

# The Reconstruction of Government Policy’s Waste Management for the Rights of Good and Healthy Living Environment

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**ABSTRACT--***The good and healthy environment of life is the basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Therefore, the government is obliged to create a good and healthy environment for Indonesian citizens to actualize a prosperous society. In this study, the law concept used is “the law is the positive norms in the national legal system”. So that the type of this study is the pure law studying about the law as it is written in the books, with the doctrinal research method, especially the deductive logic to build a positive legal system and positivistic oriented. Act Number 18 of 2008 regarding Waste Management has several weaknesses which make it difficult in the implementation. There needs to be a reconstruction of Act Number 18 of 2008 concerning Waste Management for articles that are difficult to apply, or the merger of Act Number 32 of 2009 concerning Environmental Protection and Management with Act Number 18 of 2008 concerning Waste Management with consideration both refer to article 28H of the 1945 Constitution of the Republic of Indonesia. Besides, the executors of the two laws in the provinces and regencies/cities are regional government organizations in charge of the environment.*

**Keywords:** *management, waste, environment*

## I. INTRODUCTION

The good and healthy environment of life is the basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Therefore, the government is obliged to create a good and healthy environment for Indonesian citizens to actualize a prosperous society.

The good and healthy environment has to go hand in hand with increasing the national economic development by utilizing the natural resources that continue to increase. On the other hand, the population growth with the increased welfare will increase the necessities of life which will affect the environmental conditions. Thus, the national economic development as mandated in the 1945 Constitution of the Republic of Indonesia can be carried out based on the principle of sustainable development and environmental insight.

The spirit of the regional autonomy in the administration of the Unitary State of the Republic of Indonesia has brought about the changes in the relation and authority between the Central Government and the Regional Governments,

including in the field of environmental protection and management.

The decline in the quality of the environment in line with the population and economic growth has threatened human lives and other living creatures so that it is necessary to truly and consistently protect and manage the environment by all stakeholders. The environmental damage will also affect in increasing global warming resulting in climate change, which in turn will worsen environmental degradation. The data of the population growth are as follows in table 1.

Table 1.

Pemalang Regency Population Growth in 2013-2017

No	Variable	2013	2014	2015	2016	2017
1	Total Population	1.279.596	1.284.236	1.288.566	1.292.573	1.295.367
2	Man	622.313	635.501	637.858	639.797	640.662
3	Woman	632.374	648.289	650.708	652.776	654.705
4	Gender Ratio	98,0	98,01	98,0	98,01	97,85
5	Population Density	1.147,31	1.151,47	1.155,34	1.158,95	1.280,00

Source: CBS, People's Welfare Statistics Central

Java Province 2017, 2018

The economic growth based on GRDP at Current Prices is as follows table 2.

Table 2

GRDP at Current Prices Pemalang Regency in 2012-2016 (in Billion Rupiah)

No.	Year	GRDP	Economic Growth (%)
1.	2012	13.635,67	10,24
2.	2013	15.032,62	11,44
3.	2014	16.751,92	10,38
4.	2015	18491,39	8,36
5.	2016	20.036,52	

Source: CBS, Official Statistics News, 2017

The population growth and economic growth have an impact on changes in the community consumption patterns leading to an increase in the volume, type, and characteristics of increasingly diverse waste. The waste management that is not in following the methods and techniques of environmentally-friendly waste management has negative impacts on public health and the environment. The waste has become a national problem so that its management needs to be carried out comprehensively and integrated from upstream to downstream to provide the economic benefits, be healthy for the community, be safe for the environment, and be able to change people's behavior. In the waste management, the legal certainty, clarity of responsibility and authority of the government, regional government, and the role of the society and the business world are needed so that the waste management can be carried out proportionally, effectively and efficiently.

The identification of potential waste generation is obtained from the calculation of the population times the waste generation factor of 0.40 kg/person/day. The identification of potential waste generation in Pemalang Regency from 2013 to 2017 is presented in table 3 below.

Table 3

The Waste Generation in Pemalang Regency 2013-2017

No.	Year	Total Population (people)	Amount of Waste Generation (ton/day)
1.	2013	1.279.596	511,84
2.	2014	1.284.236	513,69
3.	2015	1.288.566	515,43
4.	2016	1.292.573	517,03
5.	2017	1.295.367	518,15

Source: Regional Policy and Strategy Pemalang Regency 2018

Based on table 3, it can be concluded that the waste generation from year to year is increasing, so it is necessary to have environmentally-friendly waste management to be able to guarantee the fulfillment of human rights for the fulfilment of a good and healthy environment. Based on the background above, there are three problems to discuss.

1. Why waste management has not been carried out properly?
2. How is the construction of the implementation of waste management in Pemalang Regency?
3. How is the reconstruction of waste management as the effort to fulfill the sustainable environmental rights?

## II. FINDINGS AND DISCUSSION

### 1. *Optimal Waste Management as an Effort to Fulfill the Sustainable Environmental Rights*

The waste management in Indonesia is regulated by the Act of the Republic of Indonesia Number 18 of 2008 regarding Waste Management. Based on the law, waste is the remnant of human daily activities and/or naturally processed in solid forms. Whereas, waste management is a systematic, comprehensive and sustainable activity that includes reducing and handling the waste.

The waste which is regulated under this Act are:

- a. Household Waste;
- b. Household-like Waste;
- c. Specific Waste

Household waste derives from household daily activities, excluded feces, and specific waste. Household-like waste derives from the commercial area, industrial areas, special areas, social, facilities, public facilities, and/or other facilities. The specific waste includes:

- a. Waste contains hazardous and toxic materials
- b. Waste contains hazardous and toxic waste
- c. Waste derives from disaster
- d. Construction and demolition waste
- e. Waste that cannot be processed due to there is no available technology existed
- f. Waste that is not periodically occurred

Waste management is conducted based on the principle of responsibility, sustainability, profitability, justice, awareness, togetherness, safety, security, and economic value.

