

# Environmental Law Enforcement In Hazardous-Waste Management In West Java Indonesia: A Critical Trajectory Of Green And Anthropogenic-Based Environmental Policy Orientations

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**Abstract:** The main problems faced in efforts to enforce environmental law in developing countries are limited by legal awareness and legal compliance. Law enforcement must be carried out by considering the three integrated-comprehensive-holistic concept unions. Practically and hierarchically, enforcement of environmental regulations also needs to involve local governments in their implementation. Local government policies also need to support green and progressive policies in controlling the impacts caused by hazardous waste which results in anthropogenic aspects and environmental sustainability at the same time. This study highlights the input aspects of environmental policy in the context of hazardous waste, regulation and law enforcement by taking a case study in West Java, Indonesia. The findings reveal that licensing for the management of hazardous and toxic wastes is sought to build quality conditions that are environmentally friendly and human health so that legal arrangements regarding hazardous waste can lead to legal objectives to realize a sense of justice and balance for the company, society and the environment. This research practically suggests that the understanding of companies and the public about the norms of hazardous and toxic materials must be fully realized and policy support from the regional government must be carried out optimally as part of realizing sustainable development.

**Keyword:** law enforcement, environmental law, hazardous-waste, legal purpose.

## 1 Introduction

PROTECTION and management of the environment is an absolute thing in order to preserve a balanced environment (Milfont & Duckitt, 2010). Environmental protection and management efforts are carried out to preserve environmental functions and prevent pollution or environmental damage. These efforts can include, planning, utilization, control, maintenance, supervision, and law enforcement. The problem of law enforcement in Indonesia has become a big problem in itself which requires in-depth study because law enforcement will involve many components. Indonesia is currently faced with legal performance problems regarding formal truths which are treated as the most dominant consideration of legal decisions that embrace the Rechtslehre Kelsenian way of thinking (Kelsen, 1960). An approach that is still under further discussion through a more holistic alternative paradigm (Sutrisno, 2015). Some cases of environmental damage such as deforestation, critical land, depletion of the ozone layer, global warming, spillage of oil in the sea, dead fish in tributaries due to chemicals, and the extinction of certain species are some examples of environmental problems. These problems arise not only because of natural factors, but also caused by human behavior. This condition has confirmed the commitment in Law No. 32 of 2009 concerning Protection and Management of the Environment that the definition of the environment is included as a component of human behavior as an inseparable part of the environment itself. Natural disquiet for human behavior can arise due to human culture that does not heed the rules including among others is the disposal of waste including chemical waste. Lots of people

who do waste disposal are not in their right place (Rahmadi, 2013). Indeed, we know very well that this issue of waste is almost in every country experiencing it, including in Indonesia. Extraordinary legal handling is needed, for which social problems must be handled extraordinarily by law and must work extraordinarily (Sutrisno, 2014). The starting point of this thinking is based on the commitment of the legal state that the state is based on law, namely that all state activities should be based on law (Yasin, 2014). Practically and hierarchically, enforcement of environmental regulations also needs to involve local governments in their implementation. Local government policies also need to support green and progressive policies in controlling the impacts caused by hazardous waste which results in anthropogenic aspects and environmental sustainability at the same time (Djafar, 2014). In this waste management it was found that there was a mismatch between the rules and the reality that occurred. This waste management should be adjusted to its designation, which means that in the management of ordinary waste and there are specific wastes carried out in different ways. The treatment of specific waste must of course be done in a special way and the management site is also a place that is separated from ordinary waste and far from community settlements and public facilities. Specific wastes contain hazardous and toxic materials, so it is very risky if waste disposal is disposed of carelessly or disposed of in a waste management place that is not in accordance with applicable regulations. In certain cases, as this study took them as case study, in Panguragan Village, Cirebon Regency, a pile of chemical waste has been found mixed with ordinary waste that is in a temporary landfill and is also in warehouses for the use of used goods. Chemical waste is waste containing hazardous and toxic materials, which can cause disruptive effects on the health of the environment and the health of the community itself. Based on the description it is known that in handling chemical waste in Panguragan Village this has violated the rules because basically regarding Hazardous and Toxic Waste has been regulated in Cirebon Regent Regulation Number 2 of

