



## ARTÍCULOS

UTOPIA Y PRAXIS LATINOAMERICANA. AÑO: 25, n° EXTRA 1, 2020, pp. 493-505  
REVISTA INTERNACIONAL DE FILOSOFÍA Y TEORÍA SOCIAL  
CESA-FCES-UNIVERSIDAD DEL ZULIA. MARACAIBO-VENEZUELA.  
ISSN 1316-5216 / ISSN-e: 2477-9555

### The State Liability of Plastic Waste Dumping in Indonesia

*La responsabilidad estatal de la eliminación de residuos de plástico en Indonesia*

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Este trabajo está depositado en Zenodo:  
DOI: <http://doi.org/10.5281/zenodo.3784901>

#### ABSTRACT

Plastic Waste has become one of the most important global environment issues these days. The study aims to scrutinize problems which are related to the phenomenon, such as: the principles and regulations of liability in regard of the plastic waste dumping, and also the restructuration and strengthening law and regulation to overcome the plastic waste dumping. The results found that since the states have liability on preventive environmental damages occurred within their territory, they must strengthen their international and national regulation in order to prevent any potential loss.

**Keywords:** Illegal waste dumping, Indonesia, plastic waste, State liability.

#### RESUMEN

Los desechos plásticos se han convertido en uno de los problemas medioambientales globales más importantes en la actualidad. El estudio tiene como objetivo analizar los problemas relacionados con el fenómeno, tales como: los principios y reglamentos de responsabilidad con respecto al vertido de residuos plásticos, y también la reestructuración y fortalecimiento de la ley y la regulación para superar el vertido de residuos plásticos. Los resultados encontraron que, dado que los estados tienen la responsabilidad de los daños ambientales preventivos ocurridos dentro de su territorio, deben fortalecer su regulación internacional y nacional para evitar cualquier pérdida potencial.

**Palabras clave:** Descarga de desechos ilegales, desechos plásticos, Indonesia, responsabilidad del Estado

Recibido: 08-02-2020 • Aceptado: 24-04-2020



## INTRODUCTION

Plastic has become one of the important factors that support industrial activities. The logical consequences arising from the use of plastic by industry are the turning up of new problems in processing the remnants of the plastic waste.

The recycling of plastics can only be carried out very limitedly and in a highly complex process, because every plastic component has a chemical material with a different decomposition process (National Geographic, 2018). For as long as a decade, the production of plastic waste in Europe has been increasing in numbers from 245 million tons to 358 million tons in 2018 (Agence-France-Presse, 2019). However, from all the garbage, only 31% can be recycled.

The plastic recycling process is a complicated problem, through a specific separation stage in order to be free of contamination (UN, 2019). This stage has a high level of difficulty, because contamination should be described as a mixture of certain materials which is exposed to the plastic material itself, either in the form of chemical residues, or exposure to other materials whose compounds are different from plastic materials. Then there is a tendency for developed industrial countries to export plastic waste that is in their countries' territory, because the costs incurred will be cheaper than having to recycle themselves.

Since 1992, China has become an importer country that receives almost 45% of the world's total plastic waste (Brook, et. Al., 2018). From collective counting, China and Hong Kong become importers of 72.4% of the world's plastic waste originating from developed countries such as the United States, and other European countries such as the United Kingdom and the Netherlands. China utilizes an empty container system, that is, the export commodities brought by China to America are the remnants of the empty containers returning to China. These containers are then functioned to transport the backfill in the form of garbage (Launspach, 2018). This shows that for decades China has been the main support of the world's plastic recycling process, and on this basis a mutually beneficial relationship is born between the importer and the garbage exporter in a waste trading activity (waste trade).

Waste trade is considered an attractive business with minimal risk of environmental pollution because the garbage is merely disposed of in only one of the areas of the country (Allen, 2009). Two main factors that cause plastic waste producers to choose to export are; firstly, the country's territory can no longer process the increasing amount of waste production (Bernard et al., 2015). This is related to the different geographical conditions of the country respectively, so countries with small or narrow territories cannot to provide much space to collect garbage in one particular area. Secondly, the prevailing waste management system in a country is not effective yet. This encourages those countries to prefer to trade waste at a low cost, and obtain a great profit compared to self-processing which has to go through the stage of sorting waste to avoid contamination. Workers needed to do the sortings with lower wages are mostly available in the developing countries (Xinwe, 2011). For nearly 25 years, China has been importing plastics for production but eventually cannot control the amount of plastic waste it has. The plastic waste manufactured by domestic production and consumption, added with imported plastics make waste sorting workers in the hand sorting process be infected with various kinds of chronic diseases that arise resulting from the unhealthy environment from the garbage contamination (Lu, 2019).

The relationships that have taken place over the years ultimately have a negative environmental impact on China, until 18 November 2018 China imposes a ban referred to as the national sword. This regulation prohibits the import of certain types of waste, including plastic waste (Xinhua, 2018). This action triggered a great rejection from the industrial countries like the United States which alarms about obstacles to the world's garbage trade traffic (Miles, 2018). Based on Greenpeace data on the recycled waste shipping to developing countries increased in the Southeast Asian regions in the period 2016 to 2018 (Greenpeace, 2019). This phenomenon eventually brings a new event, namely the smuggling of plastic waste (plastic waste dumping).