The objective of waste management is to increase public health and environmental quality as well as to utilize the waste as the energy source.

The tasks of government and the local government are to ensure that waste management will be implemented in a good manner and based on environmentally sound management. The tasks are as follows:

- a. Developing and increasing the public awareness on waste management
- b. Conducting research, developing technology for reducing and handling of waste
- c. Facilitating, developing, and conducting efforts to reduce, handle, and utilize waste

- d. Carrying out waste management and facilitating in providing the facility and infrastructure for waste management
- e. Encouraging and facilitating the enhancement of the benefit of waste management outcome
- f. Facilitating the application of specific local technology developed in the local society in reducing and handling of waste
- g. Conducting coordination among government institutions, society, and industry towards an integrated waste management

In waste management, everyone has the right to:

- a. Have good and environmentally sound services in waste management from the government, local government, and/or other responsible entity
- b. Participate in the process of decision making, implementation and monitoring in waste management
- c. Get accurate, correct and prompt information on the implementation of waste management
- d. Get protection and compensation derived from the negative impact caused by the activity of the final waste processing site
- e. Get monitoring to implement good and environmentally sound waste management

Besides everyone has the right, everybody also has the obligation in the management of household waste and household-like waste, namely, she/he obliges to reduce and handle waste based on environmentally sound management.

Waste management as the effort to fulfill sustainable environmental rights is one of the government's tasks as Mashari says.

The tasks and functions of the government are as follows.

1. Governmental Sector  
Develop and uphold the national and territorial unity by using the authority and power of the state through:
  - a. Laws and regulations
  - b. Community Development
  - c. Police
  - d. Justice
2. State Administration Sector  
This task is in the form of implementing or carrying out the will (strategy, policy) and decisions of the government, implementing the laws, and controlling the situation and condition of the country to find out what is happening in society.
3. Household Management of State  
These problems include staffing, finance, materials, logistics, social security, distribution, transportation and communication traffic, health and others.
4. Development

The development plan consists of several state and regional plans, the determination of implementation and the budget. The development is planned both short-term and long-term.

5. Environmental Conservation  
Regulate the environmental use, environmental protection, environmental sanitation and so on.
6. The development of the National Culture and the Regional Culture in society
7. Business/Commerce

The business is not a trade, but it is the activity to serve the needs of the society or the public, for example, the department of sanitation, hospitals, schools as well as the state business fields such as BUMN and BUMD in Indonesia. The highest government is held by the president (Article 4 of the 1945 Constitution).

Based on the tasks and functions of the government mentioned above, waste management is an implementation of the Environmental Preservation and Urban Cleanliness task as the activity to serve the needs of society.

In its implementation, waste management has not run optimally. This is indicated by the increase in household waste and household-like waste generation. This shows that the handling and reduction of waste at its source as mandated in the Act Number 18 of 2008 regarding Waste Management has not been implemented properly.

The program that must be implemented is the reduction of waste at the source and handling of waste. Reducing waste at its source is the society's task, so society participation is needed to reduce the waste generation. Whereas, in handling the waste is the government task, by processing the waste that has been disaggregated in the temporary waste processing such as Integrated Waste Processing Sites (TPST) or Recycling Places (PDU) and Final Waste Management Sites (TPA).

#### *2. Construction of the implementation of waste management in Pematang Regency*

In this study, the definitions of law are first conveyed, even though the opinions of the legal experts do not agree with the definitions of law themselves. According to Hugo Sinzheimer, cited by Donald Albert Rumokoy and Frans Maramis, the legal sociology experts, if contemplating the meaning of the law, the law will appear to us in three kinds of formations, as follows:

**The law manifests itself as norms (Bld.: *rechtsnormen*).**

This law is called normative law (Bld.: *normative recht*). This law that first shows itself when we read the law, that is, the law is seen as a

series of regulations. This law also tends to be seen first by government officials and law enforcers such as the police and prosecutors when they affirm something by stating “according to applicable laws and regulations”.

The study of normative law is the dogmatics of law (Bld. : *rechtsdogmatiek*). The dogmatics is the knowledge of legal norms that apply in a certain place and at a certain time (positive law).

1. The law manifests itself as an ideal or legal idea (Bld. : *rechtsideal*)

This law is called ideal law (Bld.: *ideëalerecht*). This law is seen and fought for by those who call for things such as justice and human rights. According to them, justice and/or human rights are not bound by written rules made by the state. The position of justice and/or human rights is higher than the law, so if the law is contrary to justice and/or human rights, the law must be removed. St. Augustine is one of the experts who support this law by stating that "unjust law is no law at all" or unjust law is not at all law. The study of this ideal law is the philosophy of law (Bld. : *rechtphilosophie*).

2. The law manifests itself as a form of real-life in the association of human life (Bld.: *de werkelijkelevensvormen van de menselijkjesamenleving*).

This law is called legal reality (Bld.: *rechtelijke werkelijkheid*). This law is familiar to Indonesian people who have the customary laws. The various customary laws are part of the real-life forms in the association of human life (legal reality). The study of the legal reality is legal sociology (Bld. : *rechtssociologie*).

Based on the three kinds of law stated by Hugo, this study is more following the normative law. That is because this study discusses related to the laws and regulations regarding the environmental law, including the Act of the Republic of Indonesia Number 18 of 2008 regarding Waste Management, the Act of the Republic of Indonesia Number 23 of 2009 regarding Environmental Protection and Management, and the Act of the Republic of Indonesia Number 23 of 2004 regarding Regional Government in which regulates the authority of the environmental sector.

