

THE GOVERNMENT'S RESPONSIBILITY IN ENFORCING THE LAW ON PLASTIC POLLUTION IN THE SEA

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ABSTRACT

The proliferation of plastic pollution in the sea has emerged as a critical global issue, posing severe threats to marine ecosystems and human health. This study delves into the government's responsibility in addressing plastic waste pollution in Indonesian waters, where plastic waste has become a significant environmental concern. Despite existing regulations, the enforcement of laws related to plastic waste pollution remains inadequate, with various challenges hindering effective implementation. By employing a juridical-normative approach, this research analyzes the government's role in preventing environmental pollution and enforcing laws pertaining to plastic waste pollution in the sea. Key findings highlight the necessity for specific regulations targeting plastic waste management and the importance of enhancing law enforcement mechanisms. Recommendations include strengthening preventive measures, such as awareness campaigns and administrative sanctions, to foster responsible plastic waste management practices.

KEYWORDS

Plastic pollution, marine debris, waste management, environmental law enforcement, government responsibility.



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INTRODUCTION

The issue of waste is a topic that is always discussed and has become a global problem. The definition of waste according to the Republic of Indonesia Law Number 18 of 2008 Concerning Waste Management (Waste Management Law) Article 1 states, "Waste is the residue of human daily activities and/or natural processes in solid form." Based on data from the Ministry of Environment and Forestry in 2017, the composition of waste in Indonesia by type is dominated by organic waste with a percentage of 60%, followed by plastic waste at 14%, and other types of waste at 36%.

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Plastic is a material commonly used in everyday life. In all aspects of human life, from household needs to large-scale industries, the use of plastic as a raw material is indispensable, ranging from food and beverage packaging, plastic bags, household appliances, children's toys, sports equipment, medical equipment, and even electronic devices. Research indicates that global plastic production has increased, reaching 348 million tons in 2017, and 359 million tons in 2018. The Organization for Economic Cooperation and Development (OECD) stated in 2021 that there were 460 million tons of plastic used, sharply increasing from 353 million tons in 2020. In Indonesia, there has been an increase in plastic waste from 11% in 2010 to 17% in 2021. In 2022, Indonesian society generated 69 million tons of waste, of which 18.2% or 12.5 million tons were plastic waste. In 2015, Indonesia was the second-largest contributor of plastic waste after China, but in 2020, Indonesia ranked third after China, with 565.3 million kg of plastic waste ending up in the ocean.

One of the major contributors to environmental pollution, both on land and sea, is plastic waste. Rivers are a repository for plastic waste, much of which will eventually flow into the ocean. According to the United Nations Environment Programme (UNEP) report, plastic has become the largest, most dangerous, and most persistent part of marine litter, comprising at least 85% of total ocean waste, resulting in an estimated 75 to 199 million tons of plastic found in our oceans. Plastic waste dumped in coastal and marine areas will settle in coastal ecosystems such as mangroves, seagrasses, and coral reefs. Plastic poses a significant environmental pollution problem because of its non-biodegradable nature, taking hundreds of years to decompose naturally. Over time, plastic waste in the waters will undergo degradation processes through biodegradation mechanisms by microorganisms and photodegradation by light into smaller particles known as microplastics. Microplastics are small plastic particles measuring less than 5 mm. There are two types of microplastics: primary and secondary microplastics. Primary microplastics are intentionally produced small pieces of plastic, usually used in facial cleansers, cosmetics, hand scrubbers, and air-blast technologies. Secondary microplastics are fragments or results of fragmentation from larger macroplastics. The presence of plastic waste in marine waters will have negative impacts on marine life. Large plastic waste, such as fishing lines and nets, often cause entanglement in animals. Smaller plastic waste, such as bottle caps, lighters, and plastic pellets, can be ingested by aquatic organisms, causing intestinal blockages and potential chemical poisoning. Microplastic particles are potentially toxic to fish, both physically and chemically, as they can absorb addictive substances and other toxic monomers; moreover, the presence of microplastics in fish bodies can reduce fish fitness and subsequently lead to death. Microplastics can disrupt human health through the food chain, as when humans consume contaminated food. The presence of microplastics and nanoplastics in the human body can trigger cancer, digestive disorders, growth retardation, shortened lifespan, and reproductive system disturbances.

