

Licensing for Hazardous and Toxic Waste Management: A Study on Environmental Administrative Law (Case Study: Court Judgment Number 1872/PID.B/:H/2015 /PN.LBP)

Nelly Marisi Situmeang¹, Affila², R Hamdani Harahap³

¹Postgraduate Students, Universitas Sumatera Utara, Indonesia

²Faculty of Law, Universitas Sumatera Utara,

³Faculty of Social and Political Sciences, Universitas Sumatera Utara, Indonesia Indonesia

Abstract. The implementation of the new regulations, Law of the Republic of Indonesia No. 32 of 2009, Law of the Republic of Indonesia No. 11 of 2020, and the Government Regulation of the Republic of Indonesia No. 22 of 2021 has an impact on the regulations and regulatory mechanisms for licensing the Management of Toxic Hazardous Waste, particularly the Collection of hazardous waste. The One-Stop Integrated Investment and Licensing Service of Sumatera Utara Province are responsible for issuing this licensing. Following the issuance of the license, the relevant agencies need to monitor it to avoid violation as in Court Decision Number 1872/PID.B/:H/2015/PN.LBP. The research uses normative juridical, which refers to applicable laws and regulations covering legal principles, legal history, and legal comparisons. This study uses interviews with related parties and secondary data from analyzing decision-making and literature reviews to collect data. The study shows that the simplification of laws and licensing processes with Law No. 11 of 2020 alters numerous provisions in Law No. 32 of 2009. The alteration requires the investors to submit a license via the Online Single Submission Risk-Based Approach (OSS-RBA). Second, criminal law enforcement should be considered the final action in the event of a violation of the management of toxic, hazardous materials waste. Third, supervision for the company's toxic, hazardous materials waste collection should be both direct and indirect to reduce the number of violations in managing toxic, hazardous materials waste.

Keyword: Administrative Law, Hazardous and Toxic Waste, Licensing.

Abstrak. Penerapan peraturan baru, Undang-Undang Republik Indonesia Nomor 32 Tahun 2009, Undang-Undang Republik Indonesia Nomor 11 Tahun 2020, dan Peraturan Pemerintah Republik Indonesia Nomor 22 Tahun 2021 berdampak pada peraturan dan mekanisme pengaturan perizinan Pengelolaan Limbah Bahan Berbahaya dan Beracun, khususnya Pengumpulan Limbah B3. Dinas Penanaman Modal dan Perizinan Terpadu Satu Pintu Provinsi Sumatera Utara bertanggung jawab untuk menerbitkan perizinan ini. Setelah izin diterbitkan, instansi terkait perlu melakukan pengawasan agar tidak terjadi pelanggaran sebagaimana studi kasus Putusan Pengadilan Nomor 1872/PID.B/:H/2015/PN.LBP. Penelitian ini menggunakan yuridis normatif, yaitu mengacu pada peraturan perundang-undangan yang berlaku meliputi asas-asas hukum, sejarah hukum, dan perbandingan hukum. Penelitian ini menggunakan wawancara dengan pihak terkait sebagai data primer dan data sekunder dari analisis pengambilan keputusan dan studi pustaka. Hasil kajian menunjukkan bahwa penyederhanaan hukum dan proses

*Corresponding author at: Universitas Sumatera Utara, Medan, Indonesia

E-mail address: Dameniaku@gmail.com

perizinan dengan UU No 11 Tahun 2020 mengubah berbagai ketentuan dalam UU No 32 Tahun 2009. Perubahan tersebut mengharuskan investor untuk mengajukan perizinan melalui Online Single Submission Risk Based Approach (OSS- RBA). Kedua, dalam hal terjadi pelanggaran terhadap pengelolaan limbah bahan berbahaya beracun, penegakan hukum pidana harus dipertimbangkan sebagai tindakan akhir. Ketiga, pengawasan terhadap pengumpulan limbah B3 harus dilakukan secara langsung dan tidak langsung untuk mengurangi jumlah pelanggaran dalam pengelolaan limbah B3.

Kata Kunci: Hukum Administrasi, Limbah Bahan Berbahaya dan Beracun, Perizinan.

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1. Introduction

Environmental management aims to encourage development by using natural resources wisely. Planning development activities requires anticipating environmental changes due to the creation of an undesirable condition resulting from the development [1]. Development has an unavoidable impact on environmental quality. The harmful impact on the environment is a critical issue. Industrial waste contaminates land and contains various toxic chemical elements that can pollute water bodies and injure soil and plants that are destructive to living beings' health [2].