The definition of normative law from several experts as cited by Donald Albert Rumokoy and Frans Maramis is as follows:

a. According to John Austin, the positive law is a direct or indirect order from a king or sovereign institution in a position as politically superior. This definition is usually abbreviated as positive law, the command from the sovereign (positive law is the command of sovereignty). The use of the term positive law is because Austin stressed that this law is made by the sovereign in the

country so that this law can be applied by the authorities of the state.

- b. According to Hans Kelsen, the law is a system that governs human behavior. What is meant here is that the law consists of norms in which these norms form a system.
- c. According to Gustav Radbruch, the law is a complex of general rules for living together in which the idea is ultimately oriented towards justice or expediency.
- d. According to J. van Kan and J.J Beekhuis, the law is “a set of rules that are coercive, or with other regulations, or a compilation of compulsive social relations.”
- e. According to Bronwen Morgan and Karen Yeung, the law is the authoritative regulations supported by force to enforce by a legally constituted state.
- f. According to the Black’s Law Dictionary, the law in the general meaning is the set of rules of action and behavior that is determined by the controlling power and has a valid binding power, or the law is the rules that must be obeyed and followed by citizens with consequences of sanctions or legal consequences.
- g. According to Webster’s Compact English Dictionary, the law is all the rules of behavior in an organized community that is enforced by the authorities.
- h. According to the Indonesian Encyclopedia, the law is “the rule that determines how people should behave in society.”
- i. According to World Book Encyclopaedia, “law is the set of rules which the government enforces through its police, its courts, and its other agencies”.

Based on the legal definitions above, it can be concluded that law is the norms or rules containing the written rules made by the state, the law enforcement officers and the legal sanctions for the violator.

John Rawls cited by Suteki and GalangTaufani states that justice is a principle of national policy that is applied to the conception of the total welfare of all groups in society. To achieve justice, it is rational if a person insists on fulfilling his/her wishes by the principle of usability since it is done to enlarge the benefits of satisfaction obtained by society.

The quality can be laid down for the principle of justice for basically the law must be a role model so that people can take a fair position while taking into account the interests of individuals and proportionally act according to their rights and do not violate applicable laws. Therefore, justice is closely related to the rights and obligations of people in carrying out the agreement as a form of responsibility.

There are two objectives of the theory of justice stated by John Rawls. They are:

- a. This theory wants to articulate a series of general principles of justice that underlie and explain moral decisions that are considered in our particular circumstances. The moral decisions are a series of moral evaluations that we have made and presumably affect our social actions. The moral decisions seriously considered referring to the moral evaluations that we make reflexively.
- b. Rawls wants to develop a theory of social justice that is superior to the theory of utilitarianism. What Rawls means is average utilitarianism. The point here is that social institutions are said to be fair if they are devoted to maximizing profits and uses. Meanwhile, on average utilitarianism, the social institutions can be said to be fair if they are only devoted to maximizing average per capita profits. Based on two versions of utilitarianism, "profit" is defined as satisfaction or the profit that occurs through choices. Rawls says that the basic truth of his theory makes his views superior to the two versions of utilitarianism. The principles of justice which he argues are superior in explaining ethical-moral decisions over social justice.

John Rawls's two principles of justice below are the solutions to the main problems of justice, namely: First, the principle of greatest equal liberty. This principle includes:

- a) Political liberty (the right to vote and hold public office);
- b) Freedom of speech (including freedom of the press);
- c) Liberty of conscience and freedom of thought (including religious beliefs);
- d) Freedom of the person;
- e) The right to hold personal property

The second principle consists of two principles, namely the difference principle and the principle of fair equality of opportunity. The core of the first principle is that social and economic differences must be regulated to provide the greatest benefits to those who are more disadvantaged. The term socio-economic difference in the principle of difference towards inequality refers to the prospect of someone to get the basic elements of welfare, income, and authority. Whereas, the term most disadvantaged refers to those who have the least opportunity to achieve the prospect of welfare, income, and authority.

The development and economic needs continue to advance to meet the increasing and unlimited human needs, along with the increasing number of people in the world. The convergence between the increasing development and economic needs with

the increasing number of the world's population has resulted in the increasing use of natural resources.

In Pemalang Regency, the population and the needs of the people continue to increase as a result of modernization. This causes the natural resources in Pemalang Regency to decrease, especially natural resources which cannot be renewed.

According to the Coordinating Ministry for the Economic Affairs, cited by HariadiKartodihardjo, in addition to having produced positive benefits in supporting the economic growth, the improper management of natural resources can harm the environment in the form of a series of conflicts that will affect poverty, damage, and pollution of natural resources. The poverty and damage to natural resources that occur continuously will also trigger new conflicts. According to Christopher W Moore, cited by HariadiKartodihardjo, theoretically, the conflicts occur simultaneously as a result of the existence of natural resources is increasingly scarce while the needs are remained even increased (one social-interest), destructive patterns of behavior or interaction, and unequal control of resources.

Edith Brown Weiss explains that in general. There are three actions of past and present generations which are very detrimental to future generations in the environmental field, which are: firstly, the excessive consumption of quality resources makes the future generations have to pay more to be able to consume the same natural resources; secondly, the excessive use of natural resources for which the best benefit is currently unknown is very detrimental to the interests of future generations because they must pay inefficiencies in the use of these natural resources by past and present generations; thirdly, the use of natural resources by the past and present generations to the most makes the future generations do not have a high diversity of natural resources.

