

Protection of the Rights of Sanitation in Indonesia (A Case Study in Malang Regency)

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Abstract

Waste management by the government is to ensure the fulfillment of basic needs. When viewed from legal perspective, Malang Regency is one of the few districts which already have waste management regulations. However, the implementations of such Local Regulations have been facing structural and sociological constraints. Meanwhile the government through National Medium Term Development Plan 2015-2019 has put the arrangement of waste regulation as one of its targets. This paper will discuss those structural and sociological constraints and analyze the arrangement of waste regulations in Malang Regency. The analysis applied socio-legal approach to data and the results showed that social capital, competition over resources, and weak bureaucratic capacity affected the structural and sociological constraints.

Keywords: sanitation, waste management regulation, waste bank

1. Introduction

The World Bank through reports on solid waste services shows that, if the higher economic growth and urbanization, the higher the increase in the amount of garbage. The amount of solid waste in the world will continue to rise from 1.3 billion tons per year to 2.2 billion tons per year if, economic and population growth in the world does not follow that waste management plan based on the principles of sustainable development and environmentally friendly.¹

Waste management approach previously emphasized the duties and responsibilities of Local Government in the implementation. However, in line with the implementation of Law No. 18 of 2008, the waste management is not only the duty and responsibility of the regency government, but also the duty of society, including businesses. Therefore, the local government together with the community and businesses need to change the paradigm of waste management through waste reduction and handling, so that the garbage is reduced before being processed in a secure landfill.

Changes in waste management paradigm has legal consequences to the Local Government is given the duties and authority of Law No. 18 of 2008 to meet the community's right to proper sanitation. The Local Government also facilitate public obligations in implementing waste reduction and handling by means of 3R, namely Reduce (reduce generation), Reuse (reuse) and Recycle (recycle). Law No. 18 of 2008 stipulates that every person in the management of household waste and household-like waste shall reduce and handle waste in an environmentally sound manner. To anticipate the problems of waste and environmental pollution hazard that gets worse in the future, waste management needs to be developed with the concept of an integrated waste management.

In order to fulfill the right to adequate sanitation would require a legal basis in the form of regulating the waste management. The setting of waste management in the region is also the mandate of the enactment of Law No. 18 of 2008. Law No. 18 of 2008 manages the authorities of each level of government in waste management, including the authority of the Regional Government. Based on the above, the integrated waste management by establishing legal certainty regarding the responsibilities and role of government, rights, obligations and role of the community is something that cannot be postponed.

Malang Regency since 2012 has had a Local Regulation No. 10 of 2012 on Waste Management (Local Regulation No. 10 of 2012). Malang also has the power of social capital in the form of community-based waste management. However, the social capital does not seem to be offset by the strength of the government's role in supporting the fulfillment of the right to adequate sanitation through the implementation of Local Regulation No. 10 of 2012 in Malang.

This study will analyze the concept and implementation of the protection of the right to adequate sanitation in the garbage sector in Malang Regency from the regulatory approach. The analysis is directed at the recommendation of the regulatory reforms in the field of solid waste in Malang to answer the problem of protection of the right to adequate sanitation.

¹ World Bank, "What a Waste: A Global Review of Solid Waste Management", chapter 3, p. 8, www.siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1334852610766/Chap3.pdf, May 17, 2016.

2. The Human Right to Sanitation based on International Law

The roots of the human right to sanitation date back to ancient times when concepts of community governed water use. Since then, the right has evolved alongside cultural and religious traditions, evolving social norms, and the law. The right to sanitation has been brought increasingly to the forefront of international human rights discourse in recent years, culminating in the United Nations General Assembly 2010 official recognition that the human right to water and sanitation imputes (HRWS) legally binding duties.¹

