

## **Criminal Liability of Perpetrators of Unauthorized Management of Medical B<sub>3</sub> Waste Without License**

(Study of Decision Number 115/Pid.B/LH/2019/PN Slt and Decision Number 1/PID.B/LH/2020/PT Smg)

**Anaria Br Ginting<sup>1</sup>, Alvi Syahrin<sup>2</sup>, Edi Yunara<sup>3</sup>, Jelly Leviza<sup>4</sup>.**

<sup>1</sup>Student, Master of Law, Faculty of Law, University of North Sumatera, Indonesia.  
E-mail: anariavivo@gmail.com (CA)

<sup>2,3,4</sup>Lecturer, Faculty of Law, University of North Sumatera, Indonesia.

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**Abstract:** Criminal responsibility leads to the perpetrator with the intention of determining whether the defendant or suspect can be held accountable for a criminal offense that occurs. Solid Medical Hazardous Waste is goods or materials left over from activities that are not reused which have the potential to be contaminated by infectious substances. The Indonesian Ombudsman in 2021 noted that there were at least 138 million tons of medical waste that were not properly managed, so it is necessary to deal with the management of medical B<sub>3</sub> waste in Indonesia. This research uses normative juridical legal research because it wants to examine laws and regulations and judges' decisions relating to the management of B<sub>3</sub> waste without a license. The approach in this research uses a case approach by examining the case in Decision Number 115/Pid.B/LH/2019/PN Slt and Decision Number 1/Pid.B/LH/2020/PT Smg which have permanent legal force. The conclusion in the study shows that in Decision Number 115/Pid.B/LH/2019/PN Slt and Decision Number 1/Pid.B/LH/2020/PT Smg is that the criminal liability of the perpetrators of medical B<sub>3</sub> waste management at Salatiga Regional Hospital is not correct regarding the application of the law, this is because the judge in deciding this case did not pay attention to changes in the rules related to the article charged had been deleted by the Job Creation Law before the judge made a decision. The defendant should have been acquitted of the criminal charges.

**Keyword:** Criminal Liability, Infectious Substances, Medical Hazardous Waste.

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### **1. Introduction**

The development of environmental legal arrangements in Indonesia has undergone several changes starting with the birth of Law Number 4 of 1982 concerning the main

provisions of environmental management, then Law Number 23 of 1997, finally Law Number 32 of 2009 concerning environmental protection and management. The establishment of Law Number 32 of 2009 was motivated by the many cases of environmental activists who reported allegations of environmental pollution and destruction who were sued civilly and criminally prosecuted on the basis of defamation by companies suspected of committing environmental crimes (Risfalman, 2019).

Apart from being regulated in Law Number 32 of 2009 concerning the Environment, Hazardous Waste Management is also regulated in Chapter VII of Government Regulation Number 22 of 2021 which revokes Government Regulation Number 101 of 2014 concerning Hazardous Waste Management, Article 274 Paragraph (1) stipulates that Hazardous Waste Generators are obliged to manage the waste they produce. In the Environmental Law, licensing is a preventive tool in environmental management control. However, waste management licensing procedures have been established by the government. Therefore, a common case of hazardous waste pollution in Indonesia is the illegal management/disposal of waste as hazardous waste. This of course poses a threat to human health and the environment. Waste pollution has a very detrimental impact on the environment (Gaol, 2021).

In the Minister of Health Regulation Number 18 of 2020 concerning Area-Based Health Care Facility Medical Waste Management, there are several provisions related to the management of medical waste including hazardous waste generated by health care facilities. Area-Based Health Care Facility Medical Waste Management is an effort to manage medical waste of Health Care Facilities in which all stages are carried out in an area in accordance with the needs and capabilities of the region.

This research focuses on the management of medical hazardous waste without a permit as stipulated in Article 102 in conjunction with Article 59 Paragraph (4) of the Environmental Law which states "Any person who manages hazardous waste without a permit as referred to in Article 59 Paragraph (4) shall be punished with imprisonment for a minimum of one (1) year and a maximum of 3 (three) years and a fine of at least Rp1000,000,000 (one billion rupiah)", then a continuing or concurrent action as stipulated in Article 64 of the Criminal Code.

