



Proceeding of 2nd Malikussaleh International  
Conference on Law, Legal Studies and Social  
Science (MICoLLS) 2022

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## **Administrative Legal Accountability for B3 Waste Management Receiving Companies In Environmental Pollution Environmental**

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## **Abstract**

Problems are essentially ecological problems. The essence of environmental problems is the reciprocal relationship between living things and their environment. Therefore, wise development (especially in the environmental field) must be based on environmental insight as a means to achieve sustainability and become a guarantee for the welfare of present and future generations. carried out by companies or legal entities besides having a positive effect, can also have negative effects such as pollution or environmental damage. including B3 waste management. Waste treatment is closely related to the factory production system. pollution occurs, the B3 waste management company is held accountable, but in practice there is a discrepancy in the B3 waste processing carried out by the company that accepts work. This research is normative legal research, which collects secondary data through literature studies, to obtain secondary data in the form of primary, secondary and tertiary legal materials. The primary legal materials are in the form of the 1945 Constitution, other laws, decisions of judges, which are relevant to this writing and research. Secondary legal material in the form of opinions from legal experts through textbooks, journals, articles, results of previous research, workshop papers, seminars, symposiums, discussions, magazines/newspapers, theses, dissertations, etc., which have something to do with the object of this research. Tertiary legal materials in the form of dictionaries and encyclopedias, relevant bibliographies and dictionaries. Field research was conducted to complement library data. The results of the study show that legal liability to the employer due to negligence by the company that accepts B3 waste management in the event of environmental pollution is an unlawful act contained in Article 1365 of the Civil Code, Environmental Law Number 32 of 2009, which is contained in Article 87 (1) and Regulation of the Minister of Environment Number 5 of 2014 Concerning Wastewater Quality Standards, or waste being processed according to company operational standards (SOP) agreed between the management of PT. Medco with companies. Furthermore, the waste that has been processed internally in each industry will be sent to the Installation

## **Keywords**

Administrative Legal Accountability, Management Receiving Companies, Environmental Pollution

**DOI : 10.29103/micolls.v2i.135**

## **A. Introduction**

Environmental problems are not only human physical environmental problems or only human biological problems, but are related to moral issues, namely human behavior towards nature. Natural damage such as erosion, floods, mudflows, deforestation and forest fires not only cause anxiety for human fate, but raises concern how human behavior has gone beyond His khittah and corrupted. Because of that, environmental issues are the area of thought for moral experts (Bram, 2014). The ecological crisis has become a contemporary reality (Korten, 1993). Which exceeds the limits of tolerance (Brown, 1986),

and adaptability, (Toffler, 1974). Its proliferation has reached a global dimension and continues to have a dramatic impact.

Industrial development carried out by companies or legal entities besides having a positive influence, can also bring negative effects such as pollution or environmental damage, (Dirdjosisworo, 1983). However Thus, one of the impacts of the development of the industrial sector is the generation of waste, including hazardous and toxic materials, (Damanhuri, 1994), both solid, liquid and gaseous wastes.

The management of B3 waste is a must without undermining the development of the business world, especially the industrial world. Waste management is carried out in an effort to reduce waste generation, including B3 waste, especially those originating from industrial activities.waste management *cradle-to-grave* should be consistently applied.

Recognizing that B3 waste and its transportation carry risks of damage to humans and the environment, the most effective way to protect human health and the environment from hazards caused by B3 waste is to reduce waste production to a minimum and manage B3 waste in an environmentally sound manner. Therefore, countries must take the necessary measures to ensure that the management of B3 waste, including its transportation, remains consistent with the protection of human health and the environment.

Waste treatment is closely related to the factory production system. There are factories that have used equipment with levels of effluent produced that do not require treatment. This kind of factory usually has been designed pollution control system during construction. Waste requires initial handling and then further processing. The initial processing will also determine further processing so that errors in the initial handling method will affect further processing. To determine the method to be used, the condition of the waste must be known beforehand, the parameters of the waste that have the potential to pollute the environment must be determined.

