



Environmental Law Enforcement Regulations Regarding Producer Obligations in Waste Management in Indonesia

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ABSTRACT

Waste management in Indonesia is still an unresolved matter that deserves to be studied. This research aims to analyze the sanctions arrangements and its legal implications for producer responsibilities in managing waste in Indonesia. This research constitutes normative research which combined with primary and secondary legal sources which are then analyzed qualitatively. There are several regulations that have a correlation with this research, which are The Waste Management Law of 18/2008, along with Government Regulation 81/2012 concerning the Handling of Household Waste and Similar Waste, Presidential Regulation 97/2017 regarding the National Policy and Strategy for Managing Household and Similar Waste, and Minister of Environment and Forestry Regulation 75/2019 outlining the Roadmap for Producers to Reduce Waste, are significant legislative measures in waste management. The findings of this research indicated that the waste management obligations by producers in Indonesia have been regulated in laws and regulations, but have not been provided with sanction arrangements, which have had legal uncertainty implications on environmental law enforcement related to the legal basis for applying sanctions and legal uncertainty about the jurisdiction of both the central and regional administrations in law enforcement against producer obligations in managing waste in Indonesia.

Keywords: *Law Enforcement, Producer Obligations, Waste Management*

INTRODUCTION

One of the environmental issues that has always been an important concern in the community both globally and nationally is the issue of waste. Article 28H Paragraph (1) of the 1945 Constitution of Indonesia asserts the entitlement of every individual to a good and healthy environment. In addition, Law No. 32/2009 on the Environment regulates the rights of society to the environment or to environmental management. Under Article 65 Paragraph (1), each individual is entitled to a favorable and wholesome environment as a fundamental aspect of their human rights. According to the Plastic Waste Makers Index's second index report, released on February 6, 2023, by the philanthropic organization Minderoo Foundation, findings indicate that the global production of single-use waste amounted to 139 million metric tons in 2021. Those are 6 million metric tons more than 2019, the year when the first index report was released.¹ Presently, there exists a total of 150 million tons of plastic scattered across the world's oceans. This amount will increase by another 250 million if urbanization, production, and consumption trends are continued.²

Based on data released by Break Free From Plastic (BFFP) in early 2021, several global large corporations are included in the list of the 10 largest plastic waste contributors in the world. The top three rankings include Coca-Cola Group (operating in 51 countries with 13,834 plastics), Pepsico Group (operating in 43 countries with 5,155 plastics), and Nestle Group (operating in 37 countries with 8,633 plastics). The information was gathered through brand waste audits carried out in 55 nations under the BFFP network's supervision. Meanwhile in Indonesia, according to the BFFP report, the most plastic waste discovered in brand audit activities came from Danone (1052), Wings Food (552), and Mayora Indah (492).³ Furthermore, Greenpeace reported that no FMCG corporation has really committed to reducing plastic waste from the products they produce. Thus, the use of plastic materials from producers needs to get more serious attention by all parties, especially the government.

While the responsibility for waste management lies with the government, it can also be involved in the business world, which includes producers and communities engaged in waste management. The regulations on producer obligations in waste management in Indonesia are contained in several legislations, one of them is Law No. 18/2008 on Waste Management. Producers are required, as outlined in Article 15, to handle packaging and/or products they manufacture that are resistant to or challenging to decompose naturally. Then, in Article 20, it further states that:

¹ Kennial Laia, "Jumlah Sampah Plastik Sekali Pakai Di Dunia Menembus Rekor Baru," *Betahita*.

² World Economic Forum, *The New Plastics Economy Rethinking The Future of Plastics*, 2016.

³ Muhammad Nadhif Kurnia, "Permen LHK Nomor 75 Tahun 2019, Solusi Jitu Pengurangan Sampah Produsen?," *Aliansi Zero Waste Indonesia*.

