

Legal Analysis on Civil Liability for Individuals Involved in the Indiscriminate Disposal of Medical Waste

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Abstract

Medical waste management is the responsibility of individuals or organizations involved in activities that generate medical waste. Proper and systematic management is required for medical waste classified as B3 waste, encompassing all stages from processing to disposal. This research aims to investigate and evaluate the implementation of legal penalties for those who negligently dispose of medical waste. This study methodology employs normative legal research, utilizing primary legal sources derived from statute rules and secondary data obtained from library resources. This research employs both a legislative and conceptual approach, utilizing a perspective analysis method. Improper disposal of medical waste can harm the environment and may result in legal penalties. This sanction can be imposed by both judicial and extrajudicial dispute settlement processes. The judges' decision towards the defendant must be carried out as a civil penalty agreed upon by the defendant, and a request for enforcement can be made.

Keywords: B3 Waste, civil sanctions, dumping, medical waste.



Introduction

Medical waste falls under the B3 category, classified as hazardous and toxic waste, and requires appropriate and systematic management. Medical waste originates from medical facilities that handle hazardous, infectious, and toxic substances. Solid Medical B3 Waste refers to items or residual materials from activities that are not reused and may be contaminated by infectious agents. B3 medical waste includes used masks, gloves, bandages, plastic from drinks and food, cotton bud swabs, syringes, infusion sets, personal protective equipment, leftover patient food, and other garbage generated by medical activities. B3, as defined in Law Number 32 of 2009 on Environmental Protection and Management, refers to substances, energy, or components that have the potential to pollute, damage the environment, and pose risks to the health and survival of humans and other living organisms due to their characteristics, concentration, or quantity.

Healthcare institutions are a source of B3 waste, which include solid waste, infectious waste, surgical remnants, expired medications, bacteria, microbes, and similar materials.¹ Government Regulation Number 101 of 2014 in the Republic of Indonesia categorizes trash from hospital and clinical laboratory activities as B3 trash. The garbage consists of clinical waste, expired pharmaceutical items, contaminated laboratory equipment, pharmaceutical product packaging, laboratory waste, and residue from the cremation process.

The management of medical waste is governed by Minister of Health Regulation Number 18 of 2020, which pertains to Medical Waste Management for Regional-Based Health Service Facilities. The Minister of Health Regulation mandates the internal (Article 6, paragraph 1) and external (Article 7, paragraph 1) management of medical waste. B3 waste management is essential in operations that generate B3 waste, particularly in healthcare services. Improperly managed medical waste might pose a risk of contaminating the environment and causing adverse effects on ecosystems. B3 waste contamination can lead to poisoning, impacting the health of organisms and the ecological equilibrium of water, air, and soil.²

Article 51 of Minister of Environment Regulation Number 6 of 2021 mandates that individuals involved in the production, collection, utilization, processing, or stockpiling of hazardous and toxic waste (B3 Waste) must store such waste. Therefore, storing medical waste is a compulsory component of B3 waste management. Article 59 paragraph Article 47, Article 68, Article 58, and Article 49 of the PPLH Law establish environmental quality standards and conditions for environmental harm. Individuals entering Indonesia must manage Hazardous and Toxic Materials (B3) and conduct environmental audits if responsible for such materials.³ Improperly managed medical waste can affect persons or organizations responsible for generating it,

¹ Absori Absori and Muhamad Latif, "Kebijakan Hukum Dalam Pengelolaan Limbah Bahan Berbahaya Dan Beracun (B3): Studi Implementasi Pengelolaan Limbah Medis Di Rumah Sakit Salatiga," *JIL : Journal of Indonesian Law* 1, no. 1 (2020): 92–93, <https://doi.org/10.18326/jil.v1i1.91-117>.

² Aisya Nursabrina, Tri Joko, and Onny Septiani, "Kondisi Pengelolaan Limbah B3 Industri Di Indonesia Dan Potensi Dampaknya: Studi Literatur," *Jurnal Riset Kesehatan Poltekkes Depkes Bandung* 13, no. 1 (2021): 81, <https://doi.org/10.34011/juriskesbdg.v13i1.1841>.

