

Normative Problems in Settlement of Waste Disputes in Court According to Law Number 18 of 2008 Concerning Waste Management

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ABSTRACT

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Garbage production keep increasing along with population growth that the waste can be the source of contention if it is not properly managed. Accordingly, dispute resolution in waste management is currently governed by waste management law no. 18 of 2008. The rules governing it, however, remain vague. This study is normative and follows a statutory approach. According to the findings, the aforementioned law, in particular, does not clearly define waste management officers as dispute parties. In which it violates the principle of formula clarity enshrined in Law No 12 of 2011; the establishment of law and regulation, as last amended by Law No 13 of 2022; Second Amendment to Law No 12 of 2011, which is the Invitation to Form Legislation. To summarize, the ambiguity in waste management definition can eventually lead to legal certainty; waste disputes.

Introduction

In developed and developing countries, the urban population will continue to grow in, as will the urbanization. Between 1950 and 1970, the urban population in developed countries increased by 57%, while in developing countries it increased by 137% and is expected to double by 2000.¹ The country's rapid urban population growth causes numerous issues, including the waste problem. Garbage is the solid residue of human daily activities and/or natural processes.² In fact, rural residents generate fewer waste than urban residents because they consume less packaged and manufactured goods.³ Referring to the data in 2000, 2.9 billion people living in cities, or 49% of the world's population, generated more than 3 million tonnes of solid waste per day; by 2025, this figure will have more than doubled.⁴

In Indonesia, there is a trend of increasing urbanization, with predictions that by 2035, 67% of Indonesian will live in cities, while 33% of them will live in rural areas.⁵ The increase in urban population has exponentially escalate waste in cities, and with only 15% to 40% of waste being managed, diminishing environmental quality.⁶ Inadequate waste management results in groundwater pollution caused by waste leachate, a breeding ground for pathogenic animals, and air pollution caused by waste combustion. If this is not addressed immediately,

¹ Andrei Rogers, "Sources of urban population growth and urbanization, 1950-2000: a Demographic Accounting", *Economic Development and Cultural Change*, Vol. 30. No. 3. April 1982, p. 486.

² Article 1 point (1) Law Number 18 of 2008 concerning Waste Management.

³ Hoornweg, D., Bhada-Tata, P., & Kennedy, C. (2013). Environment: Waste production must peak this century, *Nature*, Vol. 502. October 2013, p. 616

⁴ *Ibid.*

⁵ Ida Bagus I. Malik, "A Study on Population Growth and the Effect on the Urban Area in Indonesia", *Papers*, Doctoral Dissertation of The University of Kitakyushu: Kitakyushu, Japan. September 2019, p.6.

⁶ Jean-Jacques Dethier, "Trash, Cities, and Politics: Urban Environmental Problems in Indonesia", *Indonesia Journal*. Vol. 103. April 2017, p. 75.

environmental quality will deteriorate. Finally, poor environmental quality will also affect public health. According to Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, everyone has the right to a good and healthy environment. Thus, the government is obliged to seek solutions to all waste management issues.

Indeed, the government has attempted to overcome the waste problem through a series of policies covering 5 (five) aspects: institutional, financing, regulatory (legal), community participation, and operational technical.⁷ In terms of the institutional aspect, waste management in Indonesia remains multi-sectoral, with no functional separation between operators who carry out waste management activities, and regulators who formulate policies and oversee their implementation.⁸ This institutional ambiguity is related to regulatory (legal) aspects of waste management. In Indonesia, the legal framework for waste management establishes in Waste Management Law Number 18 of 2008. A dispute between waste management officer and the local government or the waste management officer and the community cannot be ruled out. Such dispute arises due to suspicions, disruption and/or loss to public health and/or the environment caused by waste management activities. According to the Waste Management Law, a waste management officer is one of the parties in the waste dispute, but it does not specify who this actually refers to.