The government plays a crucial role in preventing plastic pollution in the sea, given its enormous danger to both marine life and humans. A clean and healthy environment is a human right that must be protected by the state, as mandated in the Constitution of the Republic of Indonesia 1945 (UUD 45) Article 28H

Paragraph 1 which states, "Every person has the right to live prosperously physically and spiritually, to have a place to live, and to get a good and healthy environment as well as the right to obtain health services." The lack of awareness among the public in disposing of plastic waste in appropriate places, not sorting it, using plastic bags in shopping areas, and disposing of plastic waste into the sea by industrial perpetrators. Rules to protect the environment are clearly stated in the Republic of Indonesia Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), but in practice, they do not run harmoniously and consistently.

This research aims to analyze the government's responsibility for environmental pollution and the enforcement of laws related to plastic waste pollution in the sea. There are two main problem formulations in this study, namely the government's responsibility for environmental pollution and law enforcement related to plastic waste pollution in the sea. Thus, this study has two objectives: to contribute to the development of science, especially in the field of health law, by providing input on government responsibility and to serve as consideration for the government in law enforcement related to plastic waste pollution in the sea. The practical benefits of this research are to provide information to readers about the government's responsibility in providing oversight to prevent plastic pollution in the sea. The theoretical framework used in this study includes responsibility theory, government definition according to the law, law enforcement concepts, and the definition of marine pollution based on the regulations of the President of the Republic of Indonesia. By using this theoretical framework, the study will analyze the government's responsibility and law enforcement efforts related to plastic waste pollution in the sea.

RESEARCH METHOD

The research method used in this study is juridical-normative, which examines the application of rules or norms contained in positive law. The statutory approach is used to study and analyze laws and regulations related to the legal issues under investigation. The second approach is the conceptual approach, which stems from views and doctrines that have developed within the field of law.

RESULT AND DISCUSSION

Government Responsibility for Environmental Pollution

The term "responsibility" in the Indonesian Dictionary (KBBI) means the state of being obliged to bear everything or one's awareness of the obligation to bear all consequences of one's actions. The concept of responsibility encompasses rights and obligations regarding everything that is done.

Responsibility means the obligation to bear responsibility and losses suffered when demanded, both in the legal and administrative fields.

There are two terms that refer to responsibility, namely liability (the state of being liable) and responsibility (the state or fact being responsible). Liability is a broad legal term that encompasses almost every risk or responsibility character referring to all rights and obligations characters. Liability also means a condition

responsible for actual matters or matters that can cause harm, threats, crimes, costs, or burdens. Responsibility means being accountable for an obligation, including decisions, skills, abilities, and capabilities, as well as having the responsibility to uphold or compensate for any damage caused.

Based on the mandate of the 1945 Constitution stating that a good and healthy environment is a basic and constitutional right for every Indonesian citizen, the state, government, and all stakeholders have a responsibility to protect and manage the environment in implementing sustainable development so that the Indonesian environment can remain a source and support for the lives of Indonesian people and other living beings.

The definition of the environment according to the Environmental Protection and Management Law (UUPPLH) Article 1 is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, that affect nature itself, the sustainability of life, and the well-being of humans and other living beings.

The Indonesian environment must be protected and managed properly based on the principles of state responsibility, sustainability, and justice. In addition, environmental management must provide economic, social, and cultural benefits based on the principles of caution, environmental democracy, decentralization, and recognition and appreciation of local wisdom and environmental wisdom as stipulated in UUPPLH Article 2 on the Principles of environmental protection and management.

Based on the UUPPLH, the principle of state responsibility means:

1. The state guarantees that the utilization of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the current and future generations.
2. The state guarantees the rights of citizens to a good and healthy environment.
3. The state prevents activities that utilize natural resources causing pollution and/or environmental damage.

