

International Environmental Law Enforcement using ISO 14001 in the WTO free trade system and its Implementation in Indonesian Law

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ABSTRACT

ISO 14001 is an international standard that contains guidelines (guidance) for management. International Environmental Law and national environmental law have not been able to achieve optimal enforcement of environmental law because it only contains rules in the form of a liability approach. Law enforcement must be done with other approaches such as the economic approach, especially marketing, namely the market based incentive approach. This approach provides incentives for goods and services companies holding ISO 14001 certificates, namely environmental management standards (EMS). The research problem is how the environmental management standard (EMS) of ISO 14001 helps the enforcement of International Environmental Law and Indonesian Environmental Law as well as what forms of implementation in Indonesia. The research method used is a normative juridical approach supported by a sociological juridical approach. Analysis of legal material is done descriptively through a comparative approach to management science, especially marketing management. The results show that EMS has been recognized by World Trade Organizations (WTO) member countries as a world trade standard. ISO 14001 has been required in trade by developed countries such as Europe, the United States, China etc. ISO member countries have also required ISO 14001 in the export and import of their goods and services. Companies are competing to get EMS certificates so that their products sell well in the market. One of the requirements for obtaining an ISO 14001 certificate is that each company has a commitment to uphold national and international environmental law. Indonesia as a member of ISO and WTO has implemented ISO 14001 as the Indonesian National Standard (SNI 14001). ISO 14001 has also been included in various laws such as Law Number 32 Year 2009 concerning Environmental Protection and Management.

Key words : ISO 14001, International and national environmental law enforcement, Market mechanism approach

Introduction

ISO 14001 is an international standard that contains guidelines (guidance) for managing the environment. This international standard has been agreed as a general guideline for managing the world's environment called environmental management standards (EMS). The EMS contains an outline of the activities that must be carried out so that it can be

used by various organizations or companies both government and private, both large and small companies to manage the environment. ISO 14001 sets out the criteria for an environmental management system and can be certified to. It maps out a framework that a company or organization can follow to set up an effective environmental management system.¹

ISO 14001 is a guide on environmental manage-

ment that is a guide to do something about the environment so that environmental management does not result in environmental pollution or damage. Environmental management with ISO standards will also reduce the excessive use of natural resources, especially unrennewable resources, thus increasing the environmental performance of a company. In turn, companies that use ISO 14001 will gain the trust of the consumer community to choose and use the products and services they sell.

The ISO 14001 guidelines as ems have the same criteria as their predecessors, the ISO 9001 quality management standard (QMS), so that together they (EMS and QMS) are known as Management System Standards (MSS). ISO 14001 is not a technical guide that can be practically used directly to protect the environment, but this standard is more general guidelines for managing the environment. Every individual or company / organization that conducts business and has a negative impact on the environment is increasingly aware that environmental protection is an obligation to do given:

1. Increasingly stringent laws and regulations.
2. The development of global economic policy.
3. Increasing efforts to protect the environment in various parts of the world.
4. Increasing public awareness of a good and beneficial environment, including awareness of the importance of sustainable development (Boiral, 2007).

The environment has suffered very bad damage and pollution. The World Environment Conference in Stockholm which produced the 1972 Stockholm Declaration on the Environment, (Bowet, 1990) it has been said that the treatment of the bad earth has damaged various joints of life. This damage includes climate change, depletion of the ozone layer, pollution of the sea, rivers and air as well as the scarcity of natural resources. The Stockholm Declaration has become the basis for making international agreements in the environmental field such as the Climate Change Convention, (Verman, 1973) Ozone Layer Depletion Convention, (Daud and Edisi, 2008) Sea Law Convention (Findley, Danie, 1992) etc (Francioni and Tullio, 1991). All of these agreements are international legal efforts to prevent the destruction and pollution of the international environment. Ten years later the Stockholm Declaration continued with the Rio Declaration (Gailard, 1994) and the next ten years are evaluated again with the

Johannesburg Declaration (Huala Adolf and Chandrawulan, 1995).

Results and Discussion

Problems

All Declarations and Conventions on international environmental law have produced fundamental changes to the importance of protecting against environmental damage and pollution. UN member states are bound and obliged to comply with the contents of this rule. But in the practice of law enforcement these efforts have not been maximized. The implementation of this international agreement is stalled when developed countries and developing countries that are parties to it do not want to implement the existing provisions, so that the enforcement of international environmental law then becomes blunt and not applicable to protect the environment. How does the effort to enforce international environmental law use ISO 14001 in the WTO free trade system? and how is the implementation in Indonesian Environmental Law?

International Environmental Law Enforcement Using ISO 14001 in the WTO Free Trade System

ISO 14001 as an economic entity has the power to carry out international environmental law enforcement. Law enforcement with an ISO system has a different way than the legal approach. ISO 14001 as an EMS guide does not see environmental law enforcement as a mere right and obligation. EMS does not provide sanctions, because it is not a legal entity. The EMS is the opposite, namely giving rewards in international environmental law enforcement. Rewards are given in the form of an ISO 14001 certificate to companies for their legal compliance. A company that has a commitment to carry out an EMS is guaranteed in the form of a certificate that is ISO 14001 certificate. A company that has this certificate will make it a company that is guaranteed by ISO 14001 as a company that has produced goods and services with great attention to environmental preservation namely the company who have complied voluntarily with international environmental law and national environmental law. This is another way of environmental law enforcement.

The production of goods and services holding ISO 14001 certificate has been carried out with environmental friendly. This certificate is also a guaran-

tee to consumers that a company has used natural resources in a sustainable and sustainable manner. The production of goods and services is carried out with due regard to environmental preservation and sustainability. Environmental management uses a management pattern in the following order: (Jeffrey and Peirce, 1997).