One of the cases regarding the management of B3 media waste is contained in Decision Number 115/Pid.B/LH/2019/PN Slt and Decision Number 1/PID.B/LH/2020/PT SMG, which is proven to have committed the crime of "Managing B3 Waste generated by one of the Salatiga City Public Hospitals without a license as referred to in the Regulations Continually". The article charged is Article 102 jo Article 59 Paragraph (4) of Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management jo Article 55 Paragraph (1) of the Criminal Code jo Article 64 Paragraph (1) of the Criminal Code. The defendant was sentenced to imprisonment for 1 (one) year and a fine of Rp1,000,000,000 (One Billion Rupiah). The defendant then appealed at the PT level in Semarang and was accepted with the result that the decision upheld the previous decision of the Salatiga District Court, then appealed at the Supreme Court level, but was rejected. This case has been legally binding (*inkracht*) on November 09, 2020.

Based on the description above, it is interesting to know about how the criminal liability of perpetrators of unlicensed medical B<sub>3</sub> waste management, so at least in this paper will discuss the legal application of the birth of Minister of Health Regulation Number 18 of 2020 concerning Medical Waste Management of Regionally Based Health Service Facilities, with regard to solid medical B<sub>3</sub> waste management in hospitals in Indonesia. In addition, it discusses the legal consequences for third parties who violate the provisions of B<sub>3</sub> medical waste management according to laws and regulations based on Decision No. 115/Pid.B/LH/2019/PN Slt and Decision No. 1/Pid.B/LH/2020/PT Smg, as well as the legal liability of Salatiga City Hospital for illegally appointing a third party to manage solid B<sub>3</sub> medical waste generated by Salatiga City Hospital in Decision No. 115/Pid.B/LH/2019/PN Slt and Decision No. 1/PID.B/LH/2020/PT SMG.

## 2. Research Method

This research uses normative juridical research methods and is descriptive in nature. The approach method used in this thesis is a qualitative research approach with a statutory approach and case studies. The legal materials used are sourced from primary, secondary and tertiary legal materials. Data collection techniques carried out by literature study.

## 3. Result and Discussion

The legal implementation of the issuance of Permenkes Number 18 of 2020 concerning Medical Waste Management of Area-Based Health Service Facilities can be seen in Article 9 of the Permenkes, which states that in managing medical waste, health facilities require the support of resources in the form of at least land to carry out management, tools to manage solid medical B<sub>3</sub> waste, namely insenerators, human resources and funding. Furthermore, Article 3 Paragraphs 2 and 3 of the Permenkes states that local governments facilitate health services that are unable to manage their own medical waste through the provision of managers, one of which is with private parties who have a license to manage medical hazardous waste. The lack of waste management facilities in health facilities, especially in hospitals, has led to an increase in the management of medical hazardous waste through cooperation with unlicensed medical hazardous waste managers. As a result, some health facilities hand over medical waste management to unlicensed management services, potentially polluting the environment (Cahyandari & Pradana, 2022).

If it is related to the medical hazardous waste management equipment referred to in the Permenkes, namely the incinerator, both Health Service Facilities and managers outside Health Service Facilities experience obstacles in obtaining permits to operate incinerator equipment. One of the permits that must be obtained in order to operate an incinerator is an emission permit, where the authorized party to grant the emission permit is the Ministry of Environment and Forestry directly, so many health facilities have experienced difficulties in obtaining the permit, which has led to a halt in obtaining the permit (Nurwahyuni et al., 2020).

Waste can be categorized as B3 waste if after going through a characteristic test it has the characteristics or properties of being explosive; flammable; reactive; toxic; causes infection; and is corrosive. More specifically, Medical B3 waste in the Regulation of the Minister of Environment and Forestry Number 6 of 2021 concerning Procedures and Technical Requirements for Hazardous Waste Management from Health Facilities, includes Waste with infectious characteristics, sharps, pathological, chemical, radioactive, pharmaceutical, cytotoxic, medical equipment containing heavy metals, and gas cylinders or pressurized containers (Rianti & Rahmansyah, 2022).