From the above description, it can be seen that the state, government, and policy stakeholders have a responsibility to preserve, protect, and manage the environment to prevent pollution and damage.

In carrying out the principle of responsibility for pollution and environmental damage, one of the efforts to be made is preventive and repressive efforts. Article 13 of the UUPPLH explains that the control of environmental pollution and/or damage is carried out by the Government, local governments, and responsible parties according to their respective authorities, roles, and responsibilities through three mechanisms: prevention, control, and restoration.

One prevention effort in controlling environmental pollution is to optimize monitoring and licensing instruments, for example, Environmental Impact Assessment (AMDAL). Every activity that has a significant impact on the environment must have an AMDAL, which is a preventive measure to prevent environmental damage and a prerequisite for obtaining environmental permits.

Another prevention effort in controlling environmental pollution and damage is the Strategic Environmental Assessment (KLHS). Article 15 of the UUPPLH

states that the Government and local governments are obliged to prepare and implement KLHS to ensure that the principles of sustainable development are the basis and integrated into the development of a region and/or policies, plans, and/or programs so that every development planning always considers environmental aspects.

In terms of regulations as a prevention effort against environmental pollution, it is regulated in Article 44 of the UUPPLH, which states: "Every formulation of laws and regulations at the national and regional levels must consider the protection of the function of the environment and the principles of protection and management of the environment as regulated in this Law." Therefore, the Government and local governments in drafting all regulations must not contradict the UUPPLH and refer to the regulations in the law.

The effort to mitigate environmental pollution according to the UUPPLH Article 53 is: Every person who causes pollution and/or damage to the environment must mitigate pollution and/or environmental damage by providing warning information about pollution and/or environmental damage to the community, isolating pollution and/or environmental damage sources, stopping pollution and/or environmental damage sources, or other methods in accordance with the development of science and technology.

Every person who causes pollution and/or damage to the environment must restore the function of the environment, which is done through stages: a. stopping pollution sources and cleaning pollutants; b. remediation; c. rehabilitation; d. restoration; and/or e. other methods in accordance with the development of science and technology.

The implementation of environmental pollution control, including prevention, control, and restoration, requires supervision from the government and the participation of law enforcement agencies, but in reality, law enforcement agencies are not firm in monitoring and imposing sanctions on individuals or corporations that violate these provisions.

The Government has the right to sue in carrying out its responsibility in controlling and managing the environment to prevent more severe pollution and/or damage as stated in Article 90 of the UUPPLH, which states, "Government agencies and local governments responsible for environmental matters have the authority to file claims for compensation and take certain actions against businesses and/or activities that cause pollution and/or environmental damage resulting in environmental losses." The central and local governments need to maximize their roles, even though in reality, there are still many violations of environmental regulations committed by individuals or corporations that are not sued by the government.

Government responsibility in preventing marine pollution is carried out by issuing Government Regulation of the Republic of Indonesia Number 22 of 2021 concerning the Implementation of Environmental Protection and Management (Environmental Regulation). In Environmental Regulation Articles 220-271 regulate the management and protection of sea quality. The implementation of the protection and management of sea quality aims to:

1. Protect the territory of the Unitary State of the Republic of Indonesia from sea pollution and/or damage.
2. Ensure the continuity of life and the sustainability of Sea Quality.

3. Guarantee the fulfillment and protection of the right to sea quality as part of human rights.
4. Achieve harmony, compatibility, and balance of sea quality to achieve sustainable development.

In the Environmental Regulation, the implementation of sea quality protection and management is carried out by ministers and governors, which includes planning, utilization, control, and maintenance.

In Environmental Regulation Article 261 it is explained that the Minister, governor, or regent/mayor, in accordance with their authority, carry out prevention of marine debris originating from activities on land and/or at sea through waste reduction at the source and monitoring of marine debris.