Studies on similar topics have piqued the interest of some researchers, such as Dipo Gita Ambina. Her research is titled waste sorting studies according to Waste Management Law Number 18 of 2008.⁹ The research examines waste segregation according to the Waste Management Law, Minister of Environment Regulation No 13 of 2012, and Minister of Public Works and Public Housing Regulation Number 3 of 2013. Another study, titled Overview of Waste Management, was conducted by Ashabul Kahfi. The study identified waste problems and waste management policies in Indonesia.¹⁰ Meanwhile, Febrian H Kereh discusses the mechanism for resolving waste management disputes in court through lawsuits against the law; in his study entitled Waste Management Dispute Resolution in Court.¹¹ Meyla J Parengkuan et al. followed up with a study titled Dispute Resolution in Waste Management Out of Court: Waste Management Law Number 18 of 2008.¹² This research discusses the mechanism of dispute resolution out of court. It employed mediation, negotiation, arbitration, or other options of the disputing parties. According to aforementioned issues and literature studies, this article presents the ambiguity law of the subject of waste management; resolving waste disputes and providing a prescription for the problem in question.

Research Methods

This study employed normative legal research involving a statute approach. The study involved the following primary legal materials: (1) the 1945 Constitution of the Republic of Indonesia, (2) Waste Management Law No. 18 of 2008, (3) Law No. 12 of 2011; the establishment of law and regulation, as last amended by Law No. 13 of 2022; Second

⁷ Yulia Hendra, "Perbandingan Sistem Pengelolaan Sampah di Indonesia dan Korea Selatan: Kajian 5 Aspek Pengelolaan Sampah", *Aspirasi: Jurnal Masalah-masalah Sosial*, Vol. 7. No. 1. June 2016, p. 79.

⁸ *Ibid.*, p. 85.

⁹ Dipo Gita Ambina, "Tinjauan Pemilahan Sampah Menurut Undang-Undang Nomor 18 Tahun 2008 Tentang Pengelolaan Sampah", *Jurnal Bina Hukum Lingkungan*, Vol. 3. No. 2. April 2019, Pp. 171-185.

¹⁰ Ashabul Kahfi, "Tinjauan terhadap pengelolaan sampah", *Jurnal Jurisprudencie*, Vol. 4. No.1. June 2017, Pp. 12-25.

¹¹ Febrian Kereh, "Penyelesaian Sengketa Pengelolaan Sampah Di Pengadilan", *Jurnal Lex Privatum*, Vol. 1. No. 4. October 2013, Pp. 13-23.

¹² Melya J. Parengkuan, "Penyelesaian Sengketa Dalam Pengelolaan Sampah di Luar Pengadilan Menurut Undang-Undang Nomor 18 Tahun 2008 Tentang Pengelolaan Sampah", *Jurnal Lex Privatum*. Vol. 9. No. 5. April 2021, Pp. 231-239.

Amendment to Law No. 12 of 2011, (4) Government Regulation No. 81 of 2012; Household Waste Management and Household-like Waste.

The secondary legal materials, on the other hand, were in the form of scientific papers written by scholars as well as supporting and related materials from the internet. Both materials were prescriptively analyzed to generate recommendations.

Results and Discussion

Dispute is inevitable in social interaction. The Great Indonesian Dictionary defines a dispute as something that causes a difference of opinion; quarrel; debate; showdown; dispute; case (in court)¹³ Disputes can also be interpreted as disagreements between two or more people in which each party feels aggrieved by the other until it reaches a settlement in court.¹⁴ In this context, the law is needed to resolve arising disputes, such as when someone's work or interest for a living harm others.¹⁵ In the case of waste management, the rule of justice can be determine by

