Lessons from Timor Sea oil spill crisis

IGG Maha Adi,

There are two important lessons we can learn from the oil spill case in Mexico Bay in the United States last year: Out-of-court settlement and President Barack Obama's quick response as an integral part of crisis management in the US administration. Out-of-court settlement means that goodwill from all stakeholders are the key words. It is implied that two parties agree with the adagio that goodwill builds and runs business to improve society's welfare.

So when a major crisis strikes, the corporate sector will join forces with other stakeholders to deal with it.

Owner of the Montara oil rig in Timor Sea, Thailand-based PTTEP, and the government of Indonesia as regulator have taken a couple of steps based on this good will, to negotiate and solve the impacts of Timor Sea oil spills two years ago.

The litigation process, often used in resolving disputes among business entities with other stakeholders, is strongly associated with the Western way of being direct and certain, coupled with the specific characteristic of involving the third party (the court) to resolve the disputes between two conflicting parties. In reality, litigation has never been the first option in business particularly in Eastern culture.

Businesspeople in Eastern countries decline to see their colleagues lose their faces in a zero-sum game played in court, especially when the one defeated is the regulator or the government that supposedly represents the will of the nation. This option make businesspeople uneasy as their business existence and sustainability depends on the regulations produced by this government regime.

If the Montara case were brought to the international court, the legal formal instruments are in place: The 2006 presidential decree on emergency response on oil spills at sea. Yet, there is no specific instrument to regulate compensation from oil spills resulting from oil drilling activities, and therefore out-of-court settlement is still the best option. Even the United States, equipped with four laws to regulate oil spills in the sea, including laws on settlement and compensation, still favors the non-litigation mechanism. Cost of the damage is difficult to prove as the process is intricate and lengthy, since the figure proposed by the government changes frequently and requires independent verification.

The negotiation of the Montara case, in fact, covers the weakness of the government of Indonesia in extracting the second lesson learned in the Mexico Bay environmental crisis: Inadequate environmental crisis management to respond to major cases. Ten days after Deepwater Horizon semi-submersible Mobile Offshore Drilling Unit (MODU), operated by Transocean for BP, exploded in Macondo Prospect oil plant on April 20, 2010, President Obama instructed a thorough investigation. On May 22, Obama signed the Executive Order 13543 as the basis for the establishment of a bi-partisan national team to handle the case. Valuation data on natural resources in the bay was made available quickly, and the executive order laid out who was doing what, so the process to clean up oil spills, the localization of the disaster and compensation — all was resolved within weeks, and after four months, the leak was completely shut down.

Meanwhile, official responses to the oil spills of the Montara rig in Timor Sea came when the Indonesian government established the Advocacy Team on Timor Sea Oil Spills only on July 15, 2010. The first sample, extracted by East Nusa Tenggara provincial government in October 2009 from Timor Sea, concluded that oil spills had entered Indonesian territory. The Indonesian government lost to US-based gold miner PT Newmont Minahasa Raya in 2007, in a trial related to allegations that the company had polluted Buyat Bay. The government also took over corporate

responsibility in the case of the Lapindo mudflow in Sidoarjo, East Java. Both cases reflect weakness in evidence.

The belated response to the Montara case results in loss of complete and systematic documentation that leads to difficulties in proving claims of damage. The complete sets of data are owned only by PTTEP and the government of Australia because both have conducted research and collected samples from the first days of the disaster. The biggest loss from this delayed response is another delay, in preventive and curative actions that lead to failure in avoiding another bigger loss.

The objective conditions of the geo-politics, eco-politics and the reality as a tropical country, a country like Indonesia needs to have an adequate and suitable environmental emergency and crises responses, because in spite of its huge potential, Indonesia is also vulnerable to the environmental crises.

Indonesia's environmental crisis management approach should include eight lithoral countries with which Indonesia shares sea borders as active partners. The crisis management designed should include impacts of environmental crises that might be caused by activities in sea borders — such as oil drilling activities in Timor Sea, South China Sea, Malacca Straits, Philippines Sea and Indian or Pacific oceans. Without clear identification on possible impacts which might occur in the borders, cases like the Montara oil spill will recur.

Geographical and geological realities of Indonesia lead to a relatively high probability of environmental crises as compared to other countries in the world. Combined with low levels of sensitivity and response to environmental crises, a series of tectonic and volcanic vulnerability factors and impacts of environment inter-component interaction will lead to a major environmental disaster in Indonesia. A small localized environmental crisis, if it is not managed well and detected early, can catapult into a major catastrophe that can shove Indonesia into the brink of a failed state.

The writer is executive director of The Society of Indonesian Environmental Journalists (SIEJ).