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B3 Waste Management From the View of Civil Law

Zainal Abidin[1*], Hanif[2], Indrayani[3]
Faculty of Law, Universitas Malikussaleh
*Correspondent Author, e-mail: zainalabidin@unimal.ac.id

Abstract

Environmental problems are essentially ecological problems. The core 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 in addition to bringing positive effects, can also bring negative effects such as pollution or environmental destruction. This research is a normative legal research,which collects secondary data through literature studies, to obtain secondary data in the form of primary, secondary and tertiary legal materials. Primary legal materials are in the form of the 1945 Constitution, other laws, judges' decisions, which are relevant to this writing and research. Secondary legal material in the form of opinions of legal experts through textbooks, journals, articles, results of previous research, workshop papers, seminars, symposiums, discussions, magazines/newspapers, theses, dissertations, and others, 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 company due to negligence by the company accepting the work of 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 stated in Article 87 (1). And the Minister of Environment Regulation Number 5 of 2014 concerning Wastewater Quality Standards, or waste is processed according to the company's operational standards (SOP) as agreed between the managers of PT. Medco with companies. Furthermore, the waste that has been processed internally within the respective industries will be sent to the Installation.

Keywords
Management, View, Civil Law

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1. Introductions

The environmental problem is not only a matter of the human physical environmental or only a human biological problem, but is related to a moral problem, namely human behavior towards nature. Natural damage such as erosion, floods, mudflows, deforestation and forest fires do not only caused anxiety for the fate of humans, 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.[1] The ecological crisis has become a reality contemporary,[1]yesg exceeds tolerance limits[2]and adaptability.[1] Its proliferation has reached a global dimension and continues to have a dramatic impact.

Industrial development carried out by companies or legal entities in addition to bringing positive effects can also bring negative effects such as pollution or environmental

[1]Deni Bram, Environmental Law: Homo Ethic Towards Eco Ethic, Gramata Publishing, Bekasi 2014, p. 22.

[2]Lester R. Brown, 1986, Back at the Crossroads: Population Problems with Natural Resources, Rajawali, Jakarta, p. 7.

destruction.[3] However, one of the impacts of the development of the industrial sector is the generation of waste, including hazardous and toxic waste[1], both solid, liquid and gas waste.

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. The concept of cradle-to-grave waste management 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 waste produced that do not require processing. Such factories usually have already designed their pollution control system during construction. Waste requires initial treatment and then further processing. The initial processing will also determine the subsequent processing so that errors in the initial handling method will affect the subsequent 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 belonging to 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

[3]Soedjono Dirdjosisworo, Legal Security Against Environmental Pollution Due to Industry, Alumni, Bandung, 1983, p. 31. See also Wisnu Arya Wardhana, Impact of Environmental Pollution, Andi, Yogyakarta, 2004, p. 24-25, which says that industrial and technological activities can have both direct and indirect impacts. It is said to have a direct impact if the industrial activity can be directly felt by humans. A positive direct impact is to be expected. However, direct impacts that are negative, which reduce the quality of human life must be avoided or reduced. The negative direct impact can be seen from the occurrence of problems: 1. air pollution, 2. water pollution and 3. land pollution. The three types of pollution mentioned above will reduce the carrying capacity of nature. Air pollution,

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 gutters of society without going through the processing process beforehand, this is very dear to 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. the producer of B3 waste cannot carry out the activities of agglomerating 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 are just left alone so that the impact is very risky to 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. B3 waste generators cannot carry out B3 waste clumping activities 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.

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From the description above, How is the legal responsibility of the company that provides work due to negligence by the company that accepts work in managing B3 waste in environmental pollution?

2. Methodology

This research is a normative juridical approach, namely research conducted on laws and regulations relating to Administrative Legal Liability to companies receiving B3 waste management work in the occurrence of environmental pollution with a prescriptive nature, namely research that aims to provide an overview or formulate problems according to the circumstances. or facts.[4]Analysis Data is presented qualitatively, analyzed descriptively. Through this analysis, the answers to the problems as a result of research findings are presented in the form of a systematic description by explaining the relationship between the various types of data obtained and formulating it into a comprehensive (complete) verification and research conclusion.

3. Discussion

The legal responsibility of the company that provides work due to negligence by the company that accepts work in managing B3 waste in environmental pollution. Employer's responsibility is a concept or action taken by employers as a sense of responsibility towards workers/laborers, such as protection and maintenance in order to improve the welfare of workers/laborers. 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.[1]

In a working relationship, the rights and obligations of the parties are reciprocal, the things that are the rights of the workers are the obligations of the entrepreneur to be fulfilled, on the other hand the things 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.