With the enactment of China's policy, the exporting countries look for alternatives to the plastic waste problem. The European Union restructured the plastic productions and use formulas that have a higher

recycling rate compared to the previous type of plastics, and even increase taxes on the use of plastics (Reuter, 2018). Britain and the United States are looking for other countries that are willing to collect their garbage. Countries in the Southeast Asian region such as Thailand, Vietnam, Malaysia, the Philippines and Indonesia are targeted for alternative waste trading because it is considered to have a fairly low labor cost, and a legal system that is not too strict in terms of waste management (Reuter, 2018). The waste trade is currently being carried out by smuggling solid waste which cannot be recycled like household waste. The contaminated plastic waste is inserted into plastic waste containers and shipped to other countries with recycled plastic waste labels. This model of smuggling waste has a great loss effects on the importing countries, mainly the environmental impact if the knowledge of the recycling waste as the object of trade is unbeknownst. Cross-border waste trade has a fairly high risk chiefly in territorial waters or national borders (Birmie et al., 2009).

Waste smuggling has ever occurred in the Philippines. The Philippines has taken action several times on Canada related to the smuggling of waste since 2014 (CNN Philippines, 2019). The waste that is not a recycled product (municipal solid waste) is shipped together with the recycled plastic waste by using recycled plastic labels, and is let to pile up in the Philippines without efforts to withdraw back into Canada. On April 23, 2019, the Philippines' President, Rodrigo Duterte made a statement regarding the 'war' against Canada due to illegal trash smuggled into the Philippines (CNN Philippines, 2019).

Indonesia is also one of the main targets of the waste smuggling. The amount of Indonesia's waste imports had increased significantly from 10,000 tons per month in 2017, to 35,000 tons per month in 2018 (GreenPeace East Asia). In fact, in June 2019, Indonesia had to send back 5 containers of scrap paper waste mixed with plastic waste, with labels that are not in according back to Canada as the sending country (Damarjati, 2019). Until recently, the existing rule of the international environment law is not capable yet to accommodate the development of the occurring cases on the waste issues globally. The United Nations still does not have a special body which has the authority to give directions to cases related to the waste (Philippe Sands *et. al.*, 2012), so that the urgency of the world's needs for the implementation of legal rules relating to waste and the existence of garbage smuggling is very important.

Likewise in Indonesia, The waste trading activities are regulated in Law Number 18 Year 2008 about Waste Management and the Regulation of the Minister of Trade of the Republic of Indonesia Number 84 Year 2019 concerning Provisions on the Import of Non-Hazardous Waste and Toxic as Industrial Raw Materials. However, in its execution the law has not been able yet to create an implementation steps against the general principles of responsibility and is accountable for the detrimentally environment. This shows an indication there is a possibility for the occurrence of irregularity in the future garbage shipment traffic, which is vulnerable to smuggling due to inadequate legal regulations in the Southeast Asian regions, and Indonesia in particular.

### **State Responsibility and State Liability Principles**

There is a difference in understanding between the concepts of state responsibility the concepts of state liability. In *Black Law Dictionary* responsibility refers to an obligation to provide accountability for mistakes (West Publishing, 2009), while state liability principles is defined as a condition where the state has an obligation to assume responsibility for mistakes made legally based on certain legal rules (*Black Law Dictionary*, 2012). State responsibility is a concept in international law which contains elements of state liability (Rahmadi, 1990). Responsibilities that emerge from the actions of a country contrary to international law, will become the responsibility of civil law (Huala, 1991). Every act that is charged with an error in a legal event can be held accountable. Accountability is a specific form of responsibility which refers to one's position or the legal entity assessed as having to pay a form of compensation or compensation for other legal subjects who suffers from unlawful acts (*onrechtmatige daad*) (Marzuki, 2016).

## **PARTIES TO THE STATE'S LIABILITY**

### **Government**

In waste smuggling activities, there are two parties who have the main role namely the state and private parties. This is caused by the existence of two legal relations created by the legal waste trade which is then used by certain crooks to insert/smuggle illegal garbage. First, the legal relationships between government and government in the context of legal waste trading to fulfill export-import waste commodities between countries. Second, the legal relationships between the private sector which carry out export commodities to the waste importing country (private to government). Every country has the rights attached to its sovereignty. This has a logical consequence for the country to enjoy the rights it has without making reductions or violations of the rights of other countries (Hingorani, 1984). There are three characteristics in the emergence of a responsibility for the state, that is: [1] there is an obligation under international law between two countries; [2] there is an act or omission that violates the obligation; [3] there is a loss that arises from a violation or negligence of the law (unlawful act) (Shaw, 2008).

Violations of international law that cover all actions cause direct or indirect harm to other countries. For example, the breach of treaty, violation of territorial regions of other countries, or certain damage to an object in another country's territory (Shaw, 2008). The state responsibility is an obligation to accept the consequences of an error, and the liability provides obligations to provide civil consequences due to the violations of the international law. Article 2 of the ILC Draft gives limitation to the classification of an action as an internationally wrong act; that is, the actions that occur are deemed liable to the state according to international law.