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2014 concerning Licensing for the Management of Hazardous and Toxic Waste. In the regulation it was stated, for the management of hazardous waste this could be as a temporary storage area and could be in the form of a hazardous waste collection place, and of course the two places must meet the requirements set by legislation, while in Panguragan Village they did not meet requirements such as what is written in the laws and regulations, there has been a violation of the norms of Environmental Law and for this reason law enforcement must be carried out against the disposal of chemical waste. The big question is how is the law enforcement towards the disposal of chemical waste that occurs in developing countries, especially in the Panguragan Village, Cirebon Regency and also how the Cirebon District Government's policy to deal with the disposal of chemical waste that occurred in Panguragan Village. The originality of this study was its orientation which was not solely emphasized on the environmental side, but also on the anthropogenic aspects. This is based on the basic assumption that the direction of environmental law enforcement is necessary to consider two values - green and human - at the same time.

## 2 METHODOLOGY

The research approach used is normative juridical as intended by Soerjono Soekanto whose coverage includes legal principles, vertical and horizontal legal synchronization, comparison of laws and legal history where this study analyzes the existence of legislation and its implementing regulations, so that there is a match between lower regulations with higher regulations in the hierarchy of laws and regulations. Besides that, there is an *ius constituendum*, a law that is aspired by life (Soekanto, 2014). A legal positivistic approach is carried out because the conceptualized law is law about rule, the law in the concept of written norms, namely Cirebon Regent Regulation Number 2 of 2014 concerning Licensing for the Management of Hazardous and Toxic Waste and Law Number 32 of 2009 concerning Environmental Protection and Management, in this case means that the research approach is carried out by examining the laws and regulations and implementing regulations related to the issue of chemical waste.

## 3 CROSS POINT OF THE ENVIRONMENTAL LAW ENFORCEMENT IN GREEN AND ANTHROPOGENIC POLICY ORIENTATIONS

The state is based on law not a state based on power. As well as the concept of the State adopted by Indonesia is the rule of law. This is stated in Article 1 Paragraph (3) of the 1945 Indonesian Constitution confirms Indonesia as a State of Law. As a rule of law, every administration of government affairs must be based on applicable law (*wetmatigheid van bestuur*) (Ridwan, 2014). In this regards, Roscoe Pound (2017) mentions that the law is always dynamic and developing in a society that is always changing according to the development of people's thinking at all times and places. Often, in this case the law lags behind the social development of society so that the function of law as a social control is not fulfilled (Ali, 2006). The problem that will be discussed in this study is, regarding the disposal of chemical waste in an improper place, which should be carried out in the construction and management of chemical waste through different treatment from other ordinary wastes. Because this chemical waste is included in the

category of hazardous and toxic waste, of course if this waste is disposed of and managed carelessly it will cause environmental pollution and disrupt public health. Thus, in this case the role of the State is very much needed in regulating the management of this medical waste. Based on normative provisions, it has been regulated through Law Number 18 of 2008 concerning Waste Management which is then regulated in Government Regulation Number 101 of 2014 concerning Management of Hazardous and Toxic Waste. The problem that will be discussed in this study is, regarding the disposal of medical waste in an improper place, which should be carried out in the construction and management of medical waste through different treatment from other ordinary wastes. Because this medical waste is included in the category of hazardous and toxic waste, of course if this waste is disposed of and managed carelessly it will cause environmental pollution and disrupt public health. In this case, the role of the State is very much needed in regulating the management of this medical waste. Based on normative provisions, it has been regulated through Law Number 18 of 2008 concerning Waste Management which is then regulated in Government Regulation Number 101 of 2014 concerning Management of Hazardous and Toxic Waste. According to Gustav Radbruch's (2006) theory, the existence of law is intended for the existence of justice, certainty and expediency. To realize the right law must be complementary and not exclude each other. Prioritizing one of the others will result in spanning between each of these legal values (Sutrisno, 2007). Law becomes a system in regulating community behavior and related to efforts to realize an effective legal system needs to restructure legal institutions supported by the increasing quality of human resources and cultural awareness and legal awareness, along with the renewal of harmoniously structured legal material without conflict and overlap and the law is continuously updated in accordance with the demands of development needs (Prenta, 2011). The existence of the rule of law must be able to reach the point of order and a sense of justice, including economic management, human resources, and natural resources to achieve mutual happiness (Wijaya et al., 2017). In order to achieve goals rather than the law itself, it is necessary to enforce applicable laws. Conceptual law enforcement itself can be interpreted as an activity to harmonize the relationship of values described in the principles that are solid and manifest and act as a series of final stages of value translation, to create, maintain, and maintain the peace of life (Soekanto, 2013). There are factors that influence law enforcement. These factors have a neutral meaning so that the positive or negative impact lies in certain factors that influence it. First, the legal factor, which relies on the law or on other regulations. Second, the factor of law enforcement that relies on the parties who form and implement the law. Third is the factor of facilities or facilities that support law enforcement, and fourth is community factors, namely the environment in which the law applies. In addition, cultural factors are also influential, as a result of work, creativity, and taste based on human intention in life. In addition, in carrying out law enforcement there is also a need for policies. The policy in question is public policy, according to William N. Dunn (2015) stating that public policy as a series of interconnected choices made by institutions or government officials in fields relating to government duties, such as defense, security, energy, health, education, welfare community, crime, urban and others. Meanwhile, policy research is defined as actions