- (1) Waste reduction, as mentioned in Article 19 Letter a, encompasses various activities outlined as follows:
 - a. Limiting the production of waste;
 - b. Waste recycling; and/or
 - c. Waste reutilization.
- (2) The government and regional authorities must carry out the tasks mentioned in Paragraph (1), such following below:
 - a. Setting waste reduction targets gradually during a certain time period;
 - b. Support the implementation of environmentally sustainable technology;
 - c. Enabling the implementation of environmentally-conscious product labelling;
 - d. Assisting in the promotion of reusing and recycling efforts; and
 - e. Assisting in the promotion of reused items.
- (3) Business establishments engaged in activities mentioned in Paragraph (1) must utilize production materials that minimize waste generation, are reusable, recyclable, and/or readily biodegradable through natural processes.
- (4) The community, when engaging in waste reduction as mentioned in Paragraph (1), employs materials that have the potential for reuse, recycling, or natural decomposition.
- (5) Government regulations will govern additional measures concerning waste reduction mentioned in Paragraphs (1), (2), (3), and (4).

Then, it is also emphasized in Articles 12-14 of Regulation No. 81/2012 by the Government concerning the Management of Household Waste and Comparable Domestic Waste which governs that:

Article 12

Producers must limit the creation of waste by adhering to the following guidelines:

- a. Develop a strategy to limit waste generation within its business operations or activities; and
- b. Create goods utilizing biodegradable packaging that readily decomposes through natural processes and minimizes waste generation.

Article 13

- (1) Producers are required to recycle waste properly through the following below:

- a. Organize a waste recycling initiative as an integral component of its business operations and/or tasks;
 - b. Utilizing raw materials for production that are recyclable; and
 - c. Recovering discarded materials from items and their packaging to be recycled.
- (2) In recycling waste as referred to in Paragraph (1), producers can assign other parties.

Article 14

Producers are required to reutilize waste properly through the following below:

- a. Develop a waste reuse plan and/or program as a component of its operations and/or engagements aligned with waste management policies and strategies;
- b. Utilizing raw materials for production that can be reused; and/or
- c. Retrieving discarded materials from items and their packaging to be reused.

Moreover, the responsibilities of producers regarding waste management in Indonesia are also governed by the Minister of Environment and Forestry Regulation of Indonesia Number P.75/Menlhk/Setjen/Kum.1/10/2019, which outlines the roadmap for reducing waste by producers. Furthermore, the Presidential Regulation of the Republic of Indonesia No. 97/2017 on the National Policy and Strategy for Handling Household Waste and Waste Similar to Household Waste is essential for executing the directives outlined in Article 6 of Government Regulation No. 81/2012 regarding Household Waste and Waste Similar to Household Waste Management. This presidential regulation is imperative to establish guidelines for the national approach to managing household waste and similar types of waste.

Based on the search for some of these legislations, the regulation of producer obligations in waste management in Indonesia so far is considered incomplete norms, namely there are regulations regarding producer obligations in waste management in Indonesia but are not equipped with legal sanctions if the obligations are not carried out. When talking about law enforcement, there should be a regulation regarding sanctions as a follow-up to these obligations. The incompleteness and lack of clarity of this legal substance in the legislation can cause uncertainty, which has an impact on environmental law enforcement both in terms of the application of sanctions and the authority to enforce environmental law. Then, this research aims to analyze the sanctions arrangements and its legal implications for producer responsibilities in managing waste in Indonesia

RESEARCH METHODOLOGY

The research conducted in this study is categorized as normative legal research, as it involves analyzing cases primarily using materials sourced from libraries. However, this research uses a statute approach and conceptual approach to discuss and analyze the issues discussed in this research. The legal materials used in this research are primary legal materials such as legislations; and secondary legal materials including books, scientific publications, journals, and webtopography. Legal resources are gathered through thorough literature review as well as exploration of books, web resources, online journals, and news articles from digital media outlets relevant to the research topic. Primary and secondary legal materials that have been obtained are then analyzed using descriptive analysis techniques, for clarity on the issues discussed. After all materials are processed, they are associated with legal theories, principles and opinions of legal experts in order to obtain clear conclusions that answer the formulation of the problems in this research.