Waste Management Law. Waste Management Law; Article 33 paragraph (1) classifies the dispute-related into two types: 1) disputes between the government and waste management officer and 2) disputes between waste management officer and the community. If waste disputes arise, they can be resolved through channels outside or in court. Out of the court, dispute resolution options include mediation, negotiation, arbitration, or other options proposed by the disputing parties, whereas dispute resolution in court is accomplished through lawsuits against the law. A lawsuit against the law is a way of resolving waste disputes in court. Article 1365 of the Civil Code contains the general provisions governing lawsuits for unlawful acts, which states that " Every act that violates the law (*onrechtmatige daad*) and causes harm to another person; the person who caused the loss is obliged to compensate." An unlawful act must contain four elements, which are as follows:¹⁶

1. Unlawful acts (*onrechtmatige daad*), were defined narrowly as acts that violate applicable laws (*onwetmatig*). Acts against the law have only been defined broadly since 1919, including acts that are contrary to decency and contrary to prudence principles or proper social behavior.
2. Guilt (*schuld*). The perpetrator bears responsibility for any action or event that causes harm to others. Guilt can be accidental or intentional. This component determines who is obligated to restore social balance as a result of an unlawful act and who must compensate for the loss.
3. Loss (*schade*), is compensation for victims to restore social balance. Compensation includes both incurred losses and lost profits.
4. Causal relationship (*Causaliteit*) is a direct relationship that exists between the unlawful act committed and the loss incurred.

Meanwhile, Article 35 paragraph (2); Waste Management Law, the plaintiff must prove the elements of guilt, loss, and a causal relationship between the act and the losses incurred to file a lawsuit against the law. The science of law recognizes two types of liability, fault-

¹³<https://kbbi.kemdikbud.go.id/entri/sengketa>, accessed on 20 September 2022.

¹⁴I Gede Surata dan I Gede Wira Sena, *Penyelesaian Sengketa Perdata Melalui Proses Beracara*, Yogyakarta: Nas Media Pustaka, 2022, p. 2.

¹⁵Sudikno Mertokusumo, *Mengenal Hukum : Suatu Pengantar*, Yogyakarta : Liberty, 2007, p. 31.

¹⁶Sudikno Mertokusumo, *Perbuatan Melawan Hukum oleh Pemerintah*, Yogyakarta: CV Mahakarya Pustaka, 2019, p. 15-27.

based and non-fault-based liability, also known as Strict Liability.¹⁷ The Waste Management Law adheres to fault-based liability, which means that a plaintiff must prove guilt, loss, and a causal relationship between the act and the loss incurred. A plaintiff must prove the existence of the following elements in a solid waste dispute:

1. Unlawful Acts, According to the Waste Management Law, everyone is responsible for waste management.¹⁸ These obligations include reducing and handling household waste in an environmentally responsible manner, waste segregation facilities provided by area management officers, waste reduction and labeling, and packaging and/or managing goods that cannot or are difficult to decompose naturally, which becomes producer's responsibility. Aside from obligations, everyone is subjected to prohibitions under Article 29 paragraph (1) of the Waste Management Law. Those who perform waste management must adhere to established norms, standards, procedures, or criteria. Any act that fails to fulfill obligations, violates prohibitions, or fails to carry out waste management as specified in the Waste Management Law is considered an unlawful act. A person filing a lawsuit must show that an act was not in accordance with the obligations, violated the prohibition, or neglected waste management as regulated by the Waste Management Law.
2. Guilt, The intentional or negligence guilt is mentioned in Waste Management Law, Article 40 paragraph (1) and 41 paragraph (1) even though its provisions are not explicitly related to waste disputes. The article regulates criminal penalties for waste management officers who disregard norms, standards and procedures, resulting in public health, security, pollution, and/or environmental destruction.
3. Loss, The community may suffer losses such as disruption or loss to public health and/or the environment due to waste management activities. Thus, compensation for losses and/or specific actions can be taken to restore the balance under Waste Management Law, Article 35 paragraph (3).
4. Causal relationship, To establish a causal relationship, the plaintiff must demonstrate someone's intentional and negligent actions, particularly in waste management, have a direct impact such as health and/or the environmental disruption or loss.