intended to solve social problems. Solving social problems by policymaker in this case is done on the basis of recommendations made by the policy researcher based on the results of his research. Policy here is not perceived from the point of view of government politics, but rather policy as the object of study (Danim, 2005). Law enforcement at the applicative level is an effort to uphold the material law in order to create a prosperous society's life. The effectiveness of environmental law enforcement is strongly influenced by several factors, the working of law in society is strongly influenced by all other societal and personal forces (all the strengths of individuals and communities) that surround the entire process. What is meant here is that the stages of formulation, application and execution are strongly influenced by factors that are outside the law, such as economic, political, social, cultural, educational, interests, power, and all individual and community forces that are outside the process (Chambliss & Seidman, 2012). This environmental law occupies a cross point in various parts of classical law, namely public law and private law. Public law here are criminal law, administrative law, tax law, constitutional law, even agrarian law is also related to environmental law. Then private law here is civil law relating to rights and obligations, liability, compensation, acts against the law and contract law. Enforcement of this environmental law will also be a cross point for the use of these legal instruments, especially government or administrative, civil and criminal law legal instruments. Therefore, in the enforcement of environmental law also involves various government agencies as well, such as the police, prosecutors, regional government, central government especially the Ministry of Trade, the Ministry of Industry, the Ministry of Forestry, and the Ministry of Public Works, the Office of the State Minister of Environment, criminal laboratories, even private parties such as NGOs (Non-Governmental Organizations), and others. Enforcement of environmental law by involving various relevant government agencies also covers other legal fields, of course the process will be considered complicated and takes a long time. So, it is necessary to leave between law enforcers, related agencies, and the community in order to carry out this environmental law enforcement process (Hamzah, 2005). Environmental law is the whole regulation that regulates the behavior of people about what they should do to the environment, the implementation of these regulations can be imposed with a sanction by the authorities. Environmental law can also be interpreted as a branch in legal disciplines relating to legal regulation of the behavior or activities of legal subjects in the use and protection of natural and environmental resources and human protection from negative impacts arising from the use of natural resources (Rahmadi, 2013). Drupsteen (1990) divides environmental law in two main areas. The first is environmental health law (millieuhygienerecht), which is a law relating to policies in the field of environmental health, by maintaining the conditions of ground and air water and relating to the background of human actions harmonized with the environment. The second is the environmental protection law (millieubeschermingsrecht) which is a collection of various laws and regulations in the field of environmental management related to the biotic environment and to a certain extent also with the anthropogenic environment. In essence, environmental law is a law that develops in accordance with environmental developments and legal awareness of the environment. From that awareness the legal attention, so that

branches of environmental law developed. With the existence of environmental law, it will create an environment free of pollution and destruction due to human activities that exploit nature to fulfill their own needs, because this environmental law regulates any activities carried out by humans so as not to pollute and damage their environment.