According to Hardjosoemantri quoted in A.M. Yunus Wahid, the role of environmental law is particularly clarified in Care for the Earth: A Strategy for Sustainable Living (1991), those are: (1) Giving effect to the policies formulated in supporting the development of the sustainable policies; (2) Providing guidance to the public about the actions that can be taken to protect their rights and obligations; (3) Giving the resolutions regarding rights and obligations and the actions which are detrimental for the public; and (4) Giving and strengthening the mandate and authority of the relevant authorities to carry out their duties and functions.

The presence of the state (government) in the context of conserving, saving, protecting the environment is to assume the obligations and responsibilities in relation to the politics of environmental law.

In this context, the state guarantees the utilization of natural resources will provide

maximum benefits for the welfare and quality of life of the people both for present generations and for future generations. In addition, the state guarantees the right of citizens to have a good and healthy environment and also the state prevents the activities of utilizing natural resources that cause pollution and environmental damage.

In this paper, 3 (three) laws will be discussed which are closely related to Waste Management, i.e.

1. Act of the Republic of the Indonesia Number 23 of 2014 concerning Regional Government.
2. Act of the Republic of the Indonesia Number 32 of 2009 concerning Environmental Protection and Management.
3. Act of the Republic of the Indonesia Number 18 of 2008 concerning Waste Management.

Act of the Republic of the Indonesia Number 23 of 2014 concerning Regional Government as the implementation of Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia is intended for the implementation of regional government to accelerate the realization of community welfare through improving services, empowerment, and community participation as well as increasing regional competitiveness by taking into the principles of democracy, equality, justice, and the uniqueness of an area in the system of the Unitary State of the Republic of Indonesia. Besides, it is also necessary to increase the efficiency and effectiveness of the implementation of regional government by paying more attention to aspects of the relationship between the Central Government and the regions and between regions, the potential and diversity of the region, as well as opportunities and challenges of global competition in the unity of the state governance system.

Based on Act of the Republic of the Indonesia Number 23 of 2014 concerning Regional Government Article 9 paragraph (1) Governmental affairs are divided into three, namely, absolute government affairs, concurrent government affairs, and general government affairs. Absolute government affairs are government affairs that fully become the central authority consisting of foreign policy, defense, security, justice, monetary, national fiscal, and religion. Whereas concurrent government affairs are government affairs that are shared into the central government, the provincial government, and district/city governments. Concurrent government affairs submitted to the regions become the basis for the implementation of regional autonomy. Furthermore, general government affairs are government affairs which become the authority of the president as the head of government. General government affairs include:

- a. Fostering national insights and national defense in order to establish the practice of Pancasila, the implementation of the 1945 Republic of

Indonesia State Law, the preservation of Unity in Diversity and also the preservation and maintenance of the Unity of the Republic of Indonesia (NKRI).

- b. Fostering the unity and integrity of the nation.
- c. Fostering harmony among tribes, intrusions, religious communities, races, and other groups in order to bring local, regional and national security's stability.
- d. Handling of social conflicts in accordance with legislation. (rules and regulations, legislative)
- e. Coordinating the implementation of tasks between government agencies in the provincial and district/city regions to solve problems that arise by taking into account the principles of democracy, human rights, equity, justice, privilege and specialty, potential and regional diversity in accordance with legislations
- f. Developing the democratic life based on Pancasila.
- g. Implementing all government affairs that are not the authority of the region and are not carried out by vertical agencies.

The general government affairs mentioned above are carried out by the governor/mayor in their respective work areas.

Concurrent affairs submitted to districts are the basis for implementing the autonomy at the district level. Concurrent affairs consist of compulsory governmental affairs and optional governmental affairs. Government affairs must be subdivided into government affairs relating to basic services and government affairs that are not related to basic services. Obligatory government affairs related to basic services are obligatory government affairs which its part of substances covers education, health, public spatial planning, residential areas, peace, public order, community protection, and social affairs. Obligatory government affairs that is not related to basic services include labors, women's empowerment and child protection, foods, lands, environments, population administration and civil registration, community and village empowerment, population and family planning control, transportations, communication and informatics, cooperatives, micro businesses and medium businesses, investment, youth and sports, statistics, coding, cultures, libraries, and archives. Selected governmental affairs include fisheries, tourisms, agricultures, trades, industry and transmigrations.

The division of functions mentioned above is contained in Attachment of Act Number 23 of 2014 concerning Regional Government: the Division of

Concurrent Government Affairs between the Central Government and the Provincial Government and District/City Government, where the Sub-Sector of Solid Waste is in 2 (two) Government Affairs:

1. Solid Waste Sub Affairs included in Government Affairs in the Field of Public Works and Spatial Planning in number 3. Solid Waste which divides authority as follows: The authority of the Central Government consists of:
  - a. Determination of the development of a national waste management system.
  - b. Development of cross-regional solid waste management systems and waste management systems for national strategic affairs. Provincial Regional Authority as System Development and regional waste management. District/City Regional Authority as System Development and Waste Management in Regency/City Region.
2. Sub Government Affairs for the Environment in number 11. Waste affairs divided authority as follows: The authority of the Central Government consists of:
  - a. Issuance of permits for processing waste into electricity.
  - b. Private issuance of permits for the use of methane gas (landfill gas) for electricity in regional landfills (TempatPemrosesanAkhir/TPA).
  - c. Guidance and supervision of handling of waste in regional landfills/integrated waste treatment sites (TempatPengolahanSampahTerpadu/TPST) by private parties.
  - d. Determination and supervision of producer's responsibilities in waste reduction.

