorial sea, additional sea, EEZ and high seas. Besides that, it is also regulated inland sea, island sea, bay, delta, sea channel even area outside national jurisdiction. With regard to plastic waste that is in the sea, both seas that are under national jurisdiction and beyond national jurisdiction need to be regulated given the dangers that will occur.

### 3. Regional International Law and Especially in the Effort of Plastic Arrangement

Meanwhile, the sea is beyond the jurisdiction of a country. Still, it is close to the jurisdiction of several other countries, and its ecosystem is formed naturally in a certain region of the sea such as the Mediterranean Sea, so the arrangement is in regional international law of the sea. The regional international law of the sea has several arrangements through the United Nations Environmental Programme (UNEP) Regional Sea's Programme. Through this arrangement model, the UNEP Regional Sea's Programme divides into several regional marine management through regional international agreements such as the Barcelona Convention

<sup>18</sup> UNCLOS 1982 entered into force in 1994 but some big countries such as United States, Great Britain and German has absent. David Ruzie. 2004. Droit International Public, Mementos Dalloz, Paris page 107.

<sup>19</sup> Article 1 (4). This convention state that wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this convention. Article 1 (9) "area under the national jurisdiction of a state" means any land, marine area or airspace within which a state exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment.

<sup>20</sup> Michael A Becker., The Shifting Public Order of the Ocean: Freedom of Navigation and the Interdiction of Ship at Sea (2005) 46 Harvard Int LJ 131 at 133 in Randal Walker. International Law of the Sea: Applying the Doctrine of Hot Pursuit in the 21<sup>st</sup> Century in <http://www.nzlii.org>.

for the Protection of the Mediterranean Sea Against Pollution 1976, Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution 1978, Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region 1981, Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region 1983 and Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986. In this framework, so that regional cooperation is needed in its regulation. For example, the Mediterranean Sea has the Barcelona Convention 1976. For the Atlantic there is a Convention for the Protection of the Marine Environment of the Northeast Atlantic or OSPAR Convention and for the Baltic Sea, there is a Protection on the Marine Environment of the Baltic Sea Area. For the Antarctic region, there is the Conservation of Antarctic Marine Living Resources. Other international agreements such as the protection of whale mammals in Europe have an Agreement on the Conservation of Small Cetaceans in the Baltic, North East Atlantic, North and Irish Seas (ASCOBANS). These international agreements have also agreed to efforts to handle marine plastic litter through soft law frameworks such as Strategic, Action Plan and other forms.

The sea around ASEAN countries has not been regulated together through international, regional agreements. But efforts to organize together are still carried out based on bilateral agreements or international customary law.

Whereas special international law is agreed upon by special bodies such as the International Maritime Organization (IMO) and applies specifically to ships including the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating there to and by the Protocol of 1997 (MARPOL 1973/1978). MARPOL prohibits the disposal of plastic waste also regulated in Annex V.

It is hoped that the existence of regional international law and special international law can provide a strong influence in the framework of combating plastic waste at sea. Regional cooperation is important, because regional approaches are that usually have similar and even similar cultural characteristics. This approach is more familiar so that international customs, international agreements, and legal principles are better understood among countries in the region. The handling of marine plastic litter will be more easily overcome within the framework of regional cooperation with requirements, the region is stable and strong organizational relationships have been established.

In contrast to special international law which generally emphasizes on a particular problem or topic. Like shipping carried out by ships which are indeed special arrangements. Not all countries have large shipping and ship fleet. But the shared need in a more framework for favourable conditions will be easier to handle. Ships as transport vehicles are needed by almost all countries. Because of these needs and interests, the vehicle must be comfortable in the sea. So that the ships also have to maintain a safe condition where they don't waste garbage in the sea. So, the sea becomes clean and safe for all sea vehicles that pass through. Therefore MARPOL strictly regulates and prohibits the disposal of garbage such as plastic waste in the sea without being processed.

#### **4. Soft Law in Handling Marine Plastic Litter**

According to Danusaputro, 1982 hard law is a law that has definite power-binding. Instruments hard law include Treaty, Convention, Agreement, Arrangement, etc. While soft law, according to Danusaputro, are legal elements that do not have definite binding power. Soft law instruments are usually in the form of declarations, resolutions, strategic, action plans, statements etc.