The HRWS evolved in international law through soft law instruments like the political declarations of States and the resolutions of UN human rights organizations and hard law sources like treaties. Although it emerges from legally binding treaties like the International Covenant on Economic, Social, and Cultural Rights, 1966 (ICESCR: Article 11), the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW: Article 14.2h), and the Convention on the Rights of the Child, 1989 (CRC: Article 24.1 and 24.2c), these treaties are not explicit about this right, while soft law declarations have often been more explicit. A prominent example of a political declaration recognizing the rights to water and access to sanitation is the Dublin Statement of the International Conference on Water and the Environment, 1992, which, nonetheless, also controversially recognized water as an economic good.²

The international recognition of the HRWS was preceded by recognitions in national laws and court decisions following decades of lobbying by actors, including communities and international organizations. However, national recognition focused on individuals without sufficiently considering the political, economic, and ecological costs to national governments. In practice, States face contextual implementation challenges, such as limited cost recovery options and other transaction costs. Hence, the UNGA 2010 Resolution '[C]alls on States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible, and affordable drinking water and sanitation for all.' More recently, the adoption of the Sustainable Development Goals (SDGs) in 2015 sets a deadline for the achievement of universal access to water and sanitation services by 2030. While the SDGs are not justiciable, they create an additional impetus for accelerating the implementation of this right as more than 4 billion people today are living without access to sanitation services like toilets and sewerage treatment.³

According to Brown et.al, the recognition of access to water and sanitation as human rights provides an opportunity to infuse this debate with democratic values, making society's citizens' rights bearers who may seize the possibility to organize themselves on a political front to demand that their governments – the duty bearers – guarantee them their right. A parallel may be made here with the right to health, which is not a "natural" right. Instead, it was historically constructed and conquered through social movements, and, in many countries, is still threatened by economically driven policies that seek to reduce its scope. Similarly, the expansion of social movements could bring advances to the conquest of the HRWS by reshaping public policies and reducing inequalities in access to Water and Sanitation Service (WSS).⁴

3. Access to Safe Sanitation in National Medium Term Development Plan 2015-2019

According to Central Bureau of Statistic, the proportion of households (in 2013) with access to safe drinking water is 67.7% while those with access to basic sanitation facilities only 60.9%. Therefore, 100 million people still have no access to drinking water and 120 million have no access to proper sanitation. Alignment with Indonesia's National Medium Term Development Plan 2015-2019. Under National Medium Term Development Plan 2015-2019, Government of Indonesia has committed to an ambitious target of eliminating slums and providing universal access to safe water and sanitation by 2019 (popularly known as the target 100-0-100).

In order to meet these targets, Government of Indonesia has launched sectorial platforms of service delivery in urban and rural water, sanitation and slum upgrading. For achieving the target of zero percent slums, the Government of Indonesia has established a National Slum Upgrading Program (in Indonesian known as KOTAKU) as a national platform financed by multiple sources, including central and local governments, the private sector, communities, as well as multi-lateral donors. The World Bank, the Asian Infrastructure Investment Bank (AIIB), the Asian Development Bank (ADB) and the Islamic Development Bank (IDB) will each work on a subset of National Slum Upgrading Program cities.

National Slum Upgrading Program aims to establish an integrated system for slum upgrading interventions (including improvement of primary and secondary infrastructure and construction of tertiary

¹ Lori Beail-Farkas, 2013, "The Human Right to Water and Sanitation: Context, Contours, and Enforcement Prospects", *Wisconsin International Law Journal Vol. 30 No. 4*, p. 761.

² Pedi Obani and Joyeeta Gupta, 2016, "Human Right to Sanitation in the Legal and Non-Legal Literature: the Need for Greater Synergy", *WIREs Water Volume 3*, p. 679.

³ *Ibid.*

⁴ Colin Brown et.al, 2016, "The Human Right to Water and Sanitation: a New Perspective for Public Policies", *Ciênc. saúde coletiva Vol.21 No.3*, p. 668.

infrastructure and services), with local governments enabled to lead design and implementation. A collaboration platform is being established to leverage all resources (organizational and financial) available from national, provincial and local government programs, alongside donor financing.