Provincial Regional Authority as Waste Handling in regional TPA / TPST. Regency/City Authority as:

- a. Waste management.
- b. Issuance of licenses for recycling/processing of waste, transportation for waste and final processing of waste organized by the private parties.
- c. Guidance and supervision of waste management organized by the private parties.

Based on the division of authority mentioned above, the authority of solid waste is in two concurrent government affairs. Those are in government affairs in the field of Public Works and Spatial Planning and in government affairs in the field of Environment. This has an impact on the implementation where waste at the central government level is handled by two Ministries, those are the Ministry of Environment and the Ministry of Public Works and Public Housing. However, at the Provincial Government level, it is

only handled by the Department of Environment and Forestry. While at the Level of Regency/City Government, it is only handled by the Regional Apparatus Organization in terms of the Environment Sector. This creates its own difficulties in coordinating the implementation of activities and programs.

Regarding to the implementation of environmental protection and management to ensure the implementation of the human rights of every Indonesian citizen, as mandated in article 28H of the 1945 Constitution of the Republic of Indonesia, Act of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management is stipulated. Based on the Law, environmental protection and management is carried out based on the principles of:

- a. State responsibility;
- b. Sustainability;
- c. Harmony and balance;
- d. Cohesiveness;
- e. Profit;
- f. Caution;
- g. Justice;
- h. Ecoregion;
- i. Biodiversity;
- j. Polluters pay;
- k. Participatory;
- l. Local cultures;
- m. Good governance; and
- n. Regional autonomy.

The purpose of environmental protection and management is to:

- a. Protect the territory of the Unitary Republic of Indonesia from environmental pollution and/or damage;
- b. Ensure safety, health, and human life;
- c. Guarantee the survival of living things and the preservation of ecosystems;
- d. Maintain environmental functions;
- e. Achieve environmental harmony and balance;
- f. Ensure the fulfillment of justice for present and future generations;
- g. Ensure the fulfillment and protection of the right to the environment as part of human rights;
- h. Controlling the wise use of natural resources;
- i. Achieve sustainable development; and
- j. Anticipating global environmental issues.

The scope of Act of the Republic of the Indonesia Number 32 of 2009 consists of:

- a. Planning;
- b. Utilization;
- c. Control;
- d. Maintenance;

- e. Supervision;
- f. Law enforcement.

The scopes have described the process of environmental protection and management from planning to law enforcement, if any violations occur. The supervisory activities have also been arranged by the Environmental Supervisory Officer who is a functional official determined by the Minister, the Governor, and the Regent/Mayor. In carrying out its duties the environmental authority is authorized:

- a. Carry out monitoring;
- b. Ask for information;
- c. Make copies of documents and/or make notes as needed
- d. Enter a certain place;
- e. Take a picture;
- f. Make audio visual recordings;
- g. Take sample;
- h. Check equipment;
- i. Check the installation and/or transportation equipment
- j. Stop certain violations.

In carrying out their duties, environmental inspectors can coordinate with investigating civil servant officials. If the results of supervision are found to be a violation of the environmental permit, then an administrative sanction will be applied to the person in charge of the business and/or activity. The administrative sanctions consist of:

- a. Written warning;
- b. Government coercion;
- c. Freezing of environmental permits; or
- d. Revocation of environmental permit.

Administrative sanctions do not relieve those responsible for businesses and/or activities from recovery and criminal responsibility.

Administrative sanctions in the form of suspension or revocation of environmental permits are carried out if the person in charge of the business and/or activity does not carry out government coercion in the form of:

- a. Temporary stop of production activities;
- b. Transfer of production facilities;
- c. Closure of sewerage or emissions drains;
- d. Demolition;
- e. Confiscation of goods or equipment that has the potential to cause violations;
- f. Temporary suspension of all activities, or
- g. Other actions aimed to stop violations and the act of restoring environmental functions.

The minister, the governor, or the regent/mayor have the authority to force the person in charge of a business and/or activity to restore the environment due to environmental pollution and/or damage. Environmental restoration resulting from pollution

and/or environmental damage can be settled by a third party appointed by the minister, the governor or the regent/mayor which the cost is borne by the person responsible for the business and/or activity.

The settlement of environmental disputes can be reached through the court or outside the court. The choice of resolving a life dispute is made voluntarily by the disputing parties. A lawsuit through the court can only be taken if the chosen settlement outside the court is declared unsuccessful by one or the disputing parties. Settlement of environmental disputes outside the court is carried out to reach agreement on:

- a. The form and amount of compensation.
- b. Recovery measures due to pollution and/or damage.
- c. Certain actions to guarantee that pollution and/or damage will not recur.
- d. Actions to prevent negative impacts on the environment.

Settlement of environmental disputes through the court, every person responsible for a business and/or activity that commits an illegal act in the form of environmental pollution and/or damage that causes harm to others or the environment must pay compensation and/or take certain actions. The court can set forced payment of money for each day of delay in court decisions. The amount of forced money is decided based on the legislation.

Besides the investigator officers of the Republic of Indonesia state police, certain civil servant officers in government agencies whose scope of duties and responsibilities in the field of environmental protection and management are authorized as investigators as referred to in criminal procedural law to conduct criminal investigations of living environment. Civil servant investigator officers are authorized:

- a. Conduct an investigation of the truth of a report or any evidence regarding criminal offenses in the field of environmental protection and management.
- b. Conduct investigation of every person suspected in committing criminal offenses in the field of environmental protection and management
- c. Request information and evidence from everyone regarding the crime in the field of environmental protection and management.
- d. Conduct investigation of books, records, and other documents relating to criminal offenses in the field of environment and environmental management.
- e. Conduct checks at certain places where evidence, records and other documents are suspected.
- f. Confiscate material and goods resulting from violations that can be used as evidence in criminal cases in the field of environmental protection and management.