Enforcement of Law on Plastic Waste Pollution in the Sea

Environmental Law Enforcement

In enforcing this law, three things must be considered, namely legal certainty, utility, and justice. Satjipto Rahardjo in his book "Legal Enforcement Issues" stated that law enforcement is an effort to realize ideas about justice, legal certainty, and social utility into reality. The process of realizing these ideas is the essence of law enforcement. Environmental law enforcement can be defined as the application of governmental legal power to ensure compliance with environmental regulations by:

1. Administrative supervision of compliance with environmental regulations (inspection) (especially preventive activities);
2. Administrative action or sanctions in cases of non-compliance (corrective activities);
3. Criminal investigation in cases of alleged violations (repressive activities);
4. Criminal action or sanctions in case of violations (repressive activities);
5. Civil action (legal action) in case of (threatened) non-compliance (preventive or corrective activities).

Environmental law enforcement in the context of environmental pollution control can be distinguished into three aspects:

1. Administrative environmental law enforcement by government officials.
2. Criminal environmental law enforcement carried out through judicial legal procedures.
3. Civil enforcement of environmental law and environmental dispute resolution pursued through litigation or non-litigation.

Environmental law enforcement is closely related to law enforcement agencies and the compliance of individuals and corporations with existing laws and regulations. The capacity of law enforcement agencies in the environmental field is still weak and needs improvement. Environmental law enforcement agencies include not only police, judges, prosecutors, and lawyers but also authorized officials who grant permits and officials who supervise enforcement in the field of environmental law administration.

Administrative environmental law enforcement aims to directly stop environmental pollution at its source according to the principle of supervision. Periodic monitoring is carried out on activities that have environmental permits as a monitoring effort, and compliance with licensing requirements by agencies authorized

to issue environmental permits. The general legal basis for supervision as a means of administrative environmental law enforcement in controlling environmental pollution in Indonesia is Articles 71-75 of the Environmental Protection Law. These articles stipulate that those authorized to supervise compliance with environmental management permits and to supervise environmental management permits are the minister, governor, or regent/mayor according to their authority. In carrying out supervision, the Minister, governor, or regent/mayor appoints environmental supervisory officials who are functional officials. In carrying out their duties, environmental supervisory officials may coordinate with civil servant investigator officials.

Administrative sanctions against environmental violators are regulated in Article 76 of the Environmental Protection Law, in the form of:

1. Written warnings
2. Government coercion
3. Suspension of environmental permits
4. Revocation of environmental permits.

These administrative sanctions do not absolve the business responsible from the responsibility of restoration and criminal liability. Government coercion may include temporary cessation of production activities, relocation of production facilities, closure of wastewater or emission outlets, demolition, confiscation of goods or equipment potentially causing violations, temporary cessation of all activities, or other actions aimed at stopping violations and restoring environmental functions.

The means of supervision in the field of environmental pollution control have not been comprehensively regulated. The existence of this reality confirms that administrative environmental law enforcement in the context of controlling environmental pollution through preventive juridical means has not been optimally implemented. The mastery of methods and techniques for controlling environmental pollution among administrative environmental law enforcement officers is still limited. There are differences in understanding the substance and mechanism of supervising compliance with environmental licensing requirements.

Criminal sanctions for environmental pollution and/or damage are regulated in Articles 97-120 of the Environmental Protection Law. Based on Article 1 number 14 of the Environmental Protection Law and Articles 97-120 of the Environmental Protection Law, the definition of environmental pollution offense is an act committed intentionally or due to negligence resulting in the entry or introduction of living creatures, substances, energy, and/or other components into the environment by human activities exceeding the environmental quality standards set. The subject responsible for criminal liability is "every person," whether individuals or legal entities. The formulation of environmental offenses has two basic components: the act and the consequences caused. Determination of environmental offenses as material offenses or formal offenses has legal consequences related to evidence (proof) and determination of causal relationships (causality) between polluting acts and environmental contamination. The main function of investigating and prosecuting environmental pollution and its case processes in court is to examine facts and not their legality. The truth of the facts must be found in the criminal justice mechanism so that judges can choose the right law to make decisions. Criminal sanctions are considered less effective in controlling environmental pollution as they only inflict

punishment on the perpetrator without correcting their polluting behavior. Criminal sanctions that are merely punitive without providing incentives to correct the actions of the perpetrators may not encourage positive behavior. A more holistic approach, such as a combination of criminal sanctions and rehabilitation and environmental restoration measures, may be more effective in producing behavioral changes and mitigating the impact of pollution and/or damage.