4. Implementation of Local Regulation No. 10 of 2012

Local Regulation No. 10 of 2012 is the regulation which was formed in haste. If we refer to the Law No. 12 Year 2011 on the Establishment of Legislation (Act No. 12 of 2011) and the Home Affairs Minister Regulation Number 80 Year 2015 on the Establishment of Regional Legal Products (Home Affairs Minister Regulation No. 80 Year 2015) then ideally a draft Local Regulation preceded by preparation of Academic Paper. Local Regulation No. 10 of 2012 was preceded without academic paper and the preparation is not done by the Drafting Team or the team of experts.

Lawmaking of Local Regulation No. 10 of 2012 with no academic paper seems to have implications on the substance. This regulation should be delegated legislation and set up delegated aspects from technical regulations on it. Because without prior synchronization of regulation, then some aspects delegated it is not regulated in Local Regulation No. 10 of 2012. In addition, the establishment of this law precedes enactment of Government Regulation No. 81 Year 2012 on the Management of Household Waste and Similar Waste Household Waste (Government Regulation No. 81 of 2012). Compensation arrangements delegated from Government Regulation No. 81 of 2012 no further stipulated in this law.

Besides the compensation aspect, there are also other aspects that are not regulated. Other aspects that are not regulated in these local regulations include:

a. Obligations of Producers

Producers obligation is the obligation of producer to "take back" the rest of the end from the product after use and create a system to prevent switching pollution and use resources inefficiently.

Based on Government Regulation No. 81 of 2012, liabilities related producers of waste reduction include:

- 1) Restriction of waste generation;
- 2) Carry out recycling bins;
- 3) Perform reuse waste.

b. Financing

The Local Regulation should know more detailed provisions on the financing of waste management in related areas:

- 1) sources of financing;
- 2) Other legitimate sources of funding through levies and / or the acceptance from local public service agencies.

c. System in the final waste processing site

The landfill in Malang Regency available in six (6) locations but is now operated only in four (4) locations. The landfill operating today is Randuagung Singosari landfill, Paras Puncokusumo landfill, Kepanjen Talangagung landfill, and Rejosari Bantur landfill. The landfill that has not been operated is Pusung Pujon and Kasri Bululawang. Two of the four landfill operating system was still using open dumping system. Whereas Article 44 paragraph (2) of Law No. 18 of 2008 clearly stipulates that the regional government should close the final waste processing site that uses the open dumping system later than 5 (five) years from the enactment of Law No. 18 of 2008, which means the slowest to be implemented in 2013.

Local Regulation No. 10 of 2012 also did not set provisions requiring Malang Regency Government to immediately replace the open dumping system that is still used at the landfill. Because there is no regulatory compulsion to carry out these obligations, the budget for repairing the system is also not allocated.¹

Besides not accommodate these three aspects, Local Regulation No. 10 of 2012 was not implemented because it is not the establishment of the implementing regulations in the form of the decree. Based on the substance of Local Regulation No. 10 of 2012, there were several delegations to the decree to regulate some aspects that the regulation can be implemented technically. One example is the waste management licensing requirements. But nearly five years the regulation is enacted and no decree made to further regulate the licensing aspect.

Such conditions complicate the implementation of the regulation of waste management in Malang. If traced the history of lawmaking, the weak structuring of the regulatory framework of waste management in Malang caused Local Regulation No. 10 of 2012 prepared without a comprehensive study. The academic paper from the regulation compiled without going through the process of preparing the ideal academic paper.²

¹ Interview with Renung Chairman of Hygiene and Parks, at the Department of Human Settlements and Spatial Malang, April 14 2016.

² *Ibid.*

Once the Local Regulation No. 10 of 2012 was enacted, its implementation was not running as expected by the compiler. The regulation is effective only in urban areas such as Kepanjen District, but not effective when in rural areas such as Sumbermanjing Wetan District or Tirtoyudo District that located in the coastal areas and mountains. Apparatus village administration is not actively involved in waste management, except in areas that have a Waste Management Site to Reduce, Reuse, and Recycle (TPS 3R).