³ Abdul Ropik Fauzi, Wahyu Nugroho, and Fahririn Fahririn, "Penegakan Hukum Administrasi Lingkungan Hidup Terhadap Pencemaran Pembuangan Limbah Kulit," *Journal Iuris Scientia* 1, no. 2 (2023): 95.

particularly health service facilities. Medical waste management is a component of environmental conservation and administration.⁴

Effective management of medical waste is a critical issue that requires attention. According to the Ombudsman of the Republic of Indonesia, roughly 138 million tons of medical waste were improperly managed,⁵ Enforcement and the implementation of laws are necessary to address the issue of handling medical waste that is irresponsibly disposed of. Perpetrators of improper medical waste disposal might face administrative, civil, and criminal sanctions. Abdul Ropik Fauzi and colleagues detailed in their study that administrative sanctions under the PPLH Law are implemented with supervision and oversight on the business operator. Sanctions often include a written warning, suspension of environmental permits, withdrawal or revocation of permissions, and business closure.⁶ Tarya Sonjaya et al stated that crimes against the environment are governed by Law no. 32 of 2009, Chapter XV, Articles 97 to 120, as well as by the Criminal Code in Articles 187, 188, 202, 203, 502, and 503.⁷

In a separate study by Eril Aditya Nugraha et al analyzing the ruling in case number 26/Pdt.G/2009/PN.TPI, it was found that civil liability for limited liability companies found guilty of environmental pollution can be pursued through legal proceedings or through alternative dispute resolution methods. Compensation can be provided as a means of resolving matters outside the court. Legal action can be pursued in court if attempts to settle the matter out of court are unsuccessful.⁸ This study investigates the application of fines on individuals who improperly dispose of medical waste through a civil approach, utilizing statutory requirements and existing research. This research intends to analyze and evaluate the implementation of legal penalties for those who improperly dispose of medical waste.^c

METHOD

The study approach utilized is normative legal research methodology, based on the stated objectives. This study technique focuses on legal analysis that considers law as a foundational element of ethical frameworks, including principles, ethics, regulations derived from legislative provisions, court decisions, agreements, and doctrines.⁹ This research employs a statutory and conceptual approach, together with descriptive analysis techniques.

RESULT AND DISCUSSION

Responsibilities for the Management of Medical Waste

⁴ Tarya Sonjaya et al., "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Berdasarkan Prinsip Pembangunan," *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 205, <https://doi.org/10.32801/lamlaj.v5i2.162>.

⁵ Sopian Hadi, "Krisis Pengelolaan Limbah Medis," Ombudsman Republik Indonesia (Banjarmasin, 2021), <https://ombudsman.go.id/perwakilan/news/r/pwkinternal--krisis-pengelolaan-limbah-medis>.

⁶ Abdul Ropik Fauzi, Wahyu Nugroho, and Fahririn, *Op.Cit.*, 102.

⁷ Sonjaya et al., "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Berdasarkan Prinsip Pembangunan," 208.

⁸ Eril Aditya Nugraha et al., "Pertanggungjawaban Perdata Bagi Perseroan Terbatas," *Notarius*, 13, no. 1 (2020): 325.

⁹ Mukti Fajar; Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Cetakan ke (Yogyakarta: Pustaka Pelajar, 2017), 34.

Medical waste refers to contagious or harmful waste materials that come from the healthcare sector. This garbage originates from non-recyclable things with the potential to be infectious.¹⁰ In their research titled "Civil Liability of Dompu Hospital Against Environmental Pollution as a Result of Medical Waste Management," Moch. Riyadi Husna and Djumardin, cited by the Ministry of Environment and Forestry, reported that in September 2018, there were 95 hospitals equipped with licensed incinerators with a combined capacity of 45 tonnes per day. In December 2019, data from the Medical Waste e-monev by the Environmental Health Directorate of the Ministry of Health showed that approximately 42% of hospitals comply with regulations for medical waste management. Some hospitals have incinerators that are not in use because they lack the necessary permit.¹¹