The Stockholm 1972 declaration has emphasized through principle 7, which regulates marine pollution, including plastic waste in the sea. The state should take all possible steps to prevent marine pollution by substances that are responsible for endangering human health, life and marine life, destructive facilities or which is contrary to other legal uses of the sea. In 1981 the East Asian countries agreed on the Action Plan in the name The Action Plan for the Protection and Development of the East Asian Seas Action Plan. At the same time, Food and Agriculture Organization (FAO) countries have agreed the FAO Code of Conduct for Responsible Fisheries also regulates the handling of plastic waste, especially related to fishing ports, which must provide waste management and the prohibition of disposal of plastic nets at sea.

In the European, there is the European Marine Strategy Framework Directive (2008/56/EC within which EU Member State shall take action to achieve or maintain Good Environmental Status (GES) of their Marine

Water by 2020.<sup>21</sup> Mediterranean Sea in the framework of handling marine plastic litter, there is a strategic framework on management of marine litter in the Mediterranean was agreed, adopted in 2012 and the implementation plan for the Regional Management Plan of Marine Litter in the Mediterranean, adopted in 2013, entered into force in June 2014. For the North sea Atlantic region, it was agreed that the Regional Action Plan on Marine Litter for the OSPAR Convention was adopted in 2014. As for the Baltic Sea, the Regional Action Plan on Marine Litter for the Helsinki Convention was adopted in 2015. For the Carabia Sea region, there is The Regional Action Plan on Marine Litter for the Wider Caribbean Region (RAPMaLi) was approved in 2008 and revised in 2014. Meanwhile, in the Western Pacific region, the Northwest Pacific Action Plan on Marine Litter (2008) was agreed. And then, Cleaner Pacific 2025 for the South Pacific region was agreed. Pacific Regional 2016-2025 Waste and Pollution Management Strategy.

Meanwhile, ASEAN in handling marine plastic litter has also issued several soft laws such as the Bangkok Declaration on Combating Marine Debris in ASEAN Region (2018), Joint Media Statement of the Special ASEAN Ministerial Meeting on Marine Debris (2019), ASEAN Framework of Action on Marine Debris (2019) and ASEAN plus three also agree on the ASEAN + 3 Marine Plastics Debris Cooperative Action Initiative and then ASEAN-EAS Summit Leader's Statement Combating Marine Plastic Debris (2018).

The 2030 Agenda and the Sustainable Development Goals (SDGs) have confirmed through Goal 11, Goal 12 and Goal 14 that are relevant to the issue of plastic pollution. Target SDGs related to plastic waste in the sea include by 2025, prevent and significantly reduce marine pollution, in particular from land-based activities, including marine debris and nutrient pollution.<sup>22</sup>

Meanwhile, United Nations General Assembly (UNGA) at the 70th session in December 2015, resolution 70/235 was adopted which included the decision (paragraph 312) that the 17th meeting of the United Nations Informal Consultative Process on the Law of the Sea would focus its discussions on the topic 'Marine debris, plastics and microplastics'.

Within the framework of marine protection from the dangers of pollution including plastic waste pollution, UNEP had developed a Global Program of Action for the Protection of the Marine Environment from Land-based Activities in 1995. Furthermore, after transform UNEP Governing Council (UNEP GC) to the United Nations Environmental Assembly (UNEA), it has published several resolutions including Resolutions UNEP/EA.1/Res.6 on Marine Plastic Debris and Micro-plastic, Resolution UNEP/EA.2/Res.11 on Marine plastic litters and micro-plastics, Resolution UNEP/EA.3/Res.7 on the Marine litter and micro-plastics, Resolution UNEP/EA.4/RES.6 on Marine Plastic Litter and Micro-plastics and Resolution UNEP/EA.4/RES.9 on Addressing Single-use Plastic Products Pollution.

## 5. National Law Regarding Marine Plastic Litter Management Efforts

Global, regional and special international law are adhered to and even integrated into certain norms to be part of the national legal system.<sup>23</sup> So that in handling plastic waste at sea, national law generally adheres to applicable international provisions such as international customary law, international agreements etc. In Indonesia, there are several national laws specifically legislation that regulates pollution and management of the environment, including waste pollution such as the Law Number 32 of 2009 concerning Environmental Protection and Management. Although in this law there is no explicit provision or norm regarding marine plastic litter, however, this law regulates the environment and pollution in general.