RESULT AND DISCUSSION

Sanctions on Producers' Obligations in Waste Management in Indonesia

The state's concern for environmental sustainability is outlined in written regulations. The existence of Law No. 8/2008 on Waste Management (Waste Management Law) is a concrete step to analyze the problems of waste management in Indonesia contained in Law No. 18/2008 on Waste Management. Article 15 mandates that producers must handle the packaging and/or products they manufacture which cannot easily decompose through natural processes. Subsequently, Article 20 elaborates on this requirement, stating:

- (1) Waste reduction as referred to in Article 19 letter a is including several activities such following below:
 - a. Limiting the production of waste;
 - b. Waste recycling; and/or
 - c. Waste reutilization.
- (2) The government and regional authorities must carry out the tasks mentioned in Paragraph (1), such following below:
 - a. Setting waste reduction targets gradually during a certain time period;
 - b. Support the implementation of environmentally sustainable technology;
 - c. Enabling the implementation of environmentally-conscious product labelling;
 - d. Assisting in the promotion of reusing and recycling efforts; and
 - e. Assisting in the promotion of reused items.

- (3) Business establishments engaged in activities mentioned in Paragraph (1) must utilize production materials that minimize waste generation, are reusable, recyclable, and/or readily biodegradable through natural processes.
- (4) The community, when engaging in waste reduction as mentioned in Paragraph (1), employs materials that have the potential for reuse, recycling, or natural decomposition.
- (5) Government regulations will govern additional measures concerning waste reduction mentioned in Paragraphs (1), (2), (3), and (4).

These arrangements are substantially related and reaffirmed in Articles 12-14 of Government Regulation No. 81/2012 on the Management of Household Waste and Similar Household Waste which states that:

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Producers must limit the creation of waste by adhering to the following guidelines:

- a. Develop a strategy to limit waste generation within its business operations or activities; and
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Moreover, the responsibility of waste management among producers in Indonesia is also governed by the Environmental and Forestry Minister of Indonesia Regulation Number P.75/Menlhk/Setjen/Kum.1/10/2019 regarding the Strategy for Waste Minimization by Producers. It is important to highlight that the definition of producers in this research corresponds to Article 3 of the aforementioned regulation, which specifies the producers mandated to fulfill waste management responsibilities in Indonesia.

- (1) Producers mentioned in Article 2 encompass business entities and/or operations within the subsequent sectors:
 - a. Manufacturing;
 - b. Food and beverage services; and
 - c. Retail.
- (2) The manufacturing sector as referred to in Paragraph (1) Letter a includes:
 - a. The sector concerned with food and beverage;
 - b. Consumer goods industry; and
 - c. The cosmetics and personal care industry.
- (3) The food and beverage services sector as referred to in Paragraph (1) letter b includes:
 - a. Restaurant;
 - b. Cafes;
 - c. Restaurant;
 - d. Food services; and
 - e. Hotels.
- (4) The retail sector as referred to in Paragraph (1) letter c includes:
 - a. Shopping Center;
 - b. Modern Stores; and
 - c. Public Market.

It has been mentioned before that the regulation on producer obligations in Indonesia's waste management system is not supported with sanctions. The regulation of producer obligations in Indonesia's waste management system is an obligation.⁴ This means that this regulation has a legal consequence that must be obeyed and if not obeyed, sanctions should be imposed. Nevertheless, the examination of numerous laws governing producers' responsibilities in waste management in Indonesia lacks accompanying regulations specifying clear, thorough sanctions that delineate the types and structures of penalties applicable to producers, particularly those in manufacturing, food and beverage services, and retail sectors, who fail to fulfill or adhere to waste management obligations as

⁴ Indra Widiyanto and Prof. Dr. Prasetijo Rijadi, "Environment Civil Law Enforcement," *Journal Of Law Theory And Law Enforcement* (August 18, 2023): 55–66, <https://journal.jfpublisher.com/index.php/jlte/article/view/361>.

prescribed by statutory provisions. Furthermore, the nation maintains its commitment to the Civil Law system, also known as the Continental European system, although certain laws and regulations have incorporated elements of the Common Law System or Anglo-Saxon system. Under this framework, laws are formally documented regulations, while informal regulations do not hold the status of law. This arrangement significantly influences Indonesia's legal system, allowing actions to be legally authorized only if they are explicitly regulated by the established laws and regulations.