#### 4 REGULATIONS AND CLASSIFICATION OF HAZARDOUS WASTES

Article 28 I Paragraph (4) and (5) of the 1945 Constitution affirms that the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the Government. This means that in this case also relates to Indonesia as a state of law, that regarding the implementation of enforcement and protection of human rights is guaranteed, stated, and regulated in a statutory regulation. As an example of hazardous waste, medical waste is waste originating from hospitals, clinics, or other health care facilities. This medical waste is generated from the process of activities that occur in the environment of health care facilities, which can transmit various diseases. Medical waste according to the Decree of the Minister of Health of the Republic of Indonesia No. 1204 / MENKES / SK / X / 2004 concerning Environmental Health Requirements of Hospitals, is all waste generated from hospital activities in the form of solid, liquid and gas. More specifically, Muchtar (2016) states that there are various types of medical waste depending on the potential hazards they cause can be grouped as follows:

- a) Sharp objects are objects or devices that have sharp corners, sides, edges or protruding parts that can cut or pierce the skin such as hypodermic needles, intravenous equipment, pasteur pipettes, broken glass, scalpels. Wasted sharp objects may have been contaminated with blood, body fluids and toxic materials.
- b) Infection waste includes waste related to patients who require isolation of infectious diseases, laboratory waste resulting from examination of infectious diseases, body tissue waste, dialysis unit waste, and contaminated equipment waste.
- c) Body tissue waste includes body tissues, organs, limbs, placenta, blood and other body fluids that are removed during surgery and autopsy.
- d) Cytotoxic waste is waste contaminated with cytotoxic drugs during compounding, transportation or cytotoxic therapy.
- e) Pharmaceutical waste includes medicines that have expired, drugs that are no longer used, or waste produced by drugs.
- f) Chemical waste resulting from the use of chemicals in medical, laboratory, research and sterilization processes. This chemical waste also includes pharmaceutical waste and cytotoxic waste.
- g) Radioactive waste is material contaminated with radio isotopes derived from medical use and radionuclide research.
- h) Plastic waste is plastic material produced by clinics, hospitals and other health facilities, such as medical equipment and supplies such as infusion hoses and so on.

This hazardous waste is waste which belongs to the class of hazardous and toxic waste. As in Article 1 Number 21 and 22 of Law 32/2009 concerning Protection and Management of the Environment, it is stated that hazardous and toxic materials are substances, energy, and / or other components due to their nature, concentration, and / or the amount, both directly and indirectly, can pollute and / or damage the environment, and / or endanger the environment, health, and the survival of humans and other living creatures. According to Article 5 Paragraph (2) in Government Regulation Number 101 of 2014 concerning Management of Hazardous and Toxic Waste, that the characteristics of hazardous waste as intended, include materials (a) explosive, (b) flammable, (c) reactive, (d) infectious, (e) corrosive; and / or (f) toxic. In the characteristics of hazardous waste, of course this chemical waste is waste that is in accordance with these criteria, so that it can be said that chemical waste is waste containing hazardous and toxic substances. Chemical waste, both directly and indirectly, can potentially cause environmental pollution and health problems for visitors, health workers, and the surrounding community. Therefore, this chemical waste must be handled specifically. In handling the chemical waste this can be demonstrated from the management of chemical waste. Management of this kind of chemical waste is different from ordinary waste management, because chemical waste as mentioned above is waste which belongs to the category of specific waste, namely Hazardous waste. In principle, the management of chemical waste is part of environmental health activities in health care facilities, for example hospitals, which aims to protect the public from the potential dangers of environmental pollution from hospital medical waste. In essence, according to the Decree of the Minister of Health of the Republic of Indonesia Number 1204 / Menkes / SK / X / 2004 concerning Hospital Environmental Health In terms of requirements in managing medical waste, waste minimization is first carried out, ie each hospital is required to reduce waste starting from its source, then must manage and supervise the use of hazardous and toxic chemicals. After waste minimization, segregation, storage, reuse and recycling of medical waste are carried out in ways that are in accordance with the operational standard provisions set out in this decision. After that, collecting, transporting and storing medical waste is carried out in the hospital environment. Then transportation of medical waste is carried out outside the hospital environment using special vehicles. Moreover, the processing and destruction of chemical waste is carried out, which of course in the series from the start of collection, transportation of storage, processing and destruction is required to have a special permit from the government.