According to the Waste Management Law, the plaintiff can file two types of claims: asking for compensation and/or requesting the defendant to take certain actions. However, such a provision does not apply right away; a person who believes his rights have been violated must prove all elements of an unlawful act. To get a judge to grant a lawsuit against the law, the plaintiff must prove the fulfillment of these elements. However, it is difficult to determine who made the mistake and thus must bear the loss because waste management officer is not clearly defined as one of the parties in the aforementioned law. Civil lawsuits, or lawsuits against the law, must specify who will be the defendant. The defendant's subject, who did not clearly state the consequences of the lawsuit, was rejected because it contained a formal flaw in the form of a personal error. This condition will be detrimental to the party who suffers a loss or the plaintiff, given that the plaintiff bears the burden of proof. This relates to the provisions of Civil Code Article 1865, which states that "everyone who argues that he has a right, or who refers to an event to confirm his own rights or refute someone else's rights, is obliged to prove the existence of said right or event."

¹⁷Prim Haryadi, *Penyelesaian Sengketa Lingkungan Melalui Gugatan Perdata*, Jakarta: Sinar Grafika, 2022, p. 14-15.

¹⁸Waste Management Law Article 12, Article 13, Article 14, and Article 15.

Waste management laws and regulations must be systematically interpreted so that the waste management officer does not have to rely on multiple interpretations. According to the Waste Management Law, one of the Central Government's powers is to establish waste management norms, standards, procedures, and criteria. Meanwhile, the Provincial Government has the authority to promote provincial cooperation, partnerships, and waste management networks. District/city governments, on the other hand, have the authority to organize district/city scale waste management in accordance with the central government's norms, standards, procedures, and criteria. To carry out these waste management tasks, district/city governments can collaborate with other local governments or partner with waste management business entities. According to the Waste Management Law's general elucidation section, the government is the authority and responsibility party in waste management. Although, operationally the management can collaborate with business entities. In this case, the district/city government is only responsible for managing household waste and household-type waste, while the central government is in charge of managing specific waste. The Waste Management Law is implemented by Government Regulation Number 81 of 2012; Household Waste and Household Waste-like Management (Government Regulation of Household Waste). Waste management activities include waste reduction and waste handling, according to Article 10 paragraph (1) of the government Regulation for Household Waste. Waste reduction can be accomplished by anyone or by producers. Meanwhile, waste disposal activities can be performed by multiple parties, as shown in table 1.

Table 1: Waste Handling Parties

Waste Management Activities	Parties Involved		
Sorting	everyone involved in the source	management of residential areas, commercial areas, industrial areas, special areas, public facilities, social facilities, and other facilities	district/city government
Collecting		management of residential areas, commercial areas, industrial areas, special areas, public facilities, social facilities, and other facilities	district/city government
Hauling			district/city government
processing	everyone who works at the source	management of residential areas, commercial areas, industrial areas, special areas, public facilities, social facilities, and other facilities	district/city government
Waste Final Processing (disposal)			district/city government

According to Article 26 paragraph (1) of the Government Regulation on Household Waste, district/city governments can establish waste management institutions, partner with business entities or communities, and/or cooperate with other district/city governments in waste management activities such as transportation, processing, and final disposal. Referring to the aforementioned provisions, waste management is one of the established to carry out several activities, particularly in waste management. Institutional waste management can be broadly interpreted broadly as the rules, norms, and ethics that waste management actors follow. In specific manner, it refers to the organization that is directly responsible for implementing waste management in a given area.¹⁹ Additional institutional arrangements for waste management can be found in the two (two) regulations listed below:

1. Minister of Home Affairs Regulation No. 33 of 2010; Waste Management Guidelines. Article 13 empowers local governments to establish waste management institutions. Articles 15 and 16 mention that waste management institutions can be formed at the Neighborhood Association, Community Units, Village and District levels, as well as in commercial, industrial, public facilities, social facilities. Furthermore, local governments can form BLUDs (Public Service Entities) at the level of work units in SKPD (Regional Working Unit). Meanwhile, Regional Regulations must include waste management institution materials, according to Article 44.
2. The regulation of the minister of environment and forestry No. 16 of 2011; Material Guidelines for the Content of Regional Regulations Bill on Household Waste and Household-like management Ministerial regulation of environment and forestry in Waste Management). In the The regulation of the minister of environment and forestry Waste Management, waste management institutions are not explicitly regulated. The regulations are related to licensing requirements for waste management by third parties and also the scope of waste management by district/city governments which includes sorting, collecting, hauling, processing and final processing of waste.

The Minister of Home Affairs Regulation on waste management has been repealed by Ministerial Decree No. 20 of 2016; the regulation and decree revocation, Regional Development Phase III. It is stated in the consideration section that the revocation was carried out because it contradicts the provisions of laws and regulations. Thus, the repulsion of The Minister of Home Affairs Regulation prevents institutional waste management from referring. Accordingly, the waste management law, PP (government regulation) on Household Waste, and Permen LH (Ministerial regulation of environment and forestry) for Household Waste Management can be used to identify the regulation of waste management officers.

According to the laws and regulations, the district/city government is the only party authorized to manage waste within its jurisdiction. However, district/city governments can only form waste management institutions or collaborate with businesses or the community on waste transportation, processing, and disposal. The word can in Article 26 paragraph (1) of the PP (government regulation), Household Waste means that district/city governments have the option to exercise their authority based on community benefit and general interest considerations. According to Appendix II No. 267 of Law No. 12 of 2011; the Formation of Legislation as last amended by Law Number 13 of 2022; Second Amendment to Law Number

¹⁹Sri Nurhayati Qodriyatun, " Bentuk Lembaga Yang Ideal Dalam Pengelolaan Sampah di Daerah (Studi Kota Malang dan Kabupaten Gianyar), *Aspirasi: Jurnal Masalah-masalah Sosial*, Vol. 6. No. 1. June 2015, p. 16.

12 of 2011, words can express the discretionary nature of an authority given to a person or institution. Discretionary authority has 2 (two) major aspects, 1) freedom of interpretation; the scope of authority which is formulated by its basic rule, and 2) freedom to decide how and when this authority is exercised.²⁰ The government must exercise discretion to adapt to changing needs and benefit the community.²¹ According to the above-mentioned explanation, waste management officers are not only a business entity that manages waste, but so are district/city governments.

According to the Law on Legislation Formation, laws and regulations have a systematic structure that includes a Title, Preamble, Body, Closing, and, if necessary, explanations and attachments. General Provisions are a part of Legislation body that provide definitions of abbreviations or terms used in one or more articles. According to Appendix II of the Establishment of Statutory Regulations Law No. 98, the general provisions include: a. a limitation of meaning or definition; b. abbreviations or acronyms set forth in terms of meaning or definition; and/or c. other general matters apply to one or more articles, such as provisions reflecting principles, aims, and objectives without being formulated separately in the article or chapter. Only terms that have been used repeatedly in one or more subsequent articles should be included when drafting general provisions, Law on the Formation of Legislation No. 102 Appendix II. Waste management is mentioned in Article 31 paragraph 1, Article 32 paragraph 1, Article 33 paragraph 1, Article 40 paragraphs (1) and (2), and Article 41 paragraphs (1) and (2). (2). However, it is not entirely clear. Based on the requirements of forming legislation, Appendix II No.102, the phrase "Waste Management" should also be included in the General Provisions.