Waste management in Indonesia has been regulated through law, namely Law Number 18 of 2008 concerning Solid Waste which still regulates solid waste activities in general. But in principle garbage must be managed and the disposal process is arranged through various forms. For producers, there is an obligation to manage to package produced, and the government can provide incentives. Imports of waste, mixing waste with hazardous and toxic waste materials, managing waste which then causes pollution, improper waste disposal, disposing of garbage in open places and burning garbage are prohibited. While the regulations

<sup>21</sup> F Galgani, G Hanke, S Werner and L De Vrees, "Marine Litter within the European Marine Strategy Framework Directive", *ICES Journal of Marine Science* 70, no. 6 (2013): 1055-1064. [https://doi.org/10.1007/978-3-319-13878-7\\_10](https://doi.org/10.1007/978-3-319-13878-7_10).

<sup>22</sup> UNEP 2016. *Op.Cit.*, 7.

<sup>23</sup> Jack L. Goldsmith\* and Eric A. Posner stated that Governments take care to comply with CIL, and often incorporate its norms into domestic statutes. National courts apply CIL as a rule of decision, or a defense, or a canon of statutory construction. Jack L. Goldsmith and Eric A. Posner. "A Theory of Customary International Law," *Chicago John M. Olin Law & Economics Working Paper* 63, no. 2, downloaded July 2 2019 through The Chicago Working Paper Series Index: <http://www.law.uchicago.edu/Publications/Working/index.html>

governing maritime affairs in various aspects are Law Number 14 of 2018 concerning Marine. In this law, it regulates the understanding of the sea to marine activities. While the protection of the marine environment is also regulated in this law.

As the implementation of the law, there are several government regulations including Government Regulation Number 19 of 1999 concerning Marine Pollution and/or Damage Control, Government Regulation Number 51 of 2002 concerning Shipping, Government Regulation Number 61 of 2009 concerning Ports, Government Regulation Number 27 of 2012 concerning Environmental Permit, Government Regulation Number 81 of 2012 concerning Household Waste Management and Similar to Households Waste, Government Regulation Number 32 of 2019 concerning Marine Space Management and several other government regulations.

Presidential regulations relating to waste include Presidential Regulation No. 97 of 2017 concerning National Policies and Strategies for Household Waste Management and Similar to Household Waste and Presidential Regulation No. 35 of 2018 concerning the Acceleration of Construction of Waste Processing Installation into Green Energy-Based Electric Energy. Whereas specifically for the management of waste in the sea, there is currently a National Action Plan for Waste Management in the Sea including Marine Plastic Litter which is regulated through Presidential Regulation No. 83 of 2018.<sup>24</sup>

As a more operational regulation implementer, the Ministry level has also been issued several Ministerial Regulations that need to be considered in waste management including Minister of Public Works Regulation Number 03/PRT/M/2013 concerning the Implementation of Solid Waste Infrastructure and Facilities in Household Waste & Waste-like Waste Management Households, Minister of Home Affairs Regulation Number 33 of 2010 concerning Waste Management Guidelines, Minister of Trade Regulation Number 31 of 2016 concerning Provisions on the Import of Non-Hazardous Substance, Regulation of the State Minister of Environment Number 16 of 2011 concerning Guidelines for Content Draft Regional Regulations on Home Waste Management Household Stairs and Trash, Minister of Environment Regulation Number 13 of 2012 concerning Guidelines for Implementing Reduce, Reuse and Recycle Through Waste Banks, Minister of Environment and Forestry Regulation Number P.10/KLHK/SETJEN/PLB.0/4/2018 about Guidelines for Preparation to wisdom and Regional Strategy for Household Waste Management and Similar of Household Waste. Waste Management in Ports. Whereas Circular Letters to limit the use of plastic bags and garbage, have been issued through Circular (SE) of the Director-General of Waste, Waste, and Dangerous Toxic Material of the Ministry of Environment and Forestry (LHK) Number S.1230 / PSLB3-PS / 2016 concerning Prices and Mechanisms for the Application of Paid Plastic Bags and Circular (SE) of the Director-General of Waste, Waste and Hazardous Toxic Material of the Ministry of Environment and Forestry (LHK) Number SE.8/PSLB3/PS/PLB.0/5/2016 concerning Reduction of Plastic Waste through Application of Bags Shopping for Free Disposable Plastics and Circular (SE) of the Director-General of Waste, Waste and Hazardous Toxic Material of the Ministry of Environment and Forestry (LHK) Number SE.2/PSLB3/PS/PLB.0/2/2019 concerning 2019 National Waste Care Day.