## 5 HAZARDOUS WASTE AND LAW ENFORCEMENT

Enforcement of environmental law is an effort to achieve compliance with regulations and requirements in general and individual legal provisions, through supervision and application (or threats) of administrative, judicial and civilian facilities (Erwin, 2011). The social fact that found the disposal of chemical waste in Panguragan has actually happened for many years and only discovered the existence of this chemical waste in 2016. The Environmental Studio then filed a complaint with the Cirebon Regency Environmental Agency, but due to the lack of evidence of disposal This illegal chemical waste in Panguragan has not received any action. Then in 2017, this community again filed a complaint with the

Environmental Agency by bringing sufficient evidence to do the prosecution. And directly responded by the Office of the Environment of West Java Province in coordination with the Environmental Office of Cirebon Regency and the Ministry of Environment of the Republic of Indonesia, and certainly caused disruption to public health as well as the environment. Discharged medical waste not only comes from hospitals located in the Cirebon Regency area, but also in large cities outside West Java even from outside Java. The problem is that the impact of the disposal of chemical waste is certainly very dangerous for the health of the environment and the health of the surrounding community. This also violates applicable law. For this reason, there is a need for law enforcement for the disposal of illegal chemical waste. Law enforcement on the disposal of illegal chemical waste is basically handling this is not the authority of the District Environmental Service but is the authority of the Central Government, in this case the Ministry of Environment and Forestry (KLHK) to handle cases that occur in Panguragan. Because, regarding the licensing of medical waste management issued directly by the Ministry of Environment and Forestry (KLHK), the District Environmental Service only issued recommendations. The Ministry of Environment and Forestry to date has made several efforts to enforce the law on the disposal of chemical waste, these efforts are:

1. Conduct coordination meetings between the Provincial and Regional Environmental Services, the Ministry of Environment, and the Ministry of Health.
2. The Ministry of Environment verifies the field.
3. Installing a police line at each warehouse that stores medical waste.
4. Determine suspects in this environmental crime, namely the shabby businessman in Panguragan.
5. Formulate a criminal offense committed by a suspect.
6. In the civil sector, the Ministry of Environment has calculated the losses incurred by taking samples of water quality, airborne land around the disposal and processing of medical waste so that the level of pollution is caused and how much it is lost.

The Cirebon Regency Environmental Agency in coordination with the Provincial Environmental Service until the Ministry of Environment and Forestry has made law enforcement efforts, only the process has not been carried out in synergy with other components needed for the purpose of achieving legal objectives through law enforcement, law enforcement processes environment requires various legal instruments. In administrative law enforcement of persons / entities violating environmental permits, according to Article 89 Paragraph (2) Cirebon Regency Regulation Number 6 of 2016 concerning Environmental Protection and Management will be subject to administrative sanctions, through written reprimand, government coercion, license suspension environment, or revocation of environmental permits. In the violation that occurred in Panguragan for the application of administrative sanctions, namely sealing of medical waste storage warehouses. And permits for non-Hazardous waste management have also been revoked. So that there is no longer visible activity in the stockpiling warehouse. Enforcement of this administrative law must be done to prevent other environmental crimes from occurring and also to stop the impacts caused by these environmental crimes. Civil law enforcement aims to provide legal protection to the