The issuance of The Law No. 32 of 2009 on Environmental Protection and Management, as well as Law No. 11 of 2020 on Job Creation and Government Regulation No. 22 of 2021 on Environmental Protection and Management, appear to have an impact on the regulations and regulatory mechanisms for hazardous and toxic waste management licensing [3][4][5]. The One-Stop Integrated Investment and Licensing Service (DPMPPTSP) of Sumatera Utara Province are responsible for issuing the license. Following the permission to collect hazardous and toxic waste, the appropriate agencies must conduct oversight to ensure no violations result in criminal sanctions.

The application of criminal law to the court's decision Number 1872/PID.B/H/2015/PN.LBP is the subject of the case study. The subject of the litigation is the hazardous and toxic waste disposal of a company called CV Arum. The company's director and public relations officer were found guilty in this case. Their hazardous and waste management activities appear to have taken place outside the location specified for the hazardous and toxic waste of The Deli Serdang Region. As a result, it can contaminate the environment, as water brings hazardous and toxic waste and enters sewers when it rains, causing pollution to the water. CV Arum's conduct of waste management outside the designated area violates the law on environmental protection and management.

Based on this case, it is necessary to identify the types and management of hazardous toxic waste. Furthermore, it is necessary to research the role of the government in supervising hazardous and waste management for businesses.

There are three objectives of this study. First, analyze the regulations and regulatory procedures for the Permit for Management of Hazardous and Toxic Waste. Second, analyze Law Enforcement Against Companies Collecting Hazardous and Toxic Waste based on Court

Judgment Number: 1872/PID.B/H/2015/PN.LBP. Third, analyze the supervision of hazardous and toxic waste collection companies based on Government Regulation No. 22 of 2021.

2. Methodology

Legal research is a scientific activity that examines something or particular legal events by studying them. It is focused on specific methodologies, systematics, and ideas [6]. The type of research in this study is normative juridical law.

There are two types of data in this study: primary and secondary. In order to gather various types of information, primary data were obtained through interviews with government and private sector officials. The government is from the Deli Serdang Regency Environmental Service, the North Sumatra Province Environmental Service, and the North Sumatra Province DPMPTSP. Meanwhile, the private business is from PT Non Ferindo Utama (a hazardous and toxic waste collection company). While secondary data was obtained from literature reviews of legal materials, journals, and other research.

In this study, there are five processes to analyze data. To begin, gather resources that are related to the subject under investigation. Furthermore, select legal regulations or doctrines that are appropriate to the research. Then systematize legal regulations, principles, or doctrines. The next step is to explain the relationships between various concepts, articles, or doctrines. Finally, conclude with a deductive approach.

This research is normative juridical, therefore there is no specific location studied. This research was conducted from May to July 2021.

3. Result and Discussion

3.1. Procedures and Regulations for Hazardous Waste Management License

To prevent pollution, the government must monitor directly or indirectly [7]. A proper management system must be developed and implemented to achieve the waste management goal, particularly in activity sectors that potentially generate hazardous and toxic trash. The authority of the Regency Government, the authority of the Provincial Government, and the authority of the Central Government are the three authorities that supervise the implementation of hazardous and toxic waste management [8][9].

The authority for issuing the license for collecting hazardous and toxic waste on the provincial level is The Provincial Government [5]. Businesses do not need to travel to the office for this licensing process; instead, they must register on an online platform called the Online Single Submission Risk-Based Approach (OSS-RBA). Then The One-Stop Integrated Investment and Licensing Service of Sumatera Utara Province (*DPMPTSP Provsu*) and the North Sumatra Province Environmental Service (*DLH Provsu*) will verify the documentation on the application, followed by a direct assessment of the requested location. The verification results are recorded in the official report, which states whether or not the request is approved. Based on the interviews with informants *DPMPTSP Provsu* and *DLH Provsu*, field verification

sometimes revealed that many business owners did not comply with the requirements. As a result, the license request will be canceled.

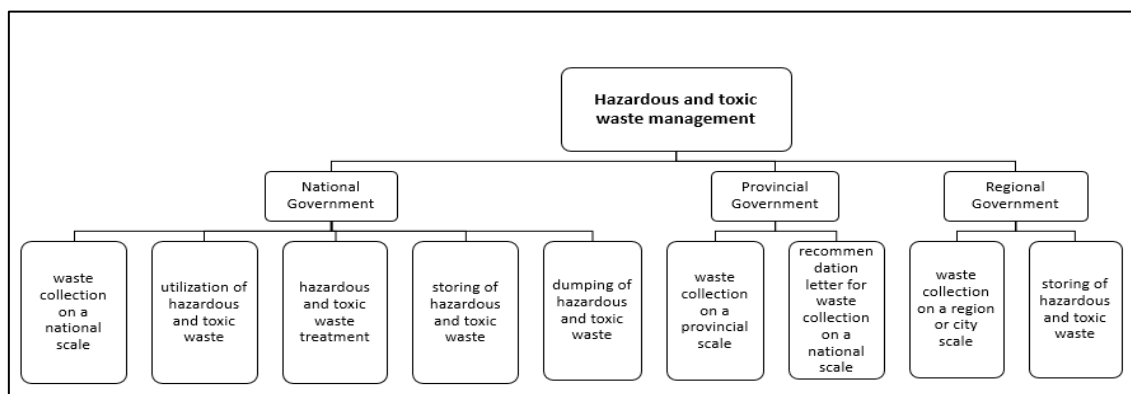


Figure 1 Division of authority on the management of hazardous and toxic waste in Indonesia