Hanqin Xue believes that the state is responsible for an event based on the doctrine of attribution, which states that there is a difference between actions taken by the private sector and actions taken by the state and the organs of the state as part of that country (Xue Hanqin, 2003). The state is said to be responsible for the consequences of an action because it has a will or decision to take or not to take action on an event. Out of responsibility leads to accountability, if it meets 3 (three) factors, namely (Xue Hanqin, 2003):

1. The state must have control over an activity, to be able to hold liability to it;
2. Even if the violation is carried out by not a state organ (private sector) however, these actions are carried out under the supervision or approval of the state;
3. The state has an obligation not to allow actions originating from its country that can harm other countries.

According to The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1992 (henceforth is called the Basel Convention), garbage shipments can be categorized as 'illegal' if the waste sent is not in accordance with the agreement between the exporting and importing countries. It is still sent without the knowledge of the importing country due to either misunderstanding or deception. In general, the entry of plastic waste and other waste, which is not in accordance with the provisions on waste, import originating from inter-state waste export-import activities. To carry out these export-import activities the importer requires a series of permits, documents, or ship manifests which must be informed to the exporter in accordance with the arrangements contained in The Basel Convention.

The International Law Commission in Article 1 of the Draft Articles states that; "Every internationally wrongful act of a State entails the international responsibility of that state," (*The International Law Commission, 2001*) every action that violates the law that is carried out by the state will impose international liability to the country concerned. The applicability of the ILC Draft this is indeed not included in the international legal instrument that is legally binding. But the existence of principles in the draft is binding on the subject of international law because it is recognized as the customary international law (Dixon, 1996).

For example, if an export company from developed countries like the United States is unable to supervise private companies that export, and then bring the impact of loss to Indonesia, then Indonesia can impose

accountability to the United States for these losses. The liability of the parties in the international environmental law, especially for the country, is an embodiment to the principle of good neighborliness and respect for the principle of state sovereignty which is present in international law.

### **Private Parties**

In legal view, the company is considered as a legal person because it can have a set of rights and bears liability for legal actions, as long as its formation has an applicable rule of law, during which International Law has not recognized any accountability for the private sector. It causes loss due to a legal action by the state (Shaw, 2008); except for activities that have a high risk of environmental pollution and are very dangerous (ultra hazardous activity) such as shipping crude oil through the sea, or the operation of a nuclear reactor (Doeker & Gehring, 1990). One of the main reasons for not holding accountability to the private sector is because the state has the sovereignty and responsibility to supervise activities carried out by the private sector.

Relating to the international and human rights violations, the principle of The Ruggie Framework is known (Martin & Bravo, 2017), developed by Special Representative General Secretary John Ruggie. The Ruggie Framework provides global guidelines to prevent the risk of high human rights violations and environmental damage due to business activities by transnational companies. The three basic principles are: 'protect, respect and remedy' and has been applied through the United Nations since 2011. In running the business, business people must not take a bribe, use violence, or cause damage to the environment which can result in the loss of community rights in order to get a good and healthy living environment (Alfia et al., 2018).

In the case of smuggling imported plastic waste in Indonesia, an investigation has been conducted by the Ecological Observation and Wetlands Conservation (henceforth is called ECOTON). Based on ECOTON's findings, there are 12 (twelve) companies that have indications of violations on the operation of importing plastic waste and are indicated violating the licensing of export-import waste activities (Mubarak, 2019). These companies are affiliated in the Indonesian Paper Pulp Association (APKI) among others; PT Ekamas Fortuna, PT Dayasa Aria Prima, PT Suparma Tbk, PT Pabrik Kertas Indonesia (Pakerin), PT Megasurya Eratama, PT Mekabox International, PT Mount Dreams Indonesia, PT Surabaya Mekabox, Pindo Deli, PT Indah Kiat Pulp and Paper Perawang, dan PT Fajar Surya Wisesa Tbk.

This form of smuggling can be said as a form of error or internationally wrongful act from the importing country. The implementation of accountability to the state can be applied to have a real direct impact to immediately stop the sustainability of smuggling the plastic waste into Indonesia by developed countries.

The ILC draft also regulates the forms of state accountability in Article 34, which states; "Full Reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction...". Article 35 states that in the case of restitution, the state has the obligation to re-establish the situation before the loss due to acts of law violation that occurred and cannot be indemnity materially. An importing country smuggling garbage into the territory of the exporting country can carry out the re-export of waste to prevent further pollution in the territory of the waste exporting country. Compensation is a form of obligation for the state to compensate in the form of material. This can take the form of payment of all or part of the loss which factually arises from violations of international rules. In the case of compensation, the exporting country can impose the costs of re-export of smuggled waste to the importing country, or ask for recovery costs through material calculation against losses undergone by the accumulation of unregistered plastic waste, while satisfaction is a form of state obligation to provide an expression of formal apology.

