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“Indonesia Clean of Corruption in 2020”

“Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe”

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Background of The Problems

To achieve the condition of society who live healthy and prosperous in the future, it will be necessary to have a healthy living environment. From the aspect of waste management, the healthy word would mean a condition that would be achieved if the waste can be managed well so that the living environment where human activity there will be clean (Permen PU number: 21 / PRT / M / 2006).

Vision of the development of waste management systems of Departemen Pekerjaan Umum dan Perumahan is "Permukiman Sehat Yang Bersih Dari Sampah", it is reflects to achieve of a good condition and healthy environment. In general, according to the Peraturan Menteri PU nomor: 21/PRT/M/2006, the areas that get solid waste services will either be shown to have the following conditions: a.) The society has access to handle the waste that are produced from daily activities, either in living environment, commerce, offices, and other public places, b). The society has a clean living environment because the waste that are produced can be handled properly. c). The society are able to maintain their health because there is no waste that could potentially be material transmission of diseases such as diarrhea, typhoid, dysentery, and others; and environmental disturbances from pollution of air, water or soil. d.) The society and the business / private sector have the opportunity to participate in waste management so as to obtain benefits for welfare.

Until now, waste management paradigm used is: GATHERING-TAKING and REMOVING, and the mainstay of a city in resolving problems of waste is landfilling in TPA. The city manager is less likely to give serious attention to the TPA, so came the failure cases of TPA. The city manager seems to assume that their TPA can solve all waste problems,
without having to give proportionate attention to these facilities. TPA can be time bomb for the city manager.

To achieve optimal waste services, it's time for a paradigm change municipal waste management. Transformative paradigm is the concept of municipal waste management to prevent or minimize the generation of pollution and other negative impacts that are detrimental to society and the environment. According to Witoelar (2006: 2) takes pioneers to change the paradigm of waste management from the approach end of the pipe (end of pipes) that dispose of waste directly to TPA towards waste management with the principles of 3R is Reduce, Reuse and Recycle.

In the case of this paradigm change is far behind the other countries. For example, according to Buclet and Olivier waste management paradigm change in most European countries has been started since 1970. The waste management policy emphasis on waste reduction at source, sorting and recycling. A very important starting point in this paradigm change is a change of policy toward the minimization of garbage at the source, rather than on disposal.

According to Law No.18 of 2008 on Waste Management, there are two main groups of waste management are: a.) Reduction of waste (waste minimization) consisting of restrictions on the trash, reuse, and recycling, b) Waste management (waste handling ). This condition is emphasized that the main priorities that should be done by all parties is how to reduce waste as much as possible. Part of waste or residue from waste reduction activities remaining is then performed processing (treatment) and heaping (landrilling).

Waste management is an important issue in the problems of city environment that is faced in line with population growth and an increase in construction activity. The increase in waste volume grows exponentially which has not been accompanied by an increase in local government revenue equivalent to the management of municipal solid waste (Puslitbang Permukiman, Bandung 2014). This relates to the increasingly difficult and expensive to get the location of the final disposal (TPA), also are located farther away has extended transport and increase the cost of transportation.

Problems

Waste management has not reflected the value of welfare, it is necessary to research by addressing the following:
1. Why waste management is not currently based on welfare value?
2. What are the weaknesses arising in waste management?
3. How is the reconstruction of the waste management law based on welfare value?

Research Method

The method used in this study is sociological juridical approach and qualitative. Sociological juridical approach (socio-legal approach) is a legal approach that relies on empirical observation, and interviews intended to study and examine the interrelationships between law and other social institutions. Qualitative approach is a procedure of research that produces descriptive data in the form of written words or spoken of people and offenders can be observed. This approach is directed at the individual data and the holistic (whole).

Research Result

Cause of waste management has not based on welfare value is the absence of institutional and participation of society. Before Law No. 18 of 2008 was issued, urban waste management policy (issued by Departemen Pekerjaan Umum) in Indonesia positioning that urban waste management is a system that consists of 5 sub-system components, namely: a) Regulatory/law, b). Institutional and organisasic). Operational technique, d). Financing, e) The society participation. The result of of waste management has not been based on welfare value as follows:

1. Waste management has not based on welfare value is a manifestation of the implementation of waste management, the current was still using the old paradigm is Gathering – Taking-Removing and do not take waste management to a new paradigm that Sorting - Gathering - Taking- Processing- End processing, while the current waste reduction also has not used the concept of 3R (Reuse, Reduse, Recycle), so that the existing waste management has not provide economic value for the society and waste manager. It is caused by several problems as follows:
   a. Increasing population density demands also increase methods / patterns waste management well.
   b. The heterogenity of socio-cultural level of the urban population adds to the complex problems;
   c. Situation of funds as well as handling the relatively low priorities of local governments is a common problem in nasional scale;
   d. Limited human resources are appropriate and available in the area to handle the waste;
e. Society participation, which are generally less focused and well-organized.