Enforcement of Law on Plastic Waste Pollution in the Sea

Plastic pollution can be defined as the disposal/introduction of substances or goods containing plastic, synthetic latex, or polyethylene, thermoplastic synthetic polymeric materials into the environment which can potentially contaminate/damage the environment. Plastic waste pollution in Indonesian waters is very concerning because based on data from 2020, Indonesia ranked third after China with 565.3 million kg of plastic waste ending up in the oceans. Pollution of the sea by plastic waste occurs due to excessive production and use of plastic products, improper plastic waste management, and disposal of plastic waste into the sea, whether done individually or corporately.

According to the Republic of Indonesia Law Number 18 Year 2008 Concerning Waste Management (Waste Management Law), waste is defined as the residue of human daily activities and/or natural processes in solid form. The Waste Management Law categorizes waste into (a) household waste; (b) similar waste to household waste; and (c) specific waste. Household waste originates from daily activities within households, excluding feces and specific waste. Specific waste includes: (a) waste containing hazardous and toxic substances; (b) waste containing hazardous and toxic waste; (c) waste arising from disasters; (d) debris from building demolition; (e) waste that cannot be processed technologically; and/or (f) waste arising irregularly. The Waste Management Law does not regulate waste management based on whether it is easily biodegradable or not, and even the term "plastic waste" is not found in this law. Similarly, Government Regulation of the Republic of Indonesia Number 81 Year 2012 concerning Household Waste and Similar Waste Management (hereinafter referred to as Household Waste Management Regulation) also does not regulate plastic waste. The term "plastic" is found in the explanation of Article 11 of the Household Waste Management Regulation regarding examples of implementation to limit waste generation, including the use of recyclable and biodegradable items, limiting the use of plastic bags, and avoiding the use of single-use items or packaging. Based on these conditions, it can be said that both the Waste Management Law and the Household Waste Management Regulation have not specifically regulated plastic waste.

To address the issue of plastic waste in the sea, the government needs to create specific regulations regarding plastic waste given the urgency that excessive use and environmental pollution by plastic waste in Indonesia have reached a dangerous stage. In 2018, the Government through Presidential Regulation of the Republic of Indonesia Number 83 Year 2018 concerning Handling of Marine Debris (Marine Debris Regulation) specifically regulates marine debris, especially plastic. Through this regulation, the government is committed to implementing action plans to reduce marine debris, especially plastic, by 70% by 2025. The Action Plan for

handling marine debris includes strategies such as: a. national awareness-raising movements for stakeholders; b. management of land-based waste; c. mitigation of coastal and marine debris; d. mechanisms for funding, institutional strengthening, supervision, and law enforcement; and e. research and development.

In Government Regulation of the Republic of Indonesia Number 27 Year 2020 concerning Specific Waste Management (Specific Waste Regulation), Paragraph 4 regulates Handling of Waste Arising on Coastal Areas, Seas, and Inland Waters. Article 57 of the Specific Waste Regulation explains that the responsibility for managing waste arising on the coast, sea, and inland waters lies with the central government, provinces, and regencies/cities. Handling of waste includes activities such as sorting, collection, transportation, processing, and/or final disposal.

Although the government has issued regulations on controlling plastic waste, society still excessively uses plastic products such as single-use plastic bags for packaging and containers, while industries continue to produce environmentally unfriendly plastic goods. The government is committed to implementing action plans to reduce marine debris, especially plastic, by 70% by 2025. The Action Plan for handling marine debris includes strategies such as: a. national awareness-raising movements for stakeholders; b. management of land-based waste; c. mitigation of coastal and marine debris; d. mechanisms for funding, institutional strengthening, supervision, and law enforcement; and e. research and development.