- g. Request expert assistance in the context of carrying out the task of investigating criminal offenses in the field of environmental protection and management.
- h. Stop the investigation.
- i. Enter certain places, take pictures, and/or make audio-visual recordings.
- j. Conduct searches of bodies, clothes, rooms and/or other places suspected of being the places of the crime.
- k. Arrest and detain criminal offenders.

In carrying out arrests and detentions, civil servant investigator officers coordinate with investigators of the Republic of Indonesia state police officers.

The evidence that is valid for criminal prosecution of environmental consists of:

- a. Witness statement
- b. Expert statement
- c. Letter
- d. Hint
- e. Defendant's statement
- f. Other evidences, including evidence that is regulated in legislation.

Criminal provisions for any person who intentionally commits an act that results in exceedances of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria are punishable by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp.3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah). If the action results injury and/or dangerous for human health will be punished minimum of 4 (four) years and a maximum 12 (twelve) years imprisonment and a minimum fine of Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.12,000,000,000.00 (twelve billion rupiah). If the act results in serious injury or death, it will be subject to a minimum of 5 (five) years and a maximum of 15 (fifteen) years imprisonment and a minimum fine of Rp.5,000,000,000.00 (five billion rupiah) and a maximum of Rp.15. 000,000,000.00 (fifteen billion rupiah).

Everyone who due to his negligence has exceeded ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria, shall be sentenced to a minimum of 1 (one) year prisonment and a maximum of 3 (three) years and a minimum fine of Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah). If the act results injury to people and/or dangerous for human health, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least Rp2,000,000,000.00 (two billion rupiah) and maximum of Rp6,000,000,000.00 (six billion

rupiah). If the act results in serious injury or death, the person is sentenced to a minimum imprisonment of 3 (three) years and a maximum of 9 (nine) years and a fine of at least Rp3,000,000,000.00 (three billion rupiah) and a maximum of Rp9. 000,000,000.00 (nine billion rupiah).

Based on the explanation above, Act Number 32 of 2009 concerning Environmental Protection and Management contains the process of environmental protection and management from planning to law enforcement and it is also equipped with environmental supervisors as executors of supervision, so that the law can already be operated in the field.

Based on the Act of the Republic of Indonesia number 18 of 2008 concerning Waste Management, Management of household waste and household-like waste consists of waste reduction and waste management. Waste reduction includes activities such as waste recycling and reuse of waste. Communities participation for waste reduction activities are by using materials that can be reused, recycled, and easily decomposed by natural processes.

Waste handling activities include:

- a. Sorting in the form of grouping and separation of waste according to the type, amount, and/or nature of the waste.
- b. Collection in the form of collecting and transferring waste from the waste source to a temporary shelter or integrated waste treatment.
- c. Transportation in the form of carrying waste from sources and/or from temporary landfills or from integrated waste treatment facilities to the final processing site.
- d. Processing in the form of changing the characteristics, composition, and amount of waste.
- e. Final processing of waste in the form of returning waste and/or residues from the previous processing to the environment media safely.

The community can play a role in waste management carried out by the government and/or local government through the giving of proposals, considerations, and suggestions to the government and/or local government, formulation of waste management policies, giving advice and opinions in the resolution of waste disputes.

The prohibition for everyone in waste management is as follows:

- a. Putting waste into the territory of the Unitary Republic of Indonesia.
- b. Importing trash
- c. Mixing trash with hazardous and toxic waste

- d. Manage waste that causes environmental savings and/or damage
- e. Disposing of trash not in a place that has been determined and provided
- f. Carrying out waste handling with open disposal at the final processing site
- g. Burning waste that is not in accordance with the technical requirements of waste management

The government and regional governments supervise the waste management policies based on norms, standards, procedures, and monitoring criteria that are set by the government. The regent/mayor can apply administrative sanctions to waste managers who violate the conditions stipulated in the license. Administrative sanctions can be in the form of government coercion, forced money and / or revocation of permits.

Disputes that can be caused from waste management consist of disputes between the local government and waste management as well as between waste management and the community. Dispute resolution can be done through out of court settlement or through court settlement. Settlement of disputes outside the court is carried out by mediation, negotiation, arbitration, or other options from the disputing parties. Disputes in court are carried out through tort actions. Lawsuit against the law requires the plaintiff to prove the elements of error, loss, and the causal relationship between the act and the harm caused. Claims in tort actions can take the form of compensation and/or certain actions. People who are harmed by illegal acts in the field of waste management have the right to file a lawsuit through group representatives.

Investigations can be carried out by investigators of the Republic of Indonesia National Police officers or civil servant officers within government agencies whose scope of duties and responsibilities in the field of waste management. They are given special authority as investigators as referred to in the Criminal Procedure Act. Civil service investigators are authorized:

- a. Conducting investigation of the truth of the reports or information related to criminal offenses in the field of waste management.
- b. Conducting investigation of people suspected of committing criminal offenses in the field of waste management.
- c. Asking for information and evidence from people related to criminal acts in the field of waste management
- d. Investigating books, records and other documents related to criminal offenses in the field of waste management.
- e. Conducting investigation in certain places suspected of having evidence, bookkeeping, recording and other documents and confiscating materials and goods resulting

from crime that can be used as evidence in criminal acts in the field of waste management.

- f. Requesting an assistance from an expert in carrying out the task of investigating criminal offenses in the field of waste management.

The investigator of the civil service official informed the commencement of the investigation and the results of the investigation to the investigator of the Republic of Indonesia State police officer. Investigators of civil servant officials convey the results of the investigation to the public prosecutor through the investigating officers of the Republic of Indonesia police.