Minister of Health Regulation Number 18 of 2020 mandates that all health facilities must manage medical waste, as specified in Article 2. This Minister of Health Regulation was specifically designed for health service facilities that offer health service initiatives. Inadequate management of medical waste is a factor considered in the implementation of health regulation no. 18 of 2020. Prior to the publication of this regulation, the responsibility to handle medical waste was outlined in Article 58 paragraph (1) of Law no. 32 of 2009 on Environmental Protection and Management, which mandates that individuals engaging in activities involving hazardous waste in Indonesia must manage it accordingly. Additionally, Article 3 paragraph (1) of Government Regulation Number 101 of 2014 on Management of Hazardous and Toxic Waste stipulates that those generating hazardous waste are required to manage the waste they produce.

Managing medical waste is necessary to preserve environmental functions and regulate environmental pollution and/or harm. Aisyah Nursabrina et al suggest that effectively managing B3 industrial waste could significantly help in decreasing environmental pollution. Common violations stemming from B3 waste include:¹²

1. Producers (businesses) improperly handle B3 waste by sending it to unauthorized persons and burning it using equipment that does not fulfill technical standards.
2. If utilization does not occur, B3 waste is disposed of without authorization. Initially, garbage was solely used to request legality from the government.
3. Every waste transporter is required to possess a manifest, which serves as evidence of the transportation and processing of B3 garbage. Nevertheless, instances of empty manifests, also known as phony waste documents, are frequently encountered in the field.

¹⁰ Annisa Hartami, Lego Karjoko, and Fatma Ulfatun Najicha, "Optimalisasi Peran Pemerintah Dalam Kebijakan Penanganan Limbah Medis," *PLEDOI (Jurnal Hukum Dan Keadilan)* 2, no. 1 (2023): 16, <https://doi.org/10.56721/pledoid.v2i1.168>.

¹¹ Moch Ryadi Husna and Djumardin Djumardin, "Tanggung Gugat Keperdataan RSUD Dompu Terhadap Pencemaran Lingkungan Sebagai Akibat Dari Pengelolaan Limbah Medis," *Private Law* 3, no. 1 (2023): 13, <https://doi.org/10.29303/prlw.v3i1.2131>.

¹² Nursabrina, Joko, and Septiani, "Kondisi Pengelolaan Limbah B3 Industri Di Indonesia Dan Potensi Dampaknya: Studi Literatur," 86.

4. Collectors, processors, and stockpilers often engage in illegal dumping. Inadequate waste processing capability can result in elevated expenses for waste transportation and disposal. Some organizations opt to take shortcuts and accumulate B3 garbage in open areas.

Article 59, paragraph (4) mandates obtaining approval from the minister, governor, or regent/mayor within their jurisdiction when managing B3 garbage. Issuing permits to medical waste-producing actors is also connected to AMDAL. Medical waste management is governed by Minister of Environment and Forestry Regulation No. 56 of 2015, which outlines 6 phases for handling waste in solid, liquid, or gas form:¹³

1. Waste Minimization and Segregation:
 - a. Reducing medical waste involves avoiding the use of hazardous and toxic materials (B3 materials) where better alternatives are available and ensuring good governance in the procurement of such items.
 - b. Medical waste sorting involves segregating B3 waste by kind, group, and characteristics, and then placing it in containers corresponding to the B3 waste group. Perform preventative and routine maintenance.
2. Waste Storage involves storing medical waste in designated facilities, such as temporary B3 waste storage sites (TPS B3) and suitable containers based on the waste category.
3. Transportation of Waste. Waste transportation activities involve the movement of waste by licensed carriers, from waste generator areas to designated destinations.
 - a. Waste storage place (transfer depot);
 - b. Waste processors with have a waste management license.
4. Waste Management. Waste processing is conducted by:
 - a. Waste producers with a B3 waste processing permit.
 - b. Individuals with a B3 waste processing permit.
5. Disposal of waste by burying it. Medical waste producers bury pathological trash and sharp objects they generate. Burial is only permitted if the waste-generating site lacks a processing facility with an incinerator. Various factors must be taken into account while burying waste, including the burial site, inventory of buried waste, upkeep of the burial site, and permits for the area.
6. Accumulation of waste. Waste landfilling involves the storage of incinerator fly ash and incinerator bottom ash (slag). Landfilling can be conducted. Sanitary landfilling is only permitted in designated facilities. Prior to disposal, waste must be encapsulated or inertized. The landfill site must comply with statutory regulations governing waste management infrastructure for handling household and household-like waste.