Lawrence M. Friedman suggests that a law constitutes a legal entity composed of three components: legal structure, legal substance, and legal culture.⁵ Sudikno Mertokusomo views the legal system as a cohesive entity comprising interconnected elements that cooperate to fulfill the unit's goals.⁶ One component within the legal system theory is termed as legal substance, encompassing the statutory elements prescribed in laws and regulations. Contrarily, Lawrence M. Friedman categorizes this as a system. Substance also denotes the outcomes generated by individuals within the legal system, encompassing their rulings and the formulation of new regulations. Additionally, substance extends to encompass living law, encompassing not only the codified rules but also the dynamic legal practices in society.

The three legal sub-systems are related to each other and cannot be separated. This means that these subsystems complement each other and will have problems if there are deficiencies in these subsystems. Regarding the regulation of producer obligations in waste management in Indonesia, one of the legal subsystems is considered problematic, which means that there are incomplete norms related to the incomplete regulation of sanctions. The lack of one of the sub-systems in this legal system can directly affect environmental law enforcement because it relates to sanctions which are one of the means of environmental law enforcement.

The incompleteness of elements or systems in legal norms also creates legal uncertainty in society. Because legal arrangements do not clearly and specifically regulate the sanctions that can be imposed if producers do not comply with their obligations in waste management in Indonesia. The incompleteness of norms related to the non-fulfillment of one of legal elements, such as the regulation of sanctions against producers if the obligations of waste management are not fulfilled, has an impact on legal certainty.

Based on the theory of legal certainty developed by Maria S.W. Sumardjono, ensuring legal certainty necessitates having functional laws and regulations that facilitate their implementation. In practice, this means

⁵ Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu Sosial*, Cetakan VI. (Bandung: Penerbit Nusa Media, 2018).

⁶ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2014).

consistently and effectively enforcing these laws and regulations with adequate human resources.⁷ Thus, the achievement of legal certainty is influenced by the legal factors themselves. Legal certainty will be realized with the establishment of law in concrete events. It means that if there is a violation, the law must be present as a means of law enforcement with the availability of arrangements regarding sanctions, in order to realize order. On the other hand, the community expects benefits in the implementation or enforcement of the law. When referring to this theory, one of the objectives of law enforcement is to achieve legal certainty.

Since the position of sanctions is very important, it is necessary to construct sanctions that can be applied to producers, especially the application of administrative sanctions. Administrative sanctions are a result of norms that have been formulated as orders, prohibitions, and obligations that have the following goals: to enforce the law's provisions; to provide punishment for violators, which is naturally tailored to the severity, lightness, or medium of the violation committed; to create a deterrent effect so that violators do not commit the same violations again; and to act as a preventive measure so that others do not violate the law.⁸ The following are a few examples of administrative law enforcement tool types such as:

- a. Compulsory measures imposed by the government (Bestuursdwang);
- b. Compulsory funds (Publiekrechtelijke dwangsom);
- c. Closure of business establishment (Sluiting van een inrichting);
- d. Stopping the operation of the company's machinery. (Buitengebruikstelling van een toestel);
- e. The business license revocation process goes through warnings, government coercion, closure and forced money.

Legal Implications of Sanction for Producer Obligations in Waste Management in Indonesia

The collaboration between central and local governments in waste management operates within their designated jurisdictions. Law No. 18/2008 outlines the responsibilities of the Central Government, Provincial, and Regency/City authorities in ensuring effective and environmentally friendly waste management practices, delineating their respective roles as follows:

1. The central government's authority is regulated in Article 7 of the waste management law, which states that:
The government has the authority to organize waste management, such following below:
 - a. Establishing policies and strategies for national waste management;

⁷ Maria S.W Sumardjono, *Dinamika Pengaturan Pengadaan Tanah Di Indonesia*, 1st ed. (Yogyakarta: Gadjah Mada University Press, 2015).

⁸ Kadarsyah, "Sanksi Administrasi Dalam Penegakan Hukum Lingkungan," *De Facto* 1, no. 1 (2014).