Several factors contribute to society's negligence in environmental conservation and indiscriminate waste disposal: predisposing factors stemming from individuals due to lack of knowledge, external factors such as the absence of waste disposal facilities, and reinforcing factors from external sources, such as others who also dispose of waste indiscriminately, leading individuals to emulate similar behavior. Another factor is lax law enforcement against individuals who dispose of plastic waste indiscriminately, private sectors that still use plastic bags for shopping, corporations and industries that produce or use plastic in their production processes without proper plastic waste management, thus the existing regulations are merely regulatory without strong sanctions.

Some regions have enacted Regional Regulations (Perda) on restricting the use of plastic bags and managing plastic waste for recycling, but due to their advisory nature and the absence of strong sanctions, plastic usage has not been effectively controlled. There is a need for administrative sanctions against individuals who still use single-use plastic bags and industry players who do not manage plastic waste according to regulations.

Enforcement of laws related to marine plastic waste can be done preventively and repressively. Preventive law enforcement, carried out through supervision and enforcement, therefore, in law enforcement, the field of marine plastic waste does not necessarily have to directly impose administrative or criminal sanctions, but preventive measures can be used as an effective implementation approach. Preventive law enforcement is recommended because it builds greater public awareness of the importance of good plastic waste management.

CONCLUSION

One of the main contributors to environmental pollution, both on land and sea, is plastic waste. Plastic has become the largest, most dangerous, and most persistent part of marine debris. The presence of plastic waste in marine waters will have negative impacts on marine life, as it can cause entanglement of animals, ingestion by aquatic organisms leading to intestinal blockages, and potential poisoning from chemical substances. Microplastic particles are potentially toxic to fish, reducing their fitness and causing death. Microplastics can also affect human health through the food chain, potentially causing cancer, digestive disorders, growth impairment, shortened lifespan, and reproductive system disturbances.

Indonesia's environment must be protected and managed well based on the principles of state responsibility, sustainability, and justice. The government plays an important role in preventing plastic waste pollution in the sea. Marine pollution from plastic waste occurs due to excessive production and use of plastic products, improper plastic waste management, and disposal of plastic waste into the sea, whether done individually or corporately.

The government is committed to implementing action plans to reduce marine debris, especially plastic, by 70% by 2025. The Action Plan for marine waste management includes strategies such as: a. national awareness-raising movements for stakeholders; b. management of land-based waste; c. mitigation of coastal and marine debris; d. mechanisms for funding, institutional strengthening, supervision, and law enforcement; and e. research and development.

Law enforcement, including administrative, criminal, and civil sanctions for plastic waste pollution in the sea by the government against the community, private sectors, and industries, is not stringent, thus limited to regulations without implementation.

There is a need for socialization and education for the community about the dangers of plastic to marine life and humans, the need for proper waste sorting, disposal, and recycling processes to raise awareness in society and actively participate in preventing plastic waste pollution in the sea.

There is a need for government action to mobilize the community, private sectors, and industries in the plastic waste recycling process to turn it into other useful materials.

The application of strict administrative sanctions and fines to individuals and corporations for violating regulations on the use of single-use plastics, improper disposal of plastic waste, production or use of plastics in their production processes, and failure to properly manage plastic waste leading to environmental pollution in general and marine pollution in particular.

There is a need to enhance the capabilities of law enforcement officials in the environmental field, which should include not only police, judges, prosecutors, and lawyers but also authorized officials granting permits and those responsible for oversight so that law enforcement in the environmental field, especially in preventing plastic waste pollution in the sea, is carried out effectively.

Strict fines and penalties in accordance with Waste Management Law (UUP-PLH) for individuals or corporations importing plastic waste into Indonesian territory, carrying out waste management activities without regard to norms, standards,

procedures, or criteria that may cause public health disturbances, security disturbances, environmental pollution, and/or environmental destruction.

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