Medical waste management is an environmental health initiative focused on promoting a healthy environment in all aspects to enhance overall health. This complies with the requirement outlined in Article 162 of Law no. 36 of 2009 on Health. Article 163 paragraph (1) ensures that the government, regional government, and community provide a healthy environment free from

¹³ Anindya Dwita and Mohammad Zamroni, "Tanggung Jawab Hukum Jasa Pengangkut Limbah Dalam Pengelolaan Limbah Medis Padat Rumah Sakit," *Jurnal Hukum Dan Etika Kesehatan* 1, no. September (2021): 52-53, <https://doi.org/10.30649/jhek.v1i1.14>.

health risks. Marie Louise Kirkegaard et al outline steps “safety culture maturity model” is administrators, practitioners, and researchers adopted.¹⁴ Effective medical waste management is crucial and requires careful consideration of all components, particularly the disposal of items like worn masks, gloves, syringes, and other medical trash. Medical waste disposal must be segregated from regular waste and should not be mixed at all.¹⁵

According to Article 104 of Law no. 32 of 2009, medical waste must not be disposed of in any location. The PPLH Law prohibits all individuals from:¹⁶

- a. Engaging in activities that cause pollution and damage to the environment;
- b. Importing B3, which is prohibited by statutory laws, into the territory of Indonesia is not allowed;
- c. Importing garbage from foreign countries into the ecosystem of Indonesia;
- d. Importing B3 garbage into Indonesia's jurisdiction is prohibited;
- e. Dispose of garbage into the environment;
- f. Dispose of B3 and B3 trash into the environment;
- g. Discharging genetically modified items into the environment in violation of legal restrictions or environmental permits;
- h. Clearing land through controlled burning;
- i. Creating an AMDAL without possessing an AMDAL drafting proficiency certificate; and/or;
- j. Providing deceptive information, removing informants; and
- k. Manipulating data or supplying inaccurate information.

Article 12, paragraph 6, letter d specifies the conditions that B3 waste storage areas must fulfill:¹⁷

- a. Location for storing B3 trash;
- b. B3 waste storage facilities must align with the volume and properties of B3 waste and be equipped with environmental pollution control measures; and
- c. Emergency preparedness gear.

Efforts to control medical waste involve more than just preparing disposal sites and obtaining permits. Managing it necessitates careful resource preparation and consistent oversight. To

¹⁴ Marie Louise Kirkegaard et al., “Risk Perceptions and Safety Cultures in the Handling of Nanomaterials in Academia and Industry,” *Annals of Work Exposures and Health* 64, no. 5 (2020): 481, <https://doi.org/10.1093/annweh/wxaa022>.

¹⁵ Jiří Jaromír Klemesš et al., “Minimising the Present and Future Plastic Waste, Energy and Environmental Footprints Related to COVID-19,” *Renewable and Sustainable Energy Reviews* 127, no. April (2020): 3, <https://doi.org/10.1016/j.rser.2020.109883>.

¹⁶ Andi Muhammad, Alfies Shihombing, and Yeni Nuraeni, “DAMPAK PENGELOLAAN SAMPAH MEDIS DIHUBUNGKAN DENGAN UNDANG-UNDANG No 36 TAHUN 2009 TENTANG KESEHATAN DAN UNDANG-UNDANG No. 32 TAHUN 2009 TENTANG PERLINDUNGAN DAN PENGELOLAAN LINGKUNGAN,” *PAJOUJL (Pakuan Justice Journal of Law)* 1, no. 1 (2020): 39–40, <https://journal.unpak.ac.id/index.php/pajoul/index>.