Article 59, paragraph 4 of the Environmental Management Act provides the legal foundation for the permit for waste treatment procurement. Meanwhile, Article 95 paragraph 1 states that law enforcement actions will be carried out against offenders of environmental crimes. Sanctions are explained in Article 102, which states that anyone processing hazardous and toxic waste without a permit will face a criminal sentence. The sanctions are imprisonment for a minimum of one year and a maximum of three years, as well as a fine of at least one billion rupiahs and a maximum of three billion rupiahs. Therefore, having a waste treatment permit is critical for businesses and manufacturers [3].

3.2. Law Enforcement Against Companies Collecting Hazardous Toxic Waste That Violates Permits Based on Court Judgment Number: 1872/Pid.B/LH/2015/PN.Lbp

Law enforcement is an effort to make legal ideas and conceptions that the public expects to become a reality [10]. Law enforcement can be carried out by a broad subject or enforcing the law involving all subjects. The goal of law enforcement is to make the concepts of justice, legal certainty, and social benefits a reality [11]. Meanwhile, Criminal law enforcement attempts to make legal sense of beliefs about justice in criminal law [12].

Case Number: 1872/PID.B/H/2015/PN.LBP is a criminal decision against CV Arum that violates managing hazardous and toxic waste provisions. CV Arum operates in the transportation, collection, utilization, and management of hazardous and toxic waste. The company holds the following licenses: Decree of the Minister of Environment No. 34 of 2011 concerning Permits for the Collection of Hazardous Toxic Waste on 21 February 2011, Decree of the Regent of Deli Serdang Regency No. 503.570/4875/02.13/PK/VII/2009 on 13 July 2009 concerning the Granting of Extension of Trading Business Permits. Based on the judgment, Defendant Director of CV Arum, individually or collectively with another defendant, issued an order to managing hazardous and toxic waste without a license according to Article 69 paragraph (4) of Law no. 32 of 2009 concerning Environmental Protection and Management. The waste disposal activity occurred in the warehouse development area next to the CV Arum

office in Percut Sei Tuan District, Deli Serdang Regency, Sumatera Utara Province, between April 2012 and May 2013.

The panel of judges reviewed numerous factors in the above case:

- a. The Panel of Judges evaluates several possibilities while considering the legal facts. They selected Article 104 Jo, Article 116 paragraph 1 letter b of Law no. 32 of 2009 concerning Environmental Protection and Management as the second alternative accusation.
- b. The panel of judges considered that Article 76 of Law no. 32 of 2009 concerning Environmental Protection and Management explains that administrative sanctions are imposed on defendants who violate environmental permits. The defendant's actions were not categorized as administrative actions in this case;
- c. During the trial, the Panel of Judges did not find anything that constituted abolition of the crime. Either justifying reasons for the action or excuses for wrongdoing.;
- d. The Panel of Judges considered that what is meant by "everyone" in this element is the perpetrator of a criminal act or a subject capable of committing an unlawful act, and if his activity fulfills all the aspects of the criminal act charged, then that person will be pronounced as perpetrator;
- e. Considering that this element is an alternative. If only one of the elements is proven, then the charge is fulfilled;
- f. Considering that what is meant by "without permission" is doing something without permission from the authorized party.

The Judges decided that the defendants were legally and convincingly guilty of the crime. They have proven as "a person who gave orders or acted as a leader of activities to dump waste into environmental media without permission." The Panel of Judges sentenced them to 4 (four) months in prison and a fine of Rp. 1,000,000,000 each (one billion rupiah).

Article 82 C paragraph (1) of the Job Creation Act regulates five types of administrative punishments for the environmental sector: written warning, government coercion, administrative fines, suspension of Business Licensing, and revocation of Business License.

Those sanctions have four administrative functions:

- a. Administrative punishments aimed at restoring the status quo.
- b. Sanctions to punish offenders.
- c. Administrative punishments serve to deter more severe behavior.
- d. Administrative sanctions for regressive behavior

The legal punishments imposed on violators must be matched to the provisions of the articles that characterize the various forms of environmental violations. The punishments are governed

by the Environmental Protection and Management Law No. 32 of 2009. The procedure for handling and prosecuting law violations is also influenced by classifying criminal actions. Incidents of Law No. 32 of 2009, classified as material or formal offenses, shall be prioritized by police and civil servant investigators. As a result, the measures or settlement efforts to address the issue or case can be determined technically.