Other weaknesses from Local Regulation No. 10 of 2012 are the perception that the regulation emphasized in the repressive function and not a function of management to create public awareness in waste management. The Civil Service Police considers these rules to be successful if the enforcement from the criminal aspect can be run, but police civil service in Malang Regency has limited human resources and budgets to enforce the law from criminal aspect.¹

5. Waste Bank as Institutional Community Based Waste Management in Malang Regency

According to the Regulation of Ministry of Environment No. 13 of 2012 about the implementation guideline of reduce, reuse, and recycle through waste bank, the definition of waste bank is a place to sort and collect the garbage that can be recycled and/or reused that have economic values. The waste bank development is the community innovative activities that teach the community to sort their garbage and make them aware on managing their garbage wisely. It will bring contribution in the garbage volume reduction. The main principle of the waste bank development is involving and empowering the community. The waste bank development as the solution for waste problem begins with the community's concern about the environmental degradation.²

Savings in waste bank is a waste management system collectively with the principle of recycling. This method can increase the economic value of dry waste, while people who act as waste bank customers will also benefit. They had some savings that can be taken as needed. Waste bank will have a positive impact on the environment and improve economic conditions in the community.³

Although management of the systemic-based regulation has not been effective, but the waste management in Malang still running with the support of community-based organizations in the form of waste bank. The waste bank development as the solution for waste problem begins with the community awareness to environment issues. The inadequate capability of local government to manage the waste can be reduced using the waste bank program. Waste bank can improve the spirit of togetherness residents in maintaining their environment. Residents are also increasingly concerned about the problems that exist in the environment. Waste bank program is able to develop a shared value, trust and a culture of cooperation. Waste bank in Malang Regency until the study was conducted about 29 units.

Although the Waste Bank in Malang Regency give positive impact, but the limited role of the government impact on the Bank's role that not synergistic with TPS 3R. Even TPS 3R tend to the view that the existence of Waste Bank detrimental to them. Teguh, the Headman of Pakisaji, assume that the existence of Waste Bank precisely overlap with TPS 3R that making it difficult for TPS 3R. Allegations of such overlap due to the scope of activity between these two institutions is in the context of the implementation of reduce, reuse, and recycle.⁴ The same opinion was also expressed by Saiful Alam, the manager of Intermediate Treatment Facilities (TPST) in Sitirejo that stated that existence of waste bank contrary to the interest of TPST. The scope of the bank's activities resulted TPST only process waste residue.⁵

The fact showed that the conflict and the absence of the government's role certainly counterproductive, but community-based waste management require consultations with officials in the public and real engagement with all stakeholders. Not synergetic role of the two institutions are also seen when the Bank of Waste into the built Environment Agency, while TPS 3R looks closer to an institution Office of Human Settlements and Spatial Planning.

6. Structural Issues

Another problem of waste management in Malang is the change institutions that have authority in waste management. Based on Law No. 23 of 2014, waste management matters within the authority of public works. However, these structures be changed because the Government Regulation No. 18 of 2016 stipulates that waste management is a matter for the environmental field. Such changes have an impact on the transfer of authority from the Department of Human Settlement and Spatial Planning to the Environment Agency.

Such changes would have an impact on many aspects. Aspects of the most heavily affected of course, is

¹ Interview with Bambang Istiawan, Head of Civil Service Police Unit, May 19, 2016.

² Hasfarm D. Purba et.al, 2014, "Waste Management Scenario through Community Based Waste Bank: A Case Study of Kepanjen District, Malang Regency, Indonesia", *International Journal of Environmental Science and Development*, Vol. 5, No. 2, p. 214.

³ Interview with Oliv (Ngalam Waste Bank), July 26, 2016.

⁴ Interview with Teguh, Headman of Pakisaji, September 09, 2016.

⁵ Interview with Syaiful Alam, TPST Sitirejo, September 09, 2016.

the budget. Environment Agency has a tight budget because it is only concerned with the affairs of Adipura and recommendations on the environmental impact statement. Changes in waste management authority would certainly increase the budget of the Environment Agency. But of course needs to be balanced with the quantity and capacity of human resources.