The constraints that are faced in waste management between government, private and society are manifestation of the lack of effective government role in fostering a society in terms of waste management.

The efforts are done by the government through socialization to the society and guidance for waste management are still perceived by the society together to create a clean environment, healthy and welfare.

2. The weaknesses of waste management at this point between the society, private and government of law substance aspect, law structure and law culture.

a. The weakness of the law substance in waste management is the lack of law regulations are made by the central and local governments are not able to provide welfare value for society, particularly in implementing waste management with the 3R concept that can provide economic value for waste management, and as a guide in the implementation of waste management among the society, private and government, supported by the active role of the society is done by self-management through waste reduction and waste management in a sustainable manner; some weaknesses substance as follows:

1. Lack of dissemination to the society of the regulations or local decisions issued by the local government, so that the society is less aware of the correct waste management.

2. Lack of SDM capable of understanding the regulations or the decisions made by Satuan Kerja Perangkat Daerah who deal directly and not providing guidance and referrals directly to the public by referring to the existing regulations.

3. The lack of substance contents of the legislation or decrees issued by local governments that directly solve the waste problem as a whole in the effort to improve the welfare of society.

b. The weakness of the legal structure for waste management can be realized by weak law enforcement by the government to the society by not applying sanctions in accordance that have been listed in the regulations by statutory or local regulations, this is evidenced by the lack of organization or institution in charge of enforcing the law clerk Satpol PP as local government officials in enforcing local regulations, but quite the local regulations have been listed in the sanctions that have been established. Waste management community chaos resulting waste that should have economic
value will be discarded directly into the TPA, so there is no guarantee of prosperity for the waste management in a sustainable manner, it is needed of coaching as well as a management of solid waste management,

c. The weakness of the culture of the society in waste management is the lack of values or culture of the society in participating in waste management for customs / culture society who do not have the desire to be together government and the private sector to manage waste by utilizing the economic value of waste that is, by processing into finished goods which can provide a welfare value for the society, it is caused by cultural or social custom that has been done for generations especially who live along the riverbanks always throw garbage into the river, so the need to manage waste from the garbage stream, household, offices, housing, and the market will lead to the environment becomes unhealthy and environmentally friendly.

3. Reconstruction of waste management law based on welfare values.

Reconstruction of the Law No.18 of 2008 on waste management is based on welfare value is providing an opportunity for government, society and private as waste management to benefit economically from the waste in order to realize the welfare of the whole society and to make the environment that is clean, healthy and comfortable.

Economically waste management mainly inorganic trash, especially plastic waste can provide economic benefits of the enumeration process until it becomes plastic pulp mill that still require pulp processing waste plastic into finished goods that could be used by the community. Therefore it is necessary reconstruction of the law against Law No. 18 of 2008 in order to better provide opportunities for society and private in obtaining economic security.

While the welfare of every citizen can be obtained with the State guarantee provides freedom in empowering the community is not able to process natural resources such as in Article 34 of the Constitution of the Republic of Indonesia Year 1945.

   Article 34
   (2) The State shall develop social security system for all citizens and empower the weak and incapable in accordance with human dignity.
   (3) The State is responsible for the provision of health care facilities and public service facilities are decent

The Mandate of the Basic Law gives consistence to government provides public services in waste management. It carries legal consequences that the government is responsible authorities in waste management area although its management operations to
partnering with business entities. Besides the organization of waste, and community groups engaged in the waste can also be included in the waste management activities.

In order to carry out waste management in an integrated and comprehensive, right and fulfillment obligation of the society, as well as the duties and authority of government and local government for the implementation of public services, necessary legal basis in the form of legislation.

Settings waste management law in this Act is based on the principle of responsibility, sustainable principles, the principle of the benefit, the principle of justice, the principle of consciousness, the principle of solidarity, the principles of safety, security principle, and the principle of economic value.

Based on the description above legal reconstruction based waste management is to realize the value of welfare waste management is beneficial economically to society, and is safe for environment. While the law reconstruction to Law No. 18 Article 9 paragraph (1) point (e), Article 11 (1) point (f) and Article 27, paragraph 4, as well as the reconstruction of Peraturan Daerah Kabupaten Kotawaringin Barat No. 3 In 2015 in Article 31, paragraph 2 point (c) and (d), Article 32 Paragraph (2) and Article 60 paragraph (2) ideally in the future may be formulated as follows, namely the Government of the district / city via BUMD or partnerships with parties establish private industrial waste processing plant into finished goods, raw materials of plastic waste (inorganic), so as to accommodate waste collection and sorting of results by the community, both individually and self-managed, so from the result of sale, the society get benefit and welfare from the government for waste management community managed in a sustainable manner, while for final processing (TPA) in long-term government helps to build incinerators to burn the waste with waste products into electrical energy. While, the final waste processing site (TPA) is required to conduct monitoring and evaluation every 3 (three) months in 20 (twenty) years as we get per day of solid waste that goes into TPA.
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