¹⁷ Farida Aini, “Pengelolaan Sampah Medis Rumah Sakit Atau Limbah B3 (Bahan Beracun Dan Berbahaya) Di Sumatera Barat,” *Jurnal Education And Development* 7, no. 1 (2019): 15, <http://journal.ipts.ac.id/index.php/ED/article/view/759>.

ensure that the disposal of medical waste is managed in a way that prevents any adverse effects on the environment and nearby communities. Improperly managed medical waste can lead to harm and contamination of the nearby environment. Medical waste disposal must be managed in an organized and methodical way to prevent the accumulation of improperly disposed trash.¹⁸

Enforcing consequence for the careless disposal of medical waste

The phrase disposal has been referenced and defined in Law no. 32 of 2009. Dumping or disposal involves the act of discarding waste or materials in specific amounts, concentrations, times, and locations according to particular environmental regulations. Article 197 paragraph (1) of Minister of Environment and Forestry Regulation No. 6 of 2021 states that anyone dumping waste into the sea must obtain approval from the Central Government.

Medical waste disposal is a compulsory part of B3 waste management practices that apply to all persons and businesses, regardless of their legal status. Medical waste disposal must be carried out responsibly by all waste producers. Every element of society and government plays a crucial part in managing medical waste. Law enforcement is essential for maintaining public legal awareness and establishing social order and legal authority.¹⁹ The World Health Organization (WHO), as cited by Endang Wahyati Yustina, emphasizes the importance of technical regulations in managing medical waste. These standards outline the essential measures for officials, from waste storage to incineration.²⁰

Individuals in charge of handling medical waste must possess a significant level of responsibility. The notion of responsibility encompasses several principles of legal accountability:²¹

1. The notion of accountability based on fault elements (liability based on fault)
This idea is broadly applicable in the Civil Code and is outlined in Articles 1365, 1366, and 1367 BW. Generally, the notion of responsibility is deemed acceptable as it is equitable for the individual who committed the error to provide compensation to the victim for their damages. It is unjust for an innocent individual to be held responsible for compensating others for their losses.²²
2. The notion of presumption of responsibility (*presumption of liability*)
This notion asserts that the defendant is presumed guilty until proven innocent. The defendant bears the burden of proof. Compensation will not be given if the defendant fails to prove the carrier's negligence.

¹⁸ Egi Agfira Noor, "Pertanggung Jawaban Rumah Sakit Terhadap Limbah Bahan Beracun Berbahaya (B3)," *Jurnal Penegakan Hukum Indonesia* 1, no. 1 (2020): 37, <https://doi.org/10.51749/jphi.v1i1.4>.

¹⁹ Kadek Indra Prayoga Dinata and Kadek Julia Mahadewi, "Application Of The Principle Of Absolute Responsibility Juridically To Companies That Pollute Rivers With Company's B3 Waste," *Jurnal Hukum Sehasen* 9, no. 2 (2023): 140, <https://doi.org/10.37676/jhs.v9i2.4917>.

²⁰ Endang Wahyati Yustina, "Aspek Hukum Pengelolaan Limbah Medis Pada Fasilitas Pelayanan Kesehatan Dan Perlindungan Terhadap Kesehatan Lingkungan," *Jurnal Paradigma Hukum Pembangunan* 6, no. 1 (2021): 113, <https://doi.org/10.25170/paradigma.v6i1.2585>.

²¹ Nugraha et al., *Loc.Cit.*, 314–316.

²² *Ibid*, 315.

3. The notion of presumption of non-responsibility (*presumption non liability principle*)
This principle is contrary to the presumption of constant responsibility. This principle is only recognized within a narrow range of consumer transactions.
4. Principle of total responsibility (*strict liability*)
The concept of absolute responsibility is frequently associated with the notion of absolute responsibility. Some argue that ultimate accountability is a principle that asserts error does not play a role. Absolute responsibility is flawless and unconditional responsibility.