The authority change also raises the question: What will the Environment Agency are also in charge of supervision to TPST and TPS 3R? Waste management practices so far have shown that the Environment Agency has a close relationship in the guidance of the waste bank in Malang, instead the Department of Human Settlement and Spatial Planning to provide guidance to TPST and TPS 3R. If the development is done by two different institutions will certainly make it difficult for collaboration in waste management.

Changes in the structure of the waste management authority it also raises the debate about nomenclature. Some people in the government who pioneered waste management considers that the Environment Agency will handle waste management should use the old nomenclature, which is "Cleanliness and Landscaping" to name one of the fields in the structure. The debate is not substantial since the name change does not change the substance of authority.¹

7. Legal Reform on Waste Management Local Regulation

Based on the weaknesses in aspects of the substance and implementation of Local Regulation No. 10 of 2012, it is necessary to reform the law. The legal reforms carried out with a focus on strengthening the capacity of community-based organizations in waste management. Strengthening the capacity through:

- a. technical support;
- b. dissemination of legislation and guidelines in the field of waste management;
- c. education and training in the field of waste management;
- d. provision of facilities for waste bank;
- e. monitoring and evaluation of waste banks; and / or
- f. help the marketing of 3R activities.

The role of local government is important because of the collaboration between waste bank and TPST/TPS 3R should be regulated through Local Regulation. The Local Regulation have to manages the synergies between the waste bank and TPST/TPS 3R. The Local Regulation can organize collaboration between the waste bank and TPST / TPS 3R by explicitly separating the scope of activities between the two institutions.

It also needs to be set on Extended Producer Responsibility. The policy instrument that extends the responsibility of the producer exceeded accountability producers as it is known today - on health and safety, consumer safety, and production costs - with the added responsibility to the life cycle costs of products and packaging it uses. It is important in the obligation of producer liability products to "take back" rest of products after use and create a system to prevent switching pollution and inefficient use of resources. Obligation of emphasizing a design strategy taking into account the environmental impact at the upstream level are summed up in the selection, the mining and extraction of material, health and environmental impacts on workers and the environment during the production process takes place, and the downstream impact during use, cycle and disposal of products. The final goal of producer's are pushing the product material is clean and safe, as well as minimizing waste at every stage of the life cycle of the product.

The Local Regulation No. 10 of 2012 also has to set obligations for Regency Government to immediately replace the open dumping system that is still used at the landfill. The compulsion to carry out these obligations can be the legitimation for the budget on repairing the landfill system. It also needs to set up an option for citizen lawsuit to sue the local government if it does not carry out the government's obligations.

8. Conclusion

Lawmaking of Local Regulation No. 10 of 2012 with no academic paper seems to have implications on the substance. This regulation should be delegated legislation and set up delegated aspects from technical regulations on it. Because without prior synchronization of regulation, then some aspects delegated it is not regulated in Local Regulation No. 10 of 2012. Although it has been enacted since 4 years ago, but no implementing regulations (Regent Regulation) were enacted. Several provisions of the national regulations delegated to the local regulation is also not accommodated. Though technically, Local Regulation can be implemented if technical guide has been completed.

Other weaknesses from Local Regulation No. 10 of 2012 are the perception that the regulation emphasized in the repressive function and not a function of management to create public awareness in waste management. Although management of the systemic-based regulation has not been effective, but the waste management in Malang still running with the support of community-based organizations in the form of waste bank. Although the Waste Bank in Malang Regency give positive impact, but the limited role of the government

¹ Interview with Tridiyah Maistuti, Head of Environment Agency, October 2016.

impact on the Bank's role that not synergistic with TPS 3R.

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Based on the weaknesses in aspects of the substance and implementation of Local Regulation No. 10 of 2012, it is necessary to reform the law. The legal reforms carried out with a focus on strengthening the capacity of community-based organizations in waste management. It also needs to be set on Extended Producer Responsibility. It is important in the obligation of producer liability products to "take back" rest of products after use and create a system to prevent switching pollution and inefficient use of resources.

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