Any person who illegally imports and/or imports household waste and/or household-like waste into the territory of the Unitary Republic of Indonesia is threatened with imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a minimum fine Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah).

Every person who unlawfully imports and/or imports specific waste into the territory of the Unitary Republic of Indonesia is threatened with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Waste managers who unlawfully and deliberately carry out waste management activities without regard to norms, standards, procedures, or criteria that can result in public health disorders, security disturbances, environmental pollution, and/or environmental damage are threatened with imprisonment for at least 4 (four) years and a maximum of 10 (ten) years and a fine of no less than Rp. 100,000,000 (one hundred million rupiah) and a maximum fine of Rp 5,000,000,000 (five billion rupiah). If those crime results in people dying or seriously injured, the waste manager is threatened with imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp 100,000,000.00 (one hundred million rupiah) and a maximum fine of Rp 5,000,000 .000.00 (five billion rupiah).

Waste managers who for their negligence carry out waste management activities without regard to norms, standards, procedures, or criteria that can result in public health disorders, security disturbances, environmental pollution, and / or environmental damage, are threatened with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp 100,000,000 (one hundred million rupiah). If the crime results in death or serious injury, the waste manager is threatened with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

From the description above, there is a reconstruction of the articles of Act Number 23 of 2014 concerning Regional Government, Act Number 32 of 2009 concerning Environmental Protection and Management and Act Number 18 of 2008 concerning Waste Management, the construction of regulations can be seen. Those factors that influence the suboptimal waste management include:

1. The issuance of Act Number 23 Year 2014 concerning Regional Government has been a shift in authority in waste management, which was originally the responsibility of the public works sector, now part of its authority in the field of public works and spatial planning as well as waste management technically is a responsibility of the environmental sector. In regencies/cities, waste management is carried out by regional apparatus organizations that handle the environment. In this case, the Department of the Environment that originally the Office of the Environment was only guided by Act Number 32 of 2009 concerning Environmental Protection and Management, now it also bases in Act Number 18 Year 2008 concerning Waste Management because it manages waste management.
2. The field of authority in the central government in the waste sub-sector is in the two fields of authority, namely, the PUPR field and the environmental field. It makes difficult for the regions to coordinate with the central government level because in the district/city the waste authority is the responsibility of the Office of the Environment.
3. Act Number 18 of 2008 concerning Waste Management has been completed with the article of supervision, but is not accompanied by a supervisory officer in charge of overseeing waste management.
4. Act Number 18 Year 2008 concerning Waste Management article 12 paragraph (1) which states "Every person in the management of household waste and household-like waste must reduce and handle waste in an environmentally manner". The article is not accompanied by sanctions so it does not have the power to force.
5. Article 35 paragraph (1) which states "Settlement of solid waste disputes in a court is conducted through a tort against the law", while paragraph (2) states "a tort against the law as referred in paragraph (1) requires the plaintiff to prove the elements of error, losses, and the causal relationship between actions and losses incurred".
6. In Article 29 paragraph (1), a prohibition that says "everyone is prohibited:
  - a. putting waste into the territory of the Unitary Republic of Indonesia;

- b. importing waste;
- c. mixing waste with hazardous and toxic waste;
- d. managing waste that causes environmental savings and/or damage;
- e. disposing of waste not in a designated and provided place;
- f. handling waste by open disposal at the final processing site; and
- g. burning rubbish that is not in accordance with the technical requirements of waste management."

Of the seven prohibitions mentioned above, there are only two criminal provisions, namely the prohibition of entering waste into the territory of the Unitary Republic of Indonesia and importing waste, while the other five prohibitions do not explicitly state the sanctions.

### **3. Reconstruction of the implementation of waste management as an effort to fulfill sustainable environmental rights**

Act Number 18 of 2008 concerning Waste Management has several weaknesses which make it difficult in its application. These weaknesses include:

1. The issuance of Act Number 23 Year 2014 concerning Regional Government has been a shift in authority in waste management, which was originally the responsibility of the public works sector, now part of its authority in the field of public works and spatial planning as well as waste management technically is a responsibility of the environmental sector. In regencies/cities, waste management is carried out by regional apparatus organizations that handle the environment. In this case, the Department of the Environment that originally the Office of the Environment was only guided by Act Number 32 of 2009 concerning Environmental Protection and Management, now it also bases in Act Number 18 Year 2008 concerning Waste Management because it manages waste management. So that the law needs to be synchronized with Act Number 23 of 2014 concerning Regional Government and Act Number 32 of 2009 concerning Environmental Protection and Management.
2. The field of authority in the central government in the waste sub-sector divided into two areas of authority, namely the PUPR field and the environmental field, making it difficult for the regions to coordinate to the central government level because in the district/city the waste authority is the responsibility of the Office of the Environment, so it needs to be reconstructed

so that the authority to manage waste is only in one area of authority.

3. In Act Number 18 Year 2008 concerning Waste Management it is completed with supervision article, but it is not accompanied by a supervisory officer in charge of overseeing waste management so it needs to be regulated with a functional officer of the waste management supervisor who can use regional environmental functional officials in accordance with the Act Number 32 of 2009 concerning Environmental Protection and Management.
4. Act Number 18 Year 2008 concerning Waste Management article 12 paragraph (1) which states "Every person in the management of household waste and household-like waste must reduce and handle waste in an environmentally manner". The article is not accompanied by sanctions so that it does not have the power to force. It needs to be supplemented with sanctions for those who do not carry out these obligations.
5. Article 35 paragraph (1) which states "Settlement of waste disputes in a court is conducted through a tort against the law", while paragraph (2) states "a tort against the law as referred in paragraph (1) requires the plaintiff to prove the elements of error, losses, and the causal relationship between actions and losses incurred". The article makes it difficult for the plaintiff because they have to prove the claim.
6. In Article 29 paragraph (1), a prohibition that says "everyone is prohibited:
  - a. putting waste into the territory of the Unitary Republic of Indonesia;
  - b. importing waste;
  - c. mixing waste with hazardous and toxic waste;
  - d. managing waste that causes environmental savings and/or damage;
  - e. disposing of waste not in a designated and provided place;
  - f. handling waste by open disposal at the final processing site; and
  - g. burning rubbish that is not in accordance with the technical requirements of waste management".