Legislation should in its formation comply with the principles of the Formation of Statutory Regulations, Article 5 which includes the principle of clarity of purpose; proper forming institutions or officials; suitability between types, hierarchies, and payload materials; can be implemented; usability and effectiveness; clarity of formulation; and openness. The principle of clarity is one of the key concepts in the murky definition of waste management officers. The concept is also included in Law No. 10 of 2004, the Old Legislation Formation Law, which should be a guideline when the Waste Management Law is being prepared at that time. There aren't many differences between the meanings of the principle of clarity in the previous and current laws on legislation formation.²² The principle of clarity aims to prevent multiple interpretations in the implementation of statutory regulation. This is because carelessness and ambiguous language leading to incorrect interpretation, particularly the citizen who must comply with it.²³

The ambiguous definition; waste management officer in the Waste Management Law violates the principle of clarity because it has multiple interpretations in its implementation, dispute resolution for instance. The purpose of a statutory regulation will not be further explored unless its terms are expressly stated.²⁴ Accordingly, utilizing the operational

²⁰Ridwan HR, *Hukum Administrasi Negara*, Jakarta: PT. RajaGrafindo Persada, 2017, p. 175.

²¹Agus Budi Susilo, " Makna dan Kriteria Diskresi Keputusan dan/atau Tindakan Pejabat Publik dalam Mewujudkan Tata Pemerintahan Yang Baik, *Jurnal Hukum dan Peradilan*, Vol. 4. No. 1. March 2015, p. 134.

²² The clarity principle is elaborated in Article 5 letter f of Law No. 10 of 2004. There is only subtle difference with Article 5 letter f of Law Number 13 of 2022.

²³ Purnawidhi W. Purbacaraka, "Sekilas Tentang Bahasa Hukum", *Jurnal Hukum dan Pembangunan Edisi Khusus Dies Natalis 85 Tahun FH UI*, 2009, p.153.

²⁴Satjipto Rahardjo, *Ilmu Hukum*, Bandung : PT. Citra Aditya Bakti, 2012, p. 97-98.

definition outlined in the General Provisions will help to avoid the ambiguous terminology.²⁵ A good and healthy environment is a human right recognized by the 1945 Constitution of the Republic of Indonesia, so the government, as the custodian of the duty, should work to uphold it. Securing guarantees for potential legal actions the community might take, like those to resolve waste disputes. In other words, law serves to protect human interests and in its enforcement it must always consider the elements of legal certainty, expediency, and justice.²⁶ To achieve justice, all parties must work toward the same legal objectives, one of which is legal certainty.²⁷ In addition, it is necessary to prevent multiple interpretations of a statutory provision to ensure legal certainty.²⁸ The lack of a definition of waste management officers as parties to a waste dispute has an unmistakable impact on legal certainty, thereby fulfilling the right to a good and healthy environment.

Conclusion

In conclusion, the Waste Management Law, the Government Regulation on Household Waste, and the Minister of Environment and Forestry Regulation on Waste Management do not clearly define the term "waste management officer." The so-called term cannot be restricted to business entities that engage in waste management, according to a systematic interpretation. This is because district/city governments also fulfill the same obligation. Accordingly, to avoid conflicting interpretations and to adhere the principle of clarity, the so-called term should be included in the general provisions of the Waste Management Law, the articles.

Suggestion

It is advised to immediately provide clear definition of waste management officers because it will affect the subject in waste disputes. However, the definition must adhere to the established rule—the Law on the Formation of Legislation. Legal certainty in waste dispute resolution is anticipated as a result of such action.

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²⁶Mertokusumo, *op.cit*, p. 160.

²⁷Suwari Akhmaddhian, "Asas-Asas dalam Penyelenggaraan Pemerintahan yang Baik untuk Mewujudkan Good Governance", *LOGIKA: Jurnal Penelitian Universitas Kuningan*, Vol. 9. No. 01. June 2018, p. 31.

²⁸Ikhwan M. Said, " Kajian Semantik Terhadap Produk Hukum Tertulis di Indonesia", *Jurnal Mimbar Hukum*, Vol. 24 No. 2, June 2012, p. 188.

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