While related to the management of the coast and sea there is a Decree of the Minister of Environment Number KEP-45/MENLH/11/1996 concerning the Sustainable Coast Program, Decree of the State Minister of Environment Number 51 of 2004 concerning Sea Water Quality Standards, Decree of the State Minister of Environment Number 179 of 2004 concerning Errors in the Decree of the State Minister of Environment Number 51 of 2004 concerning Sea Water Quality Standards.

Even in regions or village, there are also regional regulations regarding the handling of plastic use so that it does not become plastic waste including Bali Governor Regulation Number 97 of 2018 concerning Limitation of Disposable Plastic Waste, Mayor of Denpasar Regulation Number 36 Year 2018 concerning Reduction of Use of Plastic Bags, Balikpapan Mayor Regulation Number 8 Year 2018 concerning Reducing the Use of Plastic Bags, Bogor Mayor Regulation Number 61 of 2018 concerning Reducing the Use of Plastic Bags, Mayor of Padang Regulation Number 36 of 2018 concerning Control of the Use of Plastic Shopping Bags and several other regulations.

In a court case, against the lawsuit by the Indonesian Plastic Recycling Association (ADUPI) on Bali Governor Regulation Number 97 of 2018, the Supreme Court has decided among other things that the waste reduction norms regulated in Law No. 18 of 2008 and Bali Provincial Regulation No. 5 of 2011 concerning Waste management must be interpreted as a ban on the use of disposable plastics, as stipulated in Bali

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<sup>24</sup> Presidential Regulation No. 83 of 2018, concerning handling marine waste, and contains the National Action Plan 2018-2025 involving various Ministries/Institutions and Local Governments.



Governor Regulation Number 97 of 2018, thereby strengthening the government's regulation.<sup>25</sup> This case began with a garbage collection event in 150 locations in Bali Province found 30 tons of plastic waste. Seeing this condition, the Governor of Bali followed up with the issuance of a Governor Regulation Number 97 of 2018, which limits the use of plastic waste for very urgent and extraordinary reasons. However, with the issuance of this Governor Regulation, it was sued by three elements including the Indonesian Plastic Recycling Association (ADUPI), the plastic bag trade businessman and the plastic goods industry. The lawsuit was submitted to the Supreme Court on the reason that the governor had made a new norm. However, the Supreme Court judge has rejected the petition of the three petitioners based on Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Culture Right, Article 28H Paragraph 1 of the 1945 Constitution, Article 9 Paragraph 3 of Law Number 39 of 1999 concerning Human Right, Article 65 paragraph 1 of Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 18 of 2008 concerning Waste Management.<sup>26</sup>

Thus at the national level, Indonesia has had various laws and regulations that regulate pollution control, waste management, plastic control. Likewise, the courts, especially the Supreme Court, have played a role in deciding and strengthening legislation regarding restrictions on plastic waste, specifically the Bali Governor Regulation. The most important thing about handling marine plastic litter, Indonesia also has a National Action Plan for plastic waste management that also gives a mandate to central and regional institutions to play a role in handling plastic waste at sea. Thus the handling of plastic waste in the sea requires joint efforts and adequate legal instruments.

### C. Conclusion

Plastic garbage on the sea turns out to have endangered living things and humanity. In many cases, many fish and animals in the sea have swallowed plastic waste, causing disease and even death. Of course, it will be dangerous for humans who eat fish and marine animals that have swallowed plastic waste. The handling of plastic waste through international law has been sought, especially the follow-up of agreed international agreements. Regional international law has also made important contributions in the framework of reducing plastic waste in the sea, especially in their respective regions. Nevertheless, national law also makes an important contribution to increase and support the role of international law if there is a lack of international law.

While the recommendations of this study need special international institutions that continue the results in the form of resolutions, recommendations or similar forms, further research is needed on transboundary plastic waste in the sea so that it can know whose responsibility and what is imposed and how to prove and compensate if there is a loss for a country due to the inclusion of various plastic waste in its marine area.

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<sup>25</sup> <https://news.detik.com/berita/4620238/pembatasan-kantong-plastik-digugat-gubernur-koster-menang-lawan-pengusaha>.

<sup>26</sup> <https://www.aliansizerowaste.id/single-post/2019/07/17/Mahkamah-Agung-Pemerintah-Daerah-Dapat-Melarang-Plastik-Sekali-Pakai>

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