### **International Regulations on Plastic Smuggling**

The international regulation governing smuggling plastic waste is the Declaration of the United Nations Conference on the Human Environment or known as the 1972 Stockholm Declaration, United Nations Convention on the Rio Declaration of Environment and Development, 1992 or referred to as the 1992 Rio

Declaration, and Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal or called the 1989 Basel Convention. In the Declaration of the United Nations Conference on the Human Environment, 1972, Principle 22 expresses that the states have an obligation to cooperate in developing international responsibility, especially in the field of compensation that occurs in the context of environmental damage. This basic principle should be the basis for the states to be able to accept the burden of liability for the losses that might arise due to the smuggling of plastic waste into the territory of the country as an importer.

Cooperation to carry out international responsibility can also be realized by forming an agreement to provide special arrangements regarding liability in the event of a violation in the delivery of waste. So far, there are still many countries smuggling garbage to waste importing countries, and this kind of action is a violation of international environmental law specified in the United Nations Convention on the Rio Declaration of Environment and Development, 1992. The violation also refers to some general principles of international environmental law namely (Soto, 1996), Principles of Good Neighborliness and International Cooperation, The Duty to Compensate for Harm, and Principle of Preventive Action.

Specifically, the principle of good neighbor or known as *sic utere tuo ut alienum non laedas* banning countries from using their territorial regions to incur losses for other countries (Sands *et al.*, 2012). The real implications that embody this principle are obligations to cooperate between countries to identify and investigate environmental issues, and avoid environmental damage. Clear and transparent information exchange is an important element in the application of this principle, although it cannot be absolutely applied given the limitations of state sovereignty.

The 1989 Basel Convention Article 6 states that the movement of transboundary waste shipments must heed the applicable rules that the importer must know clearly about the imported goods. In addition, this convention also requires guarantees from exporting countries to deliver waste safely and in accordance with the information sent. Article 8 of the Basel Convention states that when there is a move from hazardous wastes or other wastes across national borders that are not in accordance with the previously established agreement, then the exporting country has the obligation to return the waste to the sending country. So there is no reason for all countries in the future to continuously smuggle plastic waste and other non-recycled materials to other countries through the export of waste paper because it is included in the illegal acts as referred to in this convention.

With the increasing numbers of waste shipments to other countries, then there is a notion to amend the Basel Convention in 1997. The main purpose of the amendment is to ban the transfer of hazardous and other kinds of garbage from developed countries to developing countries (United Nations Environment Programme, 2019). This is performed with the consideration that developing countries are still unable to implement good management and recycling of waste in their regions, and it is concerned to have a negative impact in the future. At the Second Conference of the Parties to the Basel Convention (COP2) March 22, 1994 in Geneva, 66 countries have agreed through Decision II / 12 to ban all forms of hazardous waste exports from the Organization of Economic Cooperation and Development (OECD) towards non-OECD countries which will be outlined in The Basel Ban Amendment.

Basel Convention Amendments are opposed by major industrial countries such as the United States, Australia, Germany, Japan and Canada, which have export and import interests in waste. However, other member states, which are still fighting for an amendment to this convention, hold the Third Conference of the Basel Convention by establishing Decision III/1 to enforce the ban, and is effective when a quorum  $\frac{3}{4}$  of 87 (eighty-seven) member states ratifies. Croatia became the 66th country to fulfill the quorum and ratified it on 6 September 2019, so that the Basel Ban Amendment enters the entry into force stage on 5 December 2019, which is 90 days after the ratification quorum has been fulfilled (United Nations Environment Programme, 2019).

Indonesia through Presidential Regulation of the Republic of Indonesia Number 47 of 2005 concerning Ratification of the Amendment to the Basel Convention on the Control of Transboundary Movements of

Hazardous Wastes and Their Disposal further strengthens the foundation of national law, and still needs to be balanced with the existence of stricter arrangements in the level of national law regarding smuggling of waste.

### **National Regulation on Plastic Smuggling**

Based on data from the Central Statistics Agency (*BPS*) in 2018, the peak of imports of plastic waste in Indonesia over the past decade reached 283,152 tons. Paper waste imports also increased. The paper waste which contained plastic waste increased from 2017 by 546,000 tons to 739,000 tons in 2018 (Adam, 2019).

The waste smuggling arrangements in Indonesia still refer to the Law Number 18 Year 2008 concerning Waste Management (Law 18/2008), the Law of the Republic of Indonesia Number 32 of 2009 concerning the Environmental Protection and Management Regulations, and the Regulation of the Minister of Trade of the Republic of Indonesia Number 84 of 2019 concerning Provisions on the Import of Non-Hazardous and Toxic Waste as Industrial Raw Materials.

Article 29 of Law Number 18 Year 2008 Regarding Waste Management stated that the act of inserting waste into Indonesian territory and importing waste is prohibited. Then, in the Environmental Protection and Management Regulations, Article 87 paragraph (1) confirms the existence of polluter pays principle imposed on the defendant as an environmental polluter as a form of accountability by using the principle of strict liability. But the Regulation of the Minister of Trade of the Republic of Indonesia Number 84 of Year 2019, has not regulate yet the re-export mechanism to return illegal waste that enters into Indonesian the territory.