- b. Set out these norms, standards, procedures, and criteria concerning the management of waste;
 - c. Facilitating and developing cross-regional cooperation, partnerships, and networking for waste management;
 - d. Coordinate, guide, and supervise the performance of regional governments regarding waste management; and
 - e. Determining regulations to resolve interregional conflicts related to waste management.
- 2. The provincial government's authority is stipulated in Article 8, which states that:
In organizing waste management, the provincial government has the responsibility, such following below:
 - a. Setting up policies and strategies in waste management are in accordance with the Government's regulations;
 - b. Facilitating inter-regional collaboration within 1 province, partnerships, and networks in waste management.
 - c. Coordinate, guide, and supervise the performance of regional governments regarding waste management; and
 - d. Facilitating the settlement of dispute over waste management between regencies/municipalities in 1 province.
- 3. The responsibilities of regency or municipality governments are regulated in Article 9, stipulating the following:
 - a. In managing waste management, the local government is authorized:
 - 1) Setting up waste management policies and strategies on the basis of national and provincial regulations;
 - 2) Performing regency/city waste management in accordance with the applicable norms, standards, specifications, and guidelines established by the government;
 - 3) Coaching and supervising of waste management performance by other parties;
 - 4) Determining temporary shelter locations, integral waste processors, and/or final waste processors;
 - 5) Periodic monitoring and evaluation every 6 (six) months for 20 (twenty) years of open dumping system closed dumping system landfills.; and
 - 6) Maintain and manage a waste management emergency response system within its authority.
 - b. Determination of integrated waste management site and final waste management sites as referred to in Paragraph (1) letter d is

part of the district/city spatial plan in accordance with statutory regulations.

The regulation of waste management in Indonesia authorizes the government regarding the implementation of waste management and waste management law enforcement. Authority is the legal capacity and right to command or act, the right or legal power of public officials to comply with the rule of law within the scope of implementing public obligations.⁹ Based on current authority theory, the context of waste management law enforcement in Law No. 18/2008 on waste management has provided formal law enforcement authority to local governments in supervising and imposing sanctions on the operation of waste management, which is stipulated in Article 30 to Article 32 of the Waste Management Law stating that:

Article 30

- (1) Monitoring of waste management regulations by local governments is conducted by the government.
- (2) Monitoring of waste management practices at the regency/city level is performed by the governor.

Article 31

- (1) Monitoring of waste management operations performed by waste managers is undertaken by the local government, either independently or jointly.
- (2) Monitoring by local governments as referred to in Paragraph (1) is based on norms, standards, procedures, and criteria for monitoring regulated by the government.
- (3) More provisions regarding waste management supervision as referred to in Paragraph (1) shall be stipulated by regional regulation.

Article 32

- (1) The regent/mayor has the authority to impose administrative sanctions on waste managers who violate the requirements stipulated in the permit.
- (2) These administrative sanctions may include: a. governmental coercion; b. compulsory fines; and/or c. permit revocation.

⁹ Siti Sundari Rangkuti, *Hukum Lingkungan & Kebijakan Ling Nasiona* (Airlangga University Press, 2015).

- (3) Further provisions regarding the implementation of administrative sanctions as mentioned in clauses (1) and (2) are regulated by the local government regulations of the district/city.

In general, both central and local governments are empowered by legislation to conduct law enforcement through monitoring and imposing administrative sanctions for waste management in Indonesia. The sanctions in environmental law enforcement are considered very important. Environmental law enforcement provides punishment or sanctions to perpetrators of environmental destruction with the aim of preventing acts that cause environmental damage, environmental law enforcement is not only representative but at the same time preventive.¹⁰ Although the Central and regional governments have the authority to manage waste in Indonesia, the legal implications caused by the incompleteness of the sanction arrangements limit the government's authority to impose sanctions on producers if these obligations are not implemented. This creates uncertainty in the law enforcement of waste management regarding the government's authority to impose sanctions on producers.