Based on research conducted by a number of companies, PT. Bahroni, Krueng Simpo Village, Juli District (Bireun), PT. Blang Ketumba, Blang Gunci Village, Paya Bakong District (North Aceh), PT. Aceh Loka Makmur Sentosa, Seuneubok Lapang Village, East Peureulak District (East Aceh), PT. Perta Arun Gas and as an example the company PT. Pupuk Iskandar Muda (PT.PIM Lhokseumawe). but in practice there is a discrepancy because the liquid waste treatment site (liquid waste storage tank/WWTP) is mediocre in size so that when it rains heavily the waste water reservoir is unable to accommodate the liquid waste which has been mixed with rainwater so that it overflows and the water goes straight into sea without going through the processing process first, this is very unfortunate for the life of marine biota and also has an impact on fishermen. It is different in other locations, namely the liquid waste collection site in Cluster I owned by Exxon PT. Medco which is no longer used.

Based on research conducted at PT. Medco in East Aceh in its implementation there was a discrepancy in the size of the mediocre wastewater treatment plant (liquid waste storage tank/WWTP) so that when it rains heavily the wastewater storage tank is unable to accommodate the liquid waste which has been mixed with rainwater so that it overflows and the water directly into the community sewers without going through the processing process beforehand, this is very unfortunate for the lives of other living things

PT. Medco disposes of mercury (Hg) waste or mercury metal into ditches which empty into rivers which as a result the river becomes polluted so that it has an impact on people who use river water for bathing, washing and so on, experiencing itching, due to the mercury waste. Mercury is a by-product produced in the oil and gas refining process and of course the amount has been in the tens of tons since the oil and gas processing took place. the time span from 2019 until now the company has produced B3 materials, aka

hazardous chemicals, including mercury, in large quantities. However, until now, the American company has kept secret the whereabouts of the chemical waste it produces, whether it is planted in the ground or disposed of in other areas. In accordance with Permen LH No 18/2009 concerning Licensing Procedures for the Management of B3 Waste, article 2 paragraph (2), it is stated that the producer of B3 waste cannot carry out the activity of clumping B3 waste as referred to in paragraph (1) letter c. Thus, Exxon Mobile as a waste producer is not allowed to manage its own mercury waste, but must hand it over to other parties. Liquid waste is left unattended without any supervision or processing efforts and is just left alone so that the impact it creates is very risky for the survival of living things. The landfilling of B3 waste should prioritize the protection of human life and health as well as the protection of the environment.

## **B. Identification of the Problem**

From the description above, what is the problem is how is the legal responsibility of the employer due to negligence by the company that accepts B3 waste management in the event of environmental pollution?

## **C. Research Methodology**

This research is a normative juridical approach, namely research conducted on laws and regulations related to Administrative Legal Responsibility for Companies that accept B3 waste management in the occurrence of environmental pollution with a prescriptive nature, namely research that aims to provide an overview or formulate a problem in accordance with the circumstances or facts that exist, (Salim HS, 2013). Data analysis is presented qualitatively, analyzed descriptively. Through this analysis, the answers to the problems as a result of the research findings are put forward in the form of a systematic description by explaining the relationship between the various types of data obtained and formulating them into a comprehensive (overall) verification and research conclusion.

## **D. Discussion**

### **Towards the Employer Company Due to Negligence Committed by the Company That Accepts the Work of B3 Waste Management in the Event of Environmental Pollution.**

Responsibility/laborer. Based on the provisions of Article 100 Law no. 13 of 2003, namely increasing welfare for workers/laborers and their families, employers are required to provide welfare facilities. Provision of welfare facilities as referred to in paragraph (1) is carried out by taking into account the needs of workers/laborers and the size of the company's capabilities. Provisions regarding the types and criteria for welfare facilities in accordance with the needs of workers/laborers and the size of the company's ability as referred to in paragraphs (1) and (2), are regulated by Government Regulations, (Wijayanti).

In an employment relationship, the rights and obligations of the parties are reciprocal, matters that are the rights of the worker are the employer's obligation to fulfill, on the other hand, matters that are the rights of the entrepreneur are the obligations of the entrepreneur/employer.

In general, the obligations of employers/employers are of course regulated in heteronomous rules made by the government in order to protect workers in companies. If you want to be regulated more specifically regarding the company where the worker does

the work, then the provisions are usually regulated in autonomous rules, namely through negotiations to draw up a collective labor agreement or regulated separately in company regulations. Starting from the substance/element of the work agreement as the beginning of an employment relationship, the obligations of the entrepreneur/employer are: to provide work to be carried out by the worker and to pay wages or compensation for the work carried out by the worker/laborer. On the other hand, workers/laborers have the right to do work in accordance with the agreement made and receive compensation or wages for the work done. It is the worker/laborer's obligation in this case to do the job as well as possible according to the instructions or orders given by the entrepreneur/employer, according to the allotted time.