### **Efforts to Overcome Garbage Smuggling**

Referring to Article 9 of the 1989 Basel Convention, that waste, which is determined by the importing country as waste, does not meet export provisions, must be sent back to the exporting country within a period of 30 (thirty) days after the importing country provides notification to the exporting country to take back the trash, or carried out disposal of the waste according to the provisions in the convention. The exporting country must provide supervision and ensure that the re-export actions do not exceed the timeframe specified by the convention, and may not refuse re-export.

From various legal instruments such as Law 18/2008, the Environmental Protection and Management Regulations, and the Regulation of the Minister of Trade of the Republic of Indonesia Number 84 of 2019, the implementation of national regulations on waste has not been able to accommodate the systematic re-export measures for all illegal waste entering Indonesia. The three legal rules are in common namely the regulation of the division of tasks in terms of supervision and stipulation of legal rules for traffic activities and waste management that can be carried out by the central and regional governments. As an application of the norm, the government can impose sanctions in the administrative, civil and criminal spheres. Administrative sanctions in the form of; written warning, coercion, forced payment of money, license suspension and/or license revocation to the waste management party that commits the violation.

If there is a violation in the export import of waste activities, the Government through the Ministry of Environment and Forestry and the Ministry of Trade can revoke any Non B3 Waste Import Recommendation Letter and Import Approval of Non-B3 Waste that has been given to the importers proven to be smuggling garbage. Referring to Article 8 of the Basel Convention, the cost to re-export can be borne by the exporting country, which has been proven to smuggle plastic waste and it must not refuse, prevent or hinder the return of the waste.

The Minister of Trade of the Republic of Indonesia Number 84/19 regulates the Task Force on Waste Import Control Team in charge of checking documents and goods, as well as research and investigation of importers, and enacts policies that are deemed necessary to refuse the entry of plastic waste in Indonesia (Luthan, 1996). It also has the authority to handle problems and supervise the import of non-B3 waste in Indonesia. In addition, Indonesia can make updates to legal instruments to provide a clear definition, as well as mechanisms for imposing sanctions on parties which violate Indonesian environmental law, such as the

Environmental Protection and Management Regulations, Law 18/2008 and the Minister of Trade Regulation 84/2019.

Referring to the policy in the British Government, which currently has implemented a new mechanism regarding taxes related to the production of the use of plastic materials in early 2019. Starting in April 2022, the UK will impose a tax on any produced goods and imported plastics of which the composition consists of less than 30% recycled plastic. In addition to the urgency of the accumulation of plastic waste in the UK that must be addressed immediately. The British government applies the theory of responsibility to producers namely extended producer responsibility (EPR) a principle that puts producers to account for their production costs until the end of the use of each product issued, and to encourage producers to continue developing products with designs that are more environmentally friendly for reuse or recycling. This also needs to be done as a form of preventive effort for Indonesia to provide protection towards potential damage to the environment due to recycling and the accumulation of plastic waste that enters due to the export-import activities.

### **Legal Remedies for Exporting Countries**

Based on data from The U.S Census Bureau, The United States has exported 78% of all plastic waste in 2018 to developing countries such as Malaysia, India, Vietnam and several other countries (Jambeck, *et al.*, 2015). According to David Nicholson, there are three types of environmental dispute resolution as efforts to resolve disputes in smuggling waste; the first is to use the authority approach, that is the use of sanctions stated in the legislation. Sanctions can also be in the form of criminal, administrative or civil sanctions as explained in the Environmental Protection and Management Regulations. Second, using the interest-approach, it focuses on achieving agreement between the two parties, namely negotiation or mediation. Third, use a right-based approach that is the use of third parties such as arbitrators, as well as institutions such as courts. All efforts to resolve the disaster are carried out to achieve environmental justice. Based on the perspective of private law, environmental justice has sided with the community in a state territory which is entitled to a healthy environment and life, as well as the right to receive compensation in the event of damage to the environment. Whereas based on the perspective of public law, environmental justice means the right to protect the public interest in a sustainable environment.

Referring to the Basel Convention, disputes that occur between parties to the convention arising from an interpretation or implementation of the convention clause must first be resolved through peaceful means or according to the choices and agreements of the parties to the dispute. If no resolution to the dispute is reached, the parties can submit the dispute to the International Court of Justice (ICJ) or the arbitration body. The role of the International Court of Justice in resolving disputes is passive, that the dispute must be submitted by the parties to the dispute (Nasser, 2018). As an implementation of the Basel Convention, The Secretariat of the Basel Convention is formed which is structurally under the auspices of the United Nations Environment Program (UNEP). with the main function to assist the implementation of the Basel Convention, for example holding a meeting for the parties to the dispute, provide reports and information between countries relating to traffic in waste trade, and ensuring communication and coordination between convention member countries.