According to Fredrik J. PinakunaryApplication of Absolute Criminal Responsibility in Environmental Pollution Cases, the concept of strict liability or absolute responsibility is

[4]H. Salim HS and Erlies Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research, PT Raja Grafindo Persada, Jakarta, 2013, p. 9.

different from the general criminal responsibility system which requires intentional or omission. In a system of absolute criminal responsibility, only the knowledge and actions of the accused are required. That is, in carrying out the act, if the defendant knows or is aware of the potential loss for the other party, then this situation is sufficient to demand criminal responsibility. So, there is no need for an element of intention or negligence on the part of the defendant, but merely an act that has resulted in pollution (Frances Russell & Christine Locke, "English Law and Language, Cassed, 1992).

The concept of strict liability was introduced in Indonesian law for the first time, among others, through Law no. 23 of 1997 concerning Environmental Management. Which is then modified withUU no. 32 of 2009 concerning Environmental Protection and Management("UUPPLH"). Article 88 of the PPLH Law explicitly states the concept of strict liability:

*"Every person whose actions, business, and/or activities use B3 (Hazardous and Toxic Materials, editor), generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible for the losses that occur without proof of the 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. It is explained that the provisions in this article are lex specialis in lawsuits about unlawful acts in general as regulated in Article 1365Code of Civil law. However, in reality, implementing this concept in Indonesia is not easy

According to Supreme Court Judge Takdir Rakhmadi, among other things, so far there has not been a case brought by the plaintiff to court demanding 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 read further discussions about strict liability in the following articles:

a. The concept of Strict Liability Has Never Been Usedand
b. Strict Liability Lawsuit Still Ambiguous in Indonesia.

The concept of strict liability can also be applied to cases of consumer protection, as implicitly regulated in Article 19UU 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"). On Yusuf Shofie' article stated that: 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 Environmental Protection and Management Act (UU PPLH),

In Pure Legal Theory Hans Kelsen introduces new concepts of basic norms; norms, hierarchy of norms, legal action Han's Kelsen's legal theory, among others, states that the law is a system that stands on coercive norms (law as a system of coercive norm) therefore the law can be enforced and the law has sanctions for those who breaking the law. It can be interpreted that legal norms are always based in a hierarchical system, which as a system, one legal norm with other legal norms 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. The same goes for parties related to B3 waste management who are partners

The existing legal products point more to efforts to provide direction in order to solve problems that develop in economic life. As well as the establishment of policies in the management of B3 waste applied at PT. Medco uses the services of a third party, even though it has the ability to treat waste independently. Determination of policies in the management of hazardous and toxic waste independently is hampered by various technical issues in implementing goverment regulation (LHK P.56/2015). Therefore, the determination of policies in the management of using third party services is based on several aspects as follows. First, the financing component required for independent B3 waste treatment 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 reducing, sorting, storing, storing, transporting, processing, stockpiling or burial carried out by PT Medco in collaboration with third parties. which exists. The inability of third-party services to manage B3 waste can be understood because of the limited number of waste processors currently available in Indonesia, and the illegal disposal of hazardous and toxic medical waste (B3) using the mode of abuse of the Ministry of Environment and Forestry (KLHK) permit.

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.[5]

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.[1]

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.[6]

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

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.

4. Conclusion

1. B3 waste management and legal responsibility for the company that provides the job due to negligence in terms of civil law is carried out by the company that accepts the work of B3 waste management in the event that environmental pollution occurs is an unlawful act contained in Article 1365 of the Civil Code and environmental law is stated in the Environmental Law Number 32 of the Year 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

[5] Absori, Environmental Dispute Resolution Law, Muhammadiyah Univercity Pers, Surakarta, 2006, page 15

[6] Absori, Law of Environmental Dispute Resolution, A Model of Environmental Dispute Resolution with a Participatory Approach, Muhammadiyah University Press. , Surakarta 2009, p. 23

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 industrial waste management process starts from the Company (factories) located in the PT. Medco. The waste generated by the company (factories) is first processed in accordance with the waste water quality standards in accordance with the Regulation of the Minister of the Environment Number 5 of 2014 concerning Wastewater Quality Standards, or the waste is processed according to the company's operational standards (SOP) as agreed between the managers of PT . Medco with companies. Furthermore, the waste that has been processed internally within the respective industries will be sent to the Installation The waste generated by the company (factories) is first processed in accordance with the waste water quality standards in accordance with the Regulation of the Minister of the Environment Number 5 of 2014 concerning Wastewater Quality Standards, or the waste is processed according to the company's operational standards (SOP) as agreed between the managers of PT . Medco with companies. Furthermore, the waste that has been processed internally within the respective industries will be sent to the Installation The waste generated by the company (factories) is first processed in accordance with the waste water quality standards in accordance with the Regulation of the Minister of the Environment Number 5 of 2014 concerning Wastewater Quality Standards, or the waste is processed according to the company's operational standards (SOP) as agreed between the managers of PT . Medco with companies. Furthermore, the waste that has been processed internally within the respective industries will be sent to the Installation

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