According to Fredrik J. Pinakunary Application of Absolute Criminal Responsibility in Environmental Pollution Cases, the concept of *strict liability* or absolute responsibility is different from the general criminal responsibility system which requires intentionality or negligence. In a system of criminal responsibility, absolutely only the knowledge and actions of the accused are required. That is, in carrying out these actions, if the defendant knows or is aware of potential losses for other parties, then this is enough to demand criminal responsibility. So, there is no need for an intentional or negligent element on the part of the accused, but merely an act which has resulted in pollution, (Russell, 1992).

The concept strict liability was introduced in Indonesian law for the first time, among others, through Law no. 23 of 1997 concerning Environmental Management. Which was subsequently amended by Law no. 32 of 2009 concerning Environmental Protection and Management ("UUPPLH"). In Article 88 of the PPLH Law, it is explicitly stated regarding the concept of strict liability:

"Any person whose actions, business, and/or activities use B3 (Hazardous and Toxic Materials, editor), produces and/or manages B3 waste, and/or causes serious threats to the environment are absolutely responsible for the losses incurred without the need to prove an element of guilt." The elucidation of this article explains what is meant by "absolute responsibility" or strict liability, which means that an element of error does not need to be proven by the plaintiff as a basis for payment of compensation. The provisions in this article are described as *lex specialis* in lawsuits regarding unlawful acts in general as regulated in Article 1365 of the Civil Code. However, in reality, the application of this concept in Indonesia is not easy.

According to the Supreme Court Judge at the Supreme Court, Takdir Rakhmadi said, among other things, that so far there has not been a case brought by the plaintiff to court to demand *strict liability*. Therefore, according to Takdir, the concept of *strict liability* has never been applied in Indonesia because there has not yet been a case in court. On the other hand, an environmental law researcher from the *Indonesian Center for Environmental Law* (ICEL) Prayekti Murharjanti said, actually there are several cases of environmental damage where the concept of *strict liability* can be applied. You can see further discussions about strict liability in the following articles:

- a. The concept of Strict Liability has never been used and
- b. Lawsuit Strict Liability Still Ambiguous in Indonesia.

The concept strict liability can also be applied to consumer protection cases, as implicitly stipulated in Article 19 of Law no. 8 of 1999 concerning Consumer Protection. However, this concept has never been applied by Indonesian courts in relation to consumer protection cases. This was conveyed by Yusuf Shofie, a permanent lecturer from Yarsi University who also has experience working at the Indonesian Consumers Foundation ("YLKI"). For more, see Yusuf Shofie's article: Indonesian courts are not familiar with strict liability. So, basically the law in Indonesia has provided arrangements that allow the application of the concept of strict liability. However, it cannot be denied

that due to the various reasons stated above, in practice the application of strict liability is not easy.

This article is used as the legal basis for the B3 waste management system by PT. Medco. When an activity or business produces B3 waste, it is immediately obligated to carry out B3 waste management activities based on the applicable terms and conditions. These applicable terms and conditions contain an order for every business actor that produces B3 waste to manage B3 waste that has already obtained a permit, which is part of the normative provisions regulated in the field of administrative law. In the Law on Environmental Protection and Management (UU PPLH), the obligation to manage B3 waste and the obligation to obtain a permit for the management of B3 waste is stated in Article 59 paragraph (1) and Article 59 paragraph (4) which are administrative rules for waste management B3.

In Pure Law Theory Hans Kelsen introduces new concepts about basic norms; norms, hierarchy of norms, legal action Han's Kelsen's legal theory, among others, states that law is a system that stands on coercive norms (*law as a system of coercive*) therefore law can be enforced and law has sanctions for those who breaking the law. It can be interpreted that legal norms are always located in a hierarchical system, which as a system, one legal norm and another should not conflict with each other, all of which are based on basic norms, namely the constitution.

Policy in the management of B3 waste generated from PT. Medco includes various parties, adjusted to the management stage. On the part of the government, the role is to make policies, regulate, permit, provide guidance, inspect, evaluate and facilitate activities related to the development and infrastructure of B3 waste management facilities. Likewise, local governments are expected to be able to assist the implementation of the B3 waste management system as a whole. Meanwhile, PT. Medco as a producer of B3 waste must understand and comply with the procedures and requirements for carrying out its waste management obligations. Likewise with parties related to B3 waste management who are partners.