### **Efforts to Overcome Plastic Waste by Manufacturers**

One of the factors causing smuggling of waste through the export-import waste paper is the existence of excess plastic waste production from a country. Companies producing plastic staple goods have not been able to apply the concept of environmentally friendly (Greenpeace Indonesia, 2019). There is a tendency to make a transition of plastic production to other disposable packaging materials such as bioplastics or even paper. As seen in 2018 McDonald's replaced plastic straws with paper straws for the UK and Ireland (Picheta, 2019); whereas the replacement of plastic raw materials into paper will cause environmental problems, namely, deforestation. Massive paper production designed as a substitute for plastic, actually cause the phenomenon of deforestation. Even with the presence of adhesive materials combined in the paper packaging, making paper products 'replacement' still difficult to recycle or decompose naturally.



Based on the results of research and audits conducted by Break Free from Plastic over 187,000 plastics from 42 countries in the world, Unilever, Coca-Cola, PepsiCo and Nestlé have been named in the top ten giant multinational companies that have become the world's largest plastic polluters (Alegado, 2018). Until now, these companies have not been able to take significant steps as evidence of environmental concern over the plastic waste crisis. Globally, plastic production and plastic burning in the world will produce carbon gas which is equivalent to 189 coal-fired power plants by the end of 2019 and even according to a report from the Center for International Environmental Law (CIEL), the world is expected to hold 12 billion tons of plastic waste by 2050 (CIEL, 1989).

In the 2017 International Zero Waste Cities Conference in Bandung organized by the Global Alliance for Incinerator Alternatives (GAIA), based on the results of investigations and audits of waste samples in Indonesia and the Philippines, there are ten companies that are the biggest polluters in Indonesia and the Philippines. These companies include; PT. Indofood CMP Sukse Makmur Tbk, PT. Unilever Indonesia, PT Mayora Indah Tbk, Danone Group, Wings Corporation, and several other large companies (*Global Alliance for Incinerator Alternatives (GAIA), 2018*). To handle the plastic waste, 17 major cities in the Philippines used 87 million dollars in 2012. This figure is a form of useless allocation of funds for cleaning up existing plastic waste.

Danone Indonesia's spokesman, Ari Mujahidin, stated that one of the products under the auspices of the company is AQUA has carried out a "Wise Plastics" campaign using recycled materials for bottled mineral water products, and appeal to the public regarding the urgency of recycling of plastic waste (Dipa & Kahfi, 2019). Danone also stated that it has joined the Packaging and Recycling Alliance for Indonesia Sustainable Environment (PRAISE) along with five other large companies such as Coca Cola, Nestlé and Unilever. However, efforts like this take a long time and are ongoing to achieve the target (Greenpeace, 2019). The solution that plastics companies need to work on is the transition from the use of plastics, use of refill or reuse and gradual reduction of production volume, making it easier for the country to manage plastic waste in its area.

### **The Practice of Handling Plastic Smuggling in ASEAN Countries**

Several countries in the Southeast Asia region are now becoming illegal shipping bins from developed countries, due to the mutually beneficial relationship between the importer and the exporter. But the benefits gained by the importing country are fading away due to the volume of illegal entry of illegal plastic waste is not controlled. Malaysia even has to re-export as many as 60 illegal plastic waste containers which has been piling up since 2018 because it is incompatible with the manifests and re-licensing of exporting countries such as the United States, Canada, the United Kingdom, and Australia (Chan, 2019). The waste shipment is charged to the importer in accordance with the Environmental Quality Act 1974 Section 34B.

The regulation in Malaysia has similarities with Indonesia's Environmental Protection and Management Regulations, by emphasizing absolute responsibility given to the importer which is proven to smuggle garbage into the country's territory. However, the implementation of the regulation has not been maximally implemented. While the State of Vietnam, has a waste management method that is still bad. The plastic waste that enters the country is only through conventional processing via garbage workers, and is done by washing and melting the types of plastics.

This kind of recycling process has a negative impact on the environment, in producing many pollutants in the form of smoke such as dioxin, furan, and polychlorinated biphenyl, and other chemicals which in the long run will have an impact on the environment. In addition, the plastic washing process, which is carried out using detergents also, has the potential to cause water pollution in a sustainable manner. In response to this, Vietnam stated that the country would not issue new licenses for importing companies in its territory, and will implement a total cessation of imports of plastic waste by 2025 (BBC News, 2019).

Efforts to tackle smuggling of waste can be done by making international agreements with waste exporting countries, especially in Southeast Asia to reinforce cross-border waste shipping traffic especially in the case of implementing accountability. So that it continually narrows the smuggling gap of plastic waste for Indonesia, and even create a better mechanism for global waste trading.

## **CONCLUSION**

The state as a party has a supervisory function on all activities carried out both by private parties and by their institutional organs. It can be liable in the event of a loss to another country due to activities within its territorial scope. Cases of smuggling garbage can cause various negative impacts ranging from economic to environmental aspects. Therefore, the State as a subject of international law can be burdened with accountability for smuggling plastic waste that causes harm to other countries, in the form of restitution, compensation, and satisfaction. The state needs to take action to strengthen the rule of law for the problem of export-import of waste in Indonesia both internationally and nationally. Efforts to overcome the smuggling of plastic waste can be done by the government through various legal rules to provide protection for the environment that is within its sovereignty and the producers themselves as a form of commitment to maintaining environmental sustainability.