environment as well as victims who suffer losses as a result of environmental pollution or damage. In enforcing environmental law in a civil manner this is usually done by filing a claim for compensation for environmental pollution, namely through a lawsuit against the law. Article 100 of Cirebon District Regulation Number 6 of 2016 concerning Protection and Management of the Environment, that every person whose actions, business, and / or activities use, produce and / or manage Hazardous waste, and / or that pose a serious threat to the environment responsible for the loss that occurs without the need to prove the element of error. The business actor is storing illegal medical and hazardous waste, must be absolutely responsible (strict liability) because it has posed a serious threat to the environment. In addition, of course there are other parties who are also potentially involved in this illegal activity, which still needs further investigation by the authorities. So that it can be known, who is the one who must be responsible for the loss for the environment and the surrounding community. In the Cirebon Regency Regulation Number 6 of 2016 concerning Environmental Protection and Management, there are a number of prohibitions that may not be carried out by every person / body and if they violate them, sanctions will also be imposed in the Regional Regulation. The Environmental Protection and Management Law, namely Law Number 32 Year 2009 regulates criminal sanctions for the management of hazardous waste that is not in accordance with the provisions, namely in Article 102 and Article 103 and Article 104. This case in Panguragan, according to the information from the Cirebon Regency Environmental Service, has been determined by someone who is the suspect and according to him the formulation of crimes committed by the suspect has also been made, but in this case it has not yet been decided how much the sentence will be imposed on the suspect. The threat of criminal penalties written in these articles does not reflect the principle of justice for the community as a result of the impact caused by his actions, namely the perpetrators of environmental crimes who have violated the provisions concerning the management of Hazardous waste. The impact of the management of hazardous waste that is incorrect and not in accordance with the applicable procedures is not proportional to the criminal threat. So that it needs to be corrected regarding the criminal threat to the perpetrators of these environmental crimes. This is reasonable because the community has the right to a clean and healthy environment as part of human rights and on the other hand the accumulation of chemical waste is very dangerous to public health. The process of law enforcement in cases of disposal of hazardous waste has not been optimally enforced and indeed still has to take a long enough process to achieve legal objectives, namely for certainty, justice and expediency. Fulfillment of rights and obligations as a human being towards the environment will balance the preservation of environmental functions and avoid pollution or damage to the environment. For this reason, the problems that occur in Panguragan require public legal awareness about environmental functions, and people here are not only Panguragan residents but also hazardous waste and non-Hazardous waste management business actors, starting from waste producers, waste collectors, waste users, waste transporters until the waste processor must have that awareness. The legal function as an agent of social control is not only because the existing law cannot follow the development of the community, but can also be caused by lack

of legal awareness of the community, so that violations can occur as happened in Panguragan. The handling of chemical waste in Panguragan Cirebon Regency by the Cirebon District Government is coordinating with the West Java Provincial Office of Environment and the Indonesian Ministry of Environment and Forestry to conduct investigations and inventory of evidence of violations of the law regarding the discovery of chemical waste in temporary storage areas of waste on the riverbank and the discovery of chemical waste in the warehouse. The local government in this case is the Cirebon District Environmental Agency confiscating evidence in the form of chemical waste and reforestation of land contaminated with chemical waste, chemical waste disposal sites on the banks of the river. The handling of chemical waste needs to be carried out by the Cirebon District Government seriously because it is a hazardous and toxic waste, this chemical waste has various impacts on human health and the health of its environment. This chemical waste is waste that has been contaminated with viral diseases.

## 6 CONCLUSION

Enforcement of environmental law through administrative legal instruments has been carried out, namely by sealing the chemical waste storage warehouse and revocation of business activity licenses. And the use of civil law instruments is carried out in advance of activities to carry out an inventory of water, soil and air samples around the disposal of chemical waste to calculate the level of environmental pollution due to illegal chemical waste management activities so that it can know what the losses must be paid environment caused. On the other hand, the use of criminal law instruments, for this matter, there is no certainty, only the Cirebon Regency Environmental Agency has known that a suspect has been established and no trial has been held for the case. The policy carried out by the Regional Government of Cirebon Regency is through efforts to coordinate authority with the Provincial Environmental Service and the Indonesian Ministry of Environment and Forestry in its handling and reforestation of the land which was originally a chemical waste disposal site on the riverbank. The findings highlight the importance of the steps of the Cirebon District Government, specifically the Cirebon District Environmental Office to further improve supervision by forming environmental supervisory officials who are functional officials, so there are no more violations of the management of hazardous waste. In addition, there is a need to improve the rules regarding the management of hazardous and toxic materials in Cirebon Regency, so that the rules are clear and definite, so as not to create overlapping authority between the Central Government and Regional Governments in enforcing the law for the creation of certainty, fair and useful for the community.

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