Therefore, it is important to regulate sanctions in the context of producer obligations in managing waste in Indonesia. In general, legislations impose obedience on the public, and therefore sanctions are included in the laws and regulations. The need for the inclusion of sanctions in a legislation is more explicitly stated by Pospisil. There are 4 (four) legal attributes mentioned by Pospisil, such following below:

1. The availability of authority;
2. The intention to treat the law universally;
3. The availability of rights and obligations;
4. The existence of sanctions.¹¹

Legal rules that contain instructions (obligations) or prohibitions will become meaningless messages or empty guarantees, and tend not to be obeyed at all if they are not attached with sanctions. Similar with the existence of laws and regulations that oblige producers in waste management in Indonesia contained in some of the legislations above. Therefore, on one side, sanctions are an absolute criterion of law and on the other side, sanctions do not always have to be physical sanctions. In fact, the actual attribute of sanctions need not be limited to only negative sanctions (both physical and psychological). There are also positive sanctions in the law which are rewards given to those who can be used as role models in the quality of legal obedience. This is appropriate with the meaning of sanction, which is a stimulus to do or not to do.¹²

¹⁰ Ibid.

¹¹ Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*.

¹² Hilman Hadikusuma, *Pengantar Antropologi Hukum* (Bandung: Citra Aditya Bakti, 1992).

The regulation of producer obligations in waste management in Indonesia is one of the government's efforts to reduce environmental pollution and damage. Therefore, the construction of sanction arrangements related to producer obligations in waste management in Indonesia can refer to Article 54 of the Environmental Management Law (UUPLH), which stipulates that the following:

- (1) Any individual who pollutes and/or damages the environment is required to recover environmental functions.
- (2) Environmental function restoration as referred to in Paragraph (1) is implemented through the following stages:
 - a. Reducing pollution sources and eliminating harmful substances;
 - b. Remediation;
 - c. Rehabilitation;
 - d. Restoration; and/or
 - e. Other stages of science and technology development.

The sanctions that come from restoring the situation and fulfilling the situation are forms of administrative sanctions that consist of government coercion (*bestuursdwang*). These sanctions arrangements, can be regulated explicitly, in the waste management law, because it is the basis or the highest legal source that regulates producer obligations in waste management in Indonesia. In addition, the urgency of this sanction arrangement, is a form of environmental law enforcement against producer obligations in waste management in Indonesia.

CONCLUSION AND SUGGESTION

Conclusion

The regulation of sanctions against producer obligations in waste management in Indonesia has not been explicitly regulated in the laws and regulations governing producer obligations in waste management in Indonesia. The legal construction that can be established can be through the perspective of criminal, civil, and administrative law. Nevertheless, the implementation of administrative law enforcement is deemed more efficient. This is due to the incorporation and execution of administrative penalties within legal frameworks, resulting from regulations that delineate prohibitions, directives (mandates), and duties. These regulations aim to mete out appropriate punishment to offenders, commensurate with the gravity, mildness, or moderation of their transgressions. Such measures serve to deter repeat offenses and prevent others from engaging in similar violations.

The legal implications of this lack of sanction arrangements create uncertainty in environmental law enforcement. In general, the central and regional governments have a legal basis to act formally according to laws and regulations in enforcing the law on waste management in Indonesia. However, regarding law

enforcement related to producer obligations in waste management in Indonesia, this authority becomes uncertain in terms of legal sources or legal basis due to the incompleteness of the norms. whereas the regulation of legal sanctions in laws and regulations is a source of government authority to impose so that the community has obedience, then the laws and regulations must include sanctions. The regulation of sanctions against producer non-compliance in waste management in Indonesia can refer to higher regulations. The regulation of sanctions can be regulated explicitly, in the law on waste management, because it is the basis or the highest legal source that regulates the obligations of producers in waste management in Indonesia.

Suggestion

Based on previous descriptions of the problems in this research, suggestions can be provided and need to be considered by the government and producers, such as (1) the government is expected to be able to construct a sanction arrangement for the producer's obligations. Therefore, law enforcement in waste management in Indonesia can really be enforced. The regulation of waste management by producers in a legislation is mandatory. However, the incompleteness of the sanction arrangements makes this obligation considered less adhered to by producers. Law enforcement is impacted by several factors, including regulations and public awareness; (2) both producers and the general public are expected to have a high level of legal awareness to comply with their obligations in waste management. In addition, the role of the community has an important meaning in maintaining the sustainability and preservation of the environment.

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