## **BIBLIOGRAPHY**

- ADAM, A. (2019). "Dalih Sampah Impor demi Industri, tapi Mengapa Ada Sampah Plastik?" <http://tirto.id/dalih-sampah-impor-demi-industri-tapi-mengapa-ada-sampah-plastik-ec6d>. Accessed 8 November 2019.
- AGENCE FRANCE-PRESSE (2009). 'Bagaimana Negara Barat Hadapi Arus Balik Limbah Plastik?' <http://dw.com/id/bagaimana-negara-barat-hadapi-arus-balik-limbah-plastik/a-49066207>. Accessed June 23<sup>rd</sup> 2019.
- ALLEN, R. (2009). *Waste Not, Want Not: The Production and Dumping of Toxic Waste*. Earthscan.
- AMINULLAH, S. (2018). "Asas Strict Liability dalam Tindak Pidana Narkotika". *Yuridika*, 1(2), 7-17-52. <https://doi.org/10.4337/9781786433725.00013>
- ANDREW B. BERNARD et al. (2015). "Trade in Waste Among Developed Countries Evidence and Origins". *7 Annual Review of Resource Economics*.
- ARRASYID, ET. AL. (2019). "Investigating the integrated leader member exchange and supply chain strategy on employee performance". *International Journal of Supply Chain Management*, 8 (6), 718-730.
- BLACK LAW DICTIONARY (2009). 9<sup>th</sup> Edition. West Publishing.
- BROOK, A.L., WANG, S. & JAMBECK, J.R. (2018). "The Chinese Import Ban and Its Impact on Global Plastic Waste Trade". Vol. 4 No. 6 *Science Advances*.
- CHARTER OF THE UNITED NATIONS 1945.
- CHRISTINAWATI, & PANDIN, M. G. R. (2019). "Andrew Marvell's poems viewed from history of the british coloniser perspective". *International Journal of Innovation, Creativity and Change*, 8(9), 31-43.

CNN PHILIPPINES STAFF (2019). "Duterte threatens war vs. Canada for Dumping Trash in PH". <http://cnnphilippines.com/news/2019/4/23/Rodrigo-Duterte-Canada-trash-war.html>. Accessed 17<sup>th</sup> August 2019.

CNN PHILIPPINES STAFF (2019). "Canada offers to ship back its trash; DFA says 'delicate negotiations' underway". <http://cnnphilippines.com/news/2019/5/4/canada-offers-take-back-garbage-philippines.html>. Accessed 17<sup>th</sup> August 2019.

DAMARJATI, D. (2019). 'Indonesia kirim balik 5 kontainer Sampah ke AS' (Detik News, 2019). <http://news.detik.com/berita/d-4586721/indonesia-kirim-balik-5-kontainer-sampah-ke-as>. Accessed 17<sup>th</sup> August 2019.

DEWI, I. K., HARDIN, SAMPARA, S., BAHARUDDIN, H., NUH, M. S., ANDARA, D., RAMADHAN, F. M., HANIARTI, RUKKA, R. M., & AMRULLAH, A. (2019). "Implementation of public services with a legal system approach in the "welfare state" framework to overcome disaster"s. 235(1). <https://doi.org/10.1088/1755-1315/235/1/012025>

DIXON, M. (1996). Textbook on International Law 3<sup>rd</sup> Edition. Blackstone Press Limited.

ERWIN, K., ABUBAKAR, E., & MUDA, I. (2018). "The relationship of lending, funding, capital, human resource, asset liability management to non-financial sustainability of rural banks (BPRs) in Indonesia". Journal of Applied Economic Sciences, 13(2), 520–542. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85049304531&partnerID=40&md5=1c7222246b999a01b054e793c7e89782>

GREEN PEACE EAST ASIA (2019). 'Data from The Global Plastic Waste Trade 2016-2018 and The Offshore Impact of China's Foreign Waste Import Ban' (2019) Analysis of import-export data.

HINGORANI (1984). Modern International Law 2<sup>nd</sup> edition. Oxford & IBH Publishing.

HUALA, A. (1991). Aspek-aspek Negara dalam Hukum Internasional. Rajawali Pers.

HUSIN, S. (2009). Penegakan Hukum Lingkungan Indonesia. Sinar Grafika.

KEMENTERIAN LINGKUNGAN HIDUP DAN KEHUTANAN (2019). "Rekomendasi Impor Limbah Non B3". <http://pelayananterpadu.menlhk.go.id/index.php/rekomendasi-impor-limbah-non-b3>. Accessed 21 November 2019.

LAUNSPACH, F. (2018). "Global waste industry rocked by China Import ban" (Al Jazeera). <http://aljazeera.com/news/2018/09/global-waste-industry-rocked-china-import-ban-180924084311908.html>. Accessed Agustus 7<sup>th</sup> 2019.

MARZUKI, P. M. (2016). Pengantar Ilmu Hukum Edisi Revisi. Prenadamedia Press.