From the seven prohibitions mentioned above, there are only two criminal provisions, those are the prohibition of entering waste into the territory of the Unitary Republic of Indonesia and importing waste. While the other five prohibitions do not explicitly state the sanctions. So it needs to be reconstructed by including sanctions for those who violate so that they have force.

This is a weakness of Act Number 18 of 2008 concerning Waste Management. There is a need for reconstruction of Act Number 18 of 2008

concerning Waste Management so that waste management can be carried out optimally.

This is in line with the opinion of Sudharto P. Hadi quoted by Prof. Dr. FX. AdjiSamekto, S.H., M.H. that the mechanism for the drafting of environmental legislation actually does not only involve procedures, but also the involvement of stakeholders, such as the community, NGOs and professional organizations. Development and Economic Needs continue to advance due to the increasing of human needs, along with the increasing number of people in the world. The convergence between the increasing development and economic needs with the increasing number of the world's population has resulted in the increasing use of natural resources.

On the other hand, to carry out good legal functions as optimal social control, in many people's lives, it depends on the conditions and consistency as well as the willingness to obey the law. The conditions described by Fuhler quoted by Rusli Effendi are: (a) The law must be in the form of rules and is permanent, (b) The law must be known for its existence and it is clear contents for the public, (c) Avoidance of the application of proactive legal regulations, (d) The existence of understanding sufficient ability of the community about the legal material, (e) Changes that are too fast in the law need to be avoided, (f) Between one law with another rule of law must be matched, no conflict should occur, (g) There must be correlation between law and the implementation of the law.

Furthermore according to Ronny Kartidjo, quoted by NomensenSinamo that law enforcement is thorough and philosophically socially controlled is a process that has been planned in advance and aims to encourage, invite, order and even force members of the community to comply with legal norms or legal order that currently in effect, where social control by law is carried out by mobilizing various activities that involve the use of state power as a politically oriented institution through the institution it forms.

Ignoring the enforcement of environmental laws will spur deterioration and damage to the environment that is detrimental to society and can even lead to environmental disasters in humans. Factually, environmental law enforcement is closely related to various complex aspects with the aim of still creating to maintain an environment that can be enjoyed by every human being or for all generations.

Meanwhile, AndiHamzah, quoted by NomensenSinamo, states that environmental law enforcement is very complicated, because environmental law occupies a cross point in various classical fields, which can be enforced with one of the instruments, namely administrative, civil or criminal legal instruments, even with the three instruments.

### III. CONCLUSION

From the above discussion, it can be concluded several things as follows:

1. Waste management in Pemalang Regency has been implemented based on Act Number 18 of 2008 concerning Waste Management and Regional Regulation of Pemalang Regency Number 13 of 2012 concerning Waste Management. However, it has not been implemented optimally.
2. Construction of the implementation of waste management in Pemalang Regency has not been going well because there are still two ministries that have authority in the waste sub-affairs. It makes difficult for the regions to coordinate the implementation of programs and activities. In addition, there are several articles in Act Number 18 Year 2008 concerning Waste Management that cannot be operationalized yet in the implementation of waste management.
3. Reconstruction of waste management policy is necessary as an effort to fulfill sustainable environmental rights.

#### Suggestion

1. The need for reconstruction of Act Number 18 Year 2008 concerning Waste Management contained in the following articles.
  - a. Article 30 regarding supervision needs to be supplemented by a paragraph regulating the supervisory officer in charge of overseeing waste management.
  - b. Article 12 paragraph (1) which reads "Every person in the management of household and household-like waste must reduce and handle the waste in an environmentally manner". The article needs to be accompanied by sanctions so that it has the power to force.
  - c. Article 35 paragraph (1) which states "Settlement of solid waste disputes in a court is conducted through a tort against the law", while paragraph (2) states "a tort against the law as referred in paragraph (1) requires the plaintiff to prove the elements of error, losses, and the causal relationship between actions and losses incurred." The article needs to be reconstructed so that the investigator can also prove the reported error.
  - d. Article 29 paragraph (1) regulates a prohibition that says "everyone is prohibited:
    - a. put waste into the territory of the Unitary Republic of Indonesia;
    - b. import waste;

- c. mix waste with hazardous and toxic waste;
- d. managing waste that causes environmental savings and / or damage;
- e. dispose of waste not in a designated and provided place;
- f. handling waste by open disposal at the final processing site; and
- g. burning rubbish that is not in accordance with the technical requirements of waste management".

Of the seven prohibitions mentioned above, there are only two criminal provisions. Those are the prohibition of putting waste into the territory of the Unitary Republic of Indonesia and importing waste. While the other five prohibitions do not explicitly state the criminal provisions so that they need to be reconstructed by including sanctions against the other five prohibitions.

2. There is a need to synchronize between Act Number 23 Year 2014 concerning Regional Government, Act Number 32 Year 2009 concerning Environmental Protection, and Management and Act Number 18 Year 2008 concerning Waste Management.
3. There is a need for law enforcement against violators of waste management rules that are environmentally sound.

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