The sanctions for B3 Waste violations consist of: First, administrative sanctions, contained in the Amendment to Article 77 of the Environmental Law, Amendment to Article 82, additional Articles 82 A, 82 B, 82 C, regarding business license requirements related to environmental management in the Job Creation Law. Second, civil sanctions, Article 87 of the Environmental Law, Amendments to the birth of Law Number 11 of 2020 concerning Job Creation Article 88 of the Environmental Law, Article 89 of the Environmental Law, concerning the deadline for filing a lawsuit, Articles 90,91,92 of the Environmental Law, concerning the right to sue. and Third, criminal sanctions, Article 88, concerning absolute liability of business actors and / or activities, Article 103, Articles 116, 117, 118 of the Environmental Law concerning criminal liability of business actors and / or activities.

The verdict of the Salatiga District Court Number 115/Pid.B/LH/2019/PN Slt was first read out by the judge on December 02, 2019, then the Defendant Muh Achmad Dardiri who was accompanied by his Advocates/Legal Counsel M.M. Samuel Ngepak, S.H and Lodewyk Rumangun, S.H filed an appeal based on a special power of attorney on December 04, 2019 which was registered at the Registrar of the Salatiga District Court under Register Number 78/SK.Pid/12/2019/PN Slt on December 05, 2019, then the defendant's appeal was accepted by the Central Java High Court. Furthermore, the defendant was dissatisfied with the appeal decision of the Semarang High Court because it upheld the decision of the Salatiga District Court Number 115/Pid.B/LH/2019/PN Slt. Through his attorney, the defendant then filed a cassation, but it was rejected by the Supreme Court with number 2709 K/Pid.Sus-LH/2020.

The application of the law by the Judge of Salatiga District Court and the Judge of Semarang High Court against the defendant Muh Achmad Dardiri is by using Article 102 jo Article 59 paragraph (4) of the Environmental Law jo Article 64 paragraph (1) of the Criminal Code, Law Number 8 of 1981 concerning Criminal Procedure.

Regarding the legal liability of Salatiga Hospital for illegally appointing a third party to manage B3 medical waste generated by Salatiga Regional General Hospital. The third party in this case did not have a license and the appointment was made by Salatiga General Hospital, in accordance with Article 116 paragraph (2) the third party is a partner appointed based on a working relationship under the leadership of Salatiga General Hospital. Therefore, the person held criminally liable in this case is the management of Salatiga General Hospital, namely: Hospital, Board of Directors, Waste Management Division. If it is associated with the hazardous waste generator having the obligation to manage the hazardous waste it produces, then Salatiga Regional General

Hospital is legally responsible in accordance with the criminal liability of Article 103 of the Environmental Law, namely: Any person who generates B<sub>3</sub> waste and does not manage it as referred to in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp 1,000,000,000.00 (one billion rupiah) and a maximum of Rp 3,000,000,000.00 (three billion rupiah).

#### 4. Conclusion

Based on the discussion above, it is concluded that the legal consequences for third parties who violate the provisions of medical hazardous waste management according to statutory regulations based on Decision 115/Pid.B/LH/2019/PN Slt and Decision Number 1/Pid.B/LH/2020/PT Smg made by the Judge of the Salatiga District Court and the Judge of the Semarang High Court against the defendant Muh Achmad Dardiri bin Alm.Harun Rosjid, using Article 102 jo Article 59 paragraph (4) of Law Number 32 of 2009 concerning the Environment jo Article 64 paragraph (1) of the Criminal Code. The judge was considered wrong in applying the verdict against the defendant, because at the time of the verdict, Article 102 of the Environmental Law had been abolished with the birth of the work copyright law. Furthermore, the legal liability of Salatiga Regional Hospital for illegally appointing a third party to manage solid medical B<sub>3</sub> waste generated by Salatiga Regional Hospital in the study of verdict number 115/Pid.B/LH/2019/PN Slt and verdict number 1/Pid.B/LH/2020/PT Smg, the B<sub>3</sub> waste generator in this verdict is Salatiga Regional Hospital, then those who can be held accountable are the Regional Hospital, the Board of Directors, the Waste Management Division, the Head of Sanitation Section and the HD Room Coordinator.

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