3.3. Government's supervision on companies collecting Hazardous Materials with the issuance of Government Regulations No. 22 of 2021

Environmental protection and management refer to a coordinated and systematic effort to maintain environmental functions. Planning, usage, control, maintenance, supervision, and law enforcement are examples of environmental protection and management activities. Supervision should be carried out regularly and as needed [13][14].

Article 496 Paragraph 2 of Government Regulation of the Republic of Indonesia Number 22 of 2021 concerning the Implementation of Environmental Protection and Management contains environmental management supervision. The supervision faces some obstacles, such as insufficient competent Environmental Supervisory Officers (*PPLH*). There is also a lack of data in the supervision. Furthermore, lack of compliance by business owners is also one of the significant challenges. Moreover, the accountability process for environmental supervision is not yet optimal. These problems affect environmental supervision ineffective at encouraging compliance and, more importantly, enforcing environmental standards, much alone maintaining a good and healthy environment [15].

Based on interviews with the Deli Serdang Regency's Head of Sub-Division of the Environmental Service. She stated that supervision occurs before and after the license was obtained. They track every action taken by the initiator. They also supervise the personnel in charge of implementing Hazardous and Toxic Waste Management. Internally, the corporation is in charge of supervision, while the Environmental Service Office is in charge of external supervision. She stated that one of the supervision's obstacles is a lack of human resources. However, she also mentioned that good coordination and cooperation with the business owners are supporting aspects. She noted that the implementation of Government Regulation No. 22 of 2021 would be essentially the same as before. Companies that commit violations risk administrative law enforcement, including five-time reprimands and lastly administrative sanctions. However, no company has received warnings or administrative sanctions in two years.

An interview with the Section Head of the Waste Management Division at *DLH Provsu* was the next source of information. In terms of supervision, she stated that business actors are obliged to reveal waste management activities. Reporting is transparent because each business reports its activities on a platform known as *Siraja Limbah*. However, because some businesses have yet to disclose their waste management on time, this reporting has not been fully implemented.

4. Conclusion

There are a few conclusions that can be drawn from the research:

- a. The provincial government has the authority to issue hazardous and toxic waste management permits. The Governor of North Sumatra delegated his authority to the Provincial DMPPTSP. The Head of the North Sumatra Province DMPPTSP issued a Decree of the Head of the North Sumatra Province One Stop Investment and Licensing Service Number 20 of 2019 concerning Licensing Service Standards in the DMPPTSP Environment which provide the mechanism and procedure for permitting the collection of Hazardous and Toxic Waste;
- b. Companies that collect hazardous and toxic waste that violate permits often subject criminal law enforcement to inspection. However, according to Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection and Management, business actors who pollute the environment will face administrative sanctions based on the minutes of supervision and reports on the results of authorized officials' supervision. Under the watchful eye of authorized officials, administrative sanctions are put into place until all administrative sanctions responsibilities have been met by business actors, then they are put into place by them;
- c. The implementation of supervision of companies that collect hazardous and toxic waste continues to face traditional challenges, such as a disproportionate number of competent environmental supervisory officers in Indonesia compared to the number of business activities that must be monitored, a lack of data on business actors, and a lack of optimal information system management. The environment for environmental supervision and the way people are held accountable are not yet ideal.

5. Recommendation

Based on the study, there are several recommendations for policy changes in hazardous and toxic waste management:

- a. Although the regulations and methods for hazardous and toxic waste management permits have been simplified, business owners remain confused when obtaining permits through the OSS RBA. *DMPPTSP Provsu* should collaborate with *DLH Provsu* to transmit the most recent regulations to the public and business actors. It is also required to conduct training on utilizing the OSS RBA.
- b. Court Judgment Number: 1872/PID.B/:H/2015/PN.LBP is a criminal decision. It is preferable to avoid bringing environmental issues into criminal law. Instead of relying on criminal law, the government should promote administrative law as a critical law enforcement strategy to achieve a preventative effect.
- c. The government, the community, and business owners must supervise hazardous and toxic waste management. The government needs to optimize the Regency/City Environmental Service's supervisory function to ensure tight monitoring. To reduce pollution, citizens must be aware of dangerous and toxic waste in the environment near

their houses. Furthermore, the community must monitor hazardous and toxic waste regulation by conducting social supervision, making suggestions, opinions, proposals, objections, complaints, and communicating information. Meanwhile, business owners use transparent cooperation agreements to improve internal oversight of environmental management carried out by third parties.

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