MILES, T. (2018). "U.S Asks China Not To Implement Ban On Foreign Garbage", (Reuters). <http://reuters.com/article/us-china-environment-usa/u-s-asks-china-not-to-implement-ban-on-foreign-garbage-idUSKBN1GZ2WI>. Accessed 12 August 2019.

NOVIEKAYATI, I. G. A. A., UTOMO, D. B., PRATIKTO, H., & PANDIN, M. G. R. (2019). "Rational decisions in communities affected by annual floods in east java, Indonesia". International Journal of Innovation, Creativity and Change, 8(8), 405–415.

PANDIN, M.G.R., MUNIR, M., & SUMARTONO (2019). "The Ludruk Aesthetics Experience". Opcion, 35(20), 1521–1538. <https://produccioncientificaluz.org/index.php/opcion/article/view/24597>

PARKER, L. (2018). "China Ban on trash imports shifts waste crisis to Southeast Asia". National Geographic. <http://nationalgeographic.com/environment/2018/11/china-ban-plastic-trash-imports-shifts-waste-crisis-southeast-asia-malaysia/>. Accessed August 5<sup>th</sup> 2019.

PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 84 TAHUN (2019) tentang Ketentuan Impor Limbah Non Bahan Berbahaya dan Beracun Sebagai Bahan Baku Industri.

PRISANDANI, U. Y. & AMANDA, A. L. (2019). "The Importance of Regulating Plastic Marine Pollution for the Protection of Indonesian Marine Environment". *Yuridika*, 35(1), 171. <https://doi.org/10.20473/ydk.v35i1.10962>

PUTRI, A. R. S., ZAINUDDIN, M., MUSBIR, M., MUSTAPHA, M. A., & HIDAYAT, R. (2019). "Effect of oceanographic conditions on skipjack tuna catches from FAD versus free-swimming school fishing in the Makassar Strait". 370(1). <https://doi.org/10.1088/1755-1315/370/1/012008>

RAHAYUNINGSIH, S., MATULESSY, A., RINI, R. A. P., PANDIN, M. G. R. (2019). "The Local Government Transformation, The Big Five Personality And Anxiety". *Opcion*, 35(88), 759–770. <https://produccioncientificaluz.org/index.php/opcion/article/view/24225/24675>

RAHMADI, T. (1990). *Hukum Lingkungan Indonesia*. Raja Grafindo Persada.

SAIDIN, O. K. (2015). "Transplantation of foreign law into Indonesian copyright law: The victory of capitalism ideology on Pancasila ideology". *Journal of Intellectual Property Rights*, 20(4), 230–249. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84938604126&partnerID=40&md5=2b5ca4229cce67eeb9028ff4ecb6fc62>

SANDS, P. et al. (2012). *Principles of International Environmental Law 3<sup>rd</sup> edition*. Cambridge University Press.

SHAW, M. N. (2008). *International Law, 6<sup>th</sup> Edition*. Cambridge University Press.

SOTO, M. V. (1996). "General Principles of International Environmental Law". *ILSA Journal of International & Comparative Law Vol.3*.

SULINDAWATY, MAWENGGANG, H., ZARLIS, M., EFFENDI, S., ZENDRATO, N., FAHMI, H., & IKHSAN, M. (2019). "Smart Fishing Vessel Monitoring for Handling of Illegal Fishing in the EEZ of Indonesia Using WSN TDMA" (P. A.R., H. D., W. A.P., W. A., S. S., & H. T. (eds.); Vol. 1255, Issue 1). Institute of Physics Publishing. <https://doi.org/10.1088/1742-6596/1255/1/012021>

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL (1992).

THE DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT (1972).

THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992).

UNDANG-UNDANG NOMOR 18 TAHUN 2008 TENTANG PENGELOLAAN SAMPAH (2008). Lembaran Negara Republik Indonesia Tahun 2008 Nomor 69, Tambahan Lembaran Negara Republik Indonesia Nomor 4851.

UNDANG-UNDANG NOMOR 32 TAHUN 2009 TENTANG PERLINDUNGAN DAN PENGELOLAAN LINGKUNGAN HIDUP (2009). Lembaran Negara Republik Indonesia Tahun 2009 Nomor 140, Tambahan Lembaran Negara Republik Indonesia Nomor 5059.

UNITED NATIONS ENVIRONMENT PROGRAMME (2019). "Plastic Recycling: an underperforming sector ripe for a remake". <http://unenvironment.org/news-and-stories/story/plastic-recycling-underperforming-sector-ripe-remake>. Accessed August 1<sup>st</sup> 2019.

VIENNA CONVENTION ON THE LAW OF TREATIES (1969).

XINHUA (2018). "China tightened ban on solid waste imports", (Xinhuanet). [http://xinhuanet.com/english/2018-11/19/c\\_137615850.htm](http://xinhuanet.com/english/2018-11/19/c_137615850.htm). Accessed 9<sup>th</sup> August 2019.

XINWEN, C. et al. (2011). "Informal electronic waste recycling: A Sector Review with special focus on China". Waste Management, Vol. 31 Issue 4.

XUE, H. (2003). Transboundary Damage in International Law. Cambridge University Press.

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