Existing legal products refer more to efforts to provide direction in order to solve problems that are developing in economic life. As with the establishment of policies in the management of B3 waste that are applied at PT. Medco uses third party services, even though it has the capability to treat waste independently. Establishment of policies in managing hazardous and toxic waste independently is hampered by various technical matters in implementing Permen LHK P.56/2015. Therefore, the determination of policies in the management of using third party services is based on the following aspects. First, the financing component required for B3 waste processing independently will be higher than handing it over to a third party service provider. Second, the allocation of funds needed includes internal and external financing for the management of B3 waste. Third, PT. Medco, which is located in mountainous areas, generally borders residential areas, so it cannot operate incinerators without disturbing the residents' comfort.

Referring to the implementation of B3 waste management from PT Medco at the stages of reduction, sorting, storage, storage, transportation, processing, stockpiling or burial carried out by PT Medco in collaboration with third parties, currently not all requirements have been met as regulated in laws and regulations. which exists. The inability of third party services to manage B3 waste is understandable due to the limitations of available waste processors in Indonesia at present, there is widespread illegal disposal of hazardous and toxic medical (B3) waste using the mode of abuse of permits from the Ministry of Environment and Forestry (KLHK).

According to J. Barros and JM Johnston it is closely related to development activities carried out by humans, among other things due to, firstly, industrial activities, in the form of waste, hazardous waste components such as radioactive substances, heavy metals and so on. Second, mining activities, in the form of damage to installations, leaks, air pollution, mining waste pollution and damage to ex-mining land. Third, transportation activities, in the form of motorized vehicle noise, rising city air temperatures, clouds of smoke, fuel spills, in the form of petroleum from tankers. Fourth, agricultural activities, especially as a result of residues from the use of chemical substances to eradicate nuisance plants/insects, such as pesticides, herbicides, insecticides, fungicides and also the use of inorganic fertilizers, (Absori, 2006).

These activities contribute to environmental damage such as leakage, installation damage, pollution (land, air and sea), mining waste, damage to ex-mining areas. All of this is the impact of human actions through various activities that position nature as a commodity that is only treated as an object of exploitation, disposal media, and industrial activities without regard to the fact that the environment is material that has limitations and is capable of being damaged. The result that arises then is the process of environmental degradation in the form of environmental pollution and the damage is getting worse and worse, (Absori, 2001).

Various natural disasters went one after another, starting with pollution, damage and environmental disasters everywhere, as a result, it is clear that environmental interests were defeated by economic, social and political interests which after all were the result of entirely human creations, (Absori, 2009).

Based on the results of interviews, observations obtained data on the condition of B3 waste management at the management stage starting from reduction, sorting, container, storage, transportation, processing, stockpiling and burial both by PT. Medco, can be summarized the various problems of B3 waste management. then it can be presented as follows: Reduction in Government Regulation Number 101 of 2014 concerning Hazardous and Toxic Waste Management. Article 10 paragraph (1) and (2) states that, "Every person who generates B3 waste is required to reduce hazardous waste, the reduction of hazardous waste as referred to in paragraph (1) is carried out by: a. material substitution; b. process modification; and/or c. use of environmentally friendly technology.

In the Regulation of the Minister of Environment and Forestry Number 56 of 2015, article 6 paragraph (3) explains that, the segregation of B3 waste as defined in paragraph (1) is carried out by means of, among other things, separating the hazardous waste based on the characteristics of the waste and containerizing the hazardous waste and/or the type, group, and/or according to the hazardous waste group.

## **E. Conclusion**

Legal responsibility to the employer company due to negligence by the company that accepts B3 waste management in the event of environmental pollution is an unlawful act contained in Article 1365 of the Civil Code and in environmental law stated in the Environmental Law Number 32 of 2009. Provisions regarding PMH are contained in Article 87 (1). provisions regarding PMH in the Environmental Law above may contain the following elements. First, that environmental pollution or damage is an unlawful act. Second, that the pollution was caused by a fault. Third, the pollution causes losses. Fourth, there is a causal relationship between acts against the law of pollution and losses. 2. The process of industrial waste management starts from companies (factories) located in the area of PT. Medco. The waste produced by the Company (factories) is first processed according to the waste water quality standards in accordance with the Minister of

Environment Regulation Number 5 of 2014 concerning Wastewater Quality Standards, or the waste is processed according to the company's operational standards (SOP) agreement between PT management. Medco with companies. Furthermore, the waste that has been processed internally in each industry will be sent to the Installation.

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