Law enforcement addresses improper disposal of medical waste through administrative, criminal, and civil sanctions against firms and individuals that harm the environment. Resolving conflicts over the negligent disposal of medical waste is a type of environmental dispute.²³ Article 84 of the PPLH Law specifies that when settling conflicts related to life, the right to seek compensation and/or environmental repair costs is included:

- a. Resolution of environmental conflicts extrajudicially
Articles 85 and 86 of the PPLH Law allow for the resolution of environmental disputes outside of court to agree on compensation and efforts to prevent harmful environmental impacts. Alternative dispute resolution methods cannot be used for environmental violations.
- b. Settling environmental concerns through litigation in court
Article 87 to Article 93 of the PPLH Law govern environmental dispute resolution through the courts, covering compensation, environmental restoration, absolute responsibility, statute of limitations for filing a lawsuit, the right to sue the government and regional government. Community and environmental organizations' legal standing to file administrative cases.

These two dispute resolution techniques are available for parties who believe they have been harmed by the negligent disposal of medical waste. Disputing parties can mediate if conflict settlement occurs outside of court. The outcomes of the agreement can be documented in a mediation deed signed by the parties, specifying the agreed-upon amount of losses. Nevertheless, this dispute settlement method does not eliminate the chance of failure if the parties fail to reach an agreement or a mutually beneficial solution regarding the compensation desired.

Improperly dumped medical waste can be addressed by legal proceedings in the jurisdiction of the defendant. The aggrieved party can bring an Unlawful Action lawsuit against the defendant, who could be an individual, business organization, or health service facility involved in actions generating medical waste. Article 1365 of the Civil Code mandates that individuals who cause harm to others through unlawful acts are obligated to compensate for the losses incurred. Additionally, Article 1366 of the Civil Code holds individuals accountable for losses resulting from their actions, negligence, or lack of care.

An act may be deemed unlawful if it satisfies the following criteria:²⁴

- a. There is a *torf onrecht*;

²³ Aji Pratama, "Penegakan Hukum Terhadap Pencemaran Lingkungan Limbah Industri Di Perairan Karawang, Jawa Barat," *Logika: Journal of Multidisciplinary Studies* 11, no. 1 (2020): 30.

²⁴ Ryadi Husna and Djumardin, "Tanggung Gugat Keperdataan RSUD Dompur Terhadap Pencemaran Lingkungan Sebagai Akibat Dari Pengelolaan Limbah Medis," 16.

- b. An error is found.;
- c. There are disadvantages; and
- d. A causal relationship exists between the loss and the activity.

The party initiating the lawsuit must outline the chronological sequence of events that form the basis of the case, as well as specify any desired requests made by the parties involved in the action. Yahya Harahap states that a proper lawsuit must have a clear and detailed petition outlining the plaintiff's demands at the end of the lawsuit, specifying the main points that need to be addressed and charged to the defendant.²⁵ In the petition, the plaintiff can request that the panel of judges order the defendant to compensate for the damages caused by the negligent disposal of medical waste. The judge's decision that is in force must be carried out and can be enforced by the plaintiff through a request for execution of the ruling.

CONCLUSION

According to the research, medical waste management is a mandatory responsibility for all individuals, legal entities, or unincorporated businesses that generate medical waste. Medical waste falls under the B3 waste category, which is governed by multiple regulations including Law no. 32 of 2009 on Environmental Protection and Management, Government Regulation Number 101 of 2014 on Management of Hazardous and Toxic Waste, Minister of Health Regulation Number 18 of 2020 on Management of Medical Waste for Regional-Based Health Service Facilities, and Minister of Environment and Forestry Regulation Number 6 of 2020 on Procedures and Requirements for Management of Hazardous and Toxic Waste. Medical waste must be managed systematically and methodically, from processing to disposal.

Improperly handled medical waste harms the environment and affects environmental health. The injured party can settle the conflict by seeking redress either via litigation or by extrajudicial means to get compensation. Civil sanctions can be imposed on parties that improperly dispose of medical waste through an Unlawful Action case (*onrechtmatigedaad*). The judges' decision towards the defendant must be carried out as a civil penalty agreed upon by the defendant, and a request for enforcement can be made.

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²⁵ Willa Wahyuni, "Perbedaan Posita Dan Petitum Dalam Gugatan," *Hukum Online*, 2022, <https://www.hukumonline.com/berita/a/perbedaan-posita-dan-petitum-dalam-isi-gugatan-lt62ea9b18364e4/?page=2>.

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