The world free trade system developed by the World Trade Organization (WTO) currently has requirements to use products and services that are produced with environmental friendly. WTO member countries that trade with this system have required trade standards as required by the WTO. The people of the world, especially those in developed countries as export destinations in developing countries, buy goods and services that are only ISO 14001 certified. These environmentally friendly communities have indirectly provided a way to enforce environmental laws. This effort has also made companies competing to get recognition in the form of ISO 14001 certificates voluntarily not based on obligation. The importer country of goods also finally began to require that the goods imported were only goods with ISO 14001 certificates as well. This is what is called National and International Environmental Law Enforcement using economic mechanisms in the form of market based incentives.

The development of the use of EMS since its release in 1997 has greatly influenced the global trading system. According to Boiral the EMS approach has gained popularity mostly due to the worldwide distribution and commercial success of the environmental management standard of ISO 14001. During the last two decades, more than 300,000 organizations in 171 countries round the world have chosen to certify their EMS. The use of ISO 14001 certificates by various major world trade countries is presented in the following Table 1.

In Table 1, shows that the development of accep-

tance of ISO 14001 increased significantly in two decades throughout the world. This increase is closely related to the increasingly rapid global trade system. On the contrary, in developing countries, such as in several countries in Asia and Africa, Africa shows that ISO 14001 has become counter-productive to companies and is considered a technical barrier in world trade. This is caused by the large number of their goods and services being rejected by the importing country. Developed countries are considered to use ISO 14001 certificate as a way to prevent developing country products from developing countries because they do not meet international standards. This is what is called a technical barrier to trade by developing countries.

In many African countries according to the results of the Iñaki Heras-Saizarbitoria study (Jackson, 1994) system of goods and services of their products are not widely exported to countries that have required ISO 14001 such as the USA, European Union of China and so on, so they are not bothered by this EMS. The obstacles there are actually internal obstacles in their country. According to Iñaki these barriers include various aspects, such as institutional weaknesses, unclear industrial policies, lack of governmental incentives, poor dissemination of information and knowledge about the standards, quasi-absence of reliable local certification bodies, and the predominance of informal SMEs shaped by traditional culture. Lack of human and financial resources also represents a significant barrier to the adoption of ISO standards (Kenneth and Irene, 1994).

The motivations for implementing an environmental management system vary these tend to be external factors such as customers, ethical motivations, performance improvement, compliance with legislation, marketing and legitimating reasons and other intangible benefits (Kusnadi, 2001). In this

Table 1. International Adoption of ISO 14001 in The Main Global Economic Zones

	1999	2001	2008	2015	2015	
					%	ICI
USA	636	1645	4987	6067	1.92	0.08
Japan	3015	8123	35,573	26,069	8.24	1.36
European Union	7253	17,941	78,118	119,754	37.50	1.30
China	222	1085	39,195	114,303	36.13	2.37
World	13,994	36,464	188,574	319,324	100	1

Source : Own preparation on the basis of the various executive reports on the global statistics for ISO 14001 published by ISO.¹¹

study the writer focuses on the use of ISO 14001 implementation at the compliance with legislation.

Implementation of ISO 14001 in Indonesian Environmental Law Enforcement

Compliance with international environmental law has been widely practiced by developed and developing countries. Indonesia as a member of the world community as well as a country that is a party to various international environmental agreements has taken steps and a very cooperative attitude in implementing international law. Many provisions and Indonesian National Laws were made to implement international agreements in the environmental field.

Indonesia as a member of ISO and WTO has included ISO 14001 as the Indonesian National Standard (SNI 14001). The practice of applying ISO in Indonesia is very closely related to the Indonesian National Standard System. Indonesia has a national standard called the Indonesian National Standard (SNI). SNI is determined by the National Standardization Body (BSN). BSN is an independent institution that is given authority by the government to determine SNI. BSN also represented Indonesia as a member of the International Standard Organization (ISO). BSN independently sets Indonesian National Standards (SNI).

SNI issued by BSN has adopted many international ISO standards. BSN has set ISO 14001 International Environmental Standards as National Standards SNI 14001-1997. This determination has made that environmental management in Indonesia must be of international standard. This is very beneficial for companies that will sell their products to the international market, because one of the requirements for export goods and services is the same as international standards. So that the goods that have been produced with SNI 14001 means that it is the same as the ISO 14001 standard. The goods and services they produce already meet export standards to developed countries. This standard has become a benchmark for goods and services produced by Indonesia. SNI becomes the standard in national domestic trade as well as internationally traded goods and services or export products.

To strengthen the existence of ISO 14001 Indonesia has also included ems rules in Law Number 23 of 1997 concerning Environmental Management (LN 1997 No. 12, TLN No. 3215), abbreviated as UUPPLH and now replaced by Law Number 32 of

2009 concerning Environmental Protection and Management (LNRI Year 2009 Number 140 TLN Number 5059), abbreviated as UUPPLH. Both of these laws are the embodiment of the Stockholm Declaration and its derivatives which show Indonesia's attitude is very compliant and obedient to international environmental law. Law Number 32 of 2009 concerning the Law on Environmental Protection and Management is now an umbrella law in Indonesian law.

In the Final Act Embodying of WTO it has been stated that in international trade international standards will be used. The WTO has asked the International Standards Organization (ISO) to provide various standards in international trade. For environmental standards in the WTO trade system ISO 14001 is used. The implementation of International Environmental Law and International Trade Law in Indonesian Law has been carried out in harmony. Law No. 23/1997 concerning the UUPPLH has required the government to develop and implement ISO 14000 instruments in Indonesia. This is written explicitly in the UUPPLH explanation. In Article 10 Letter e which states that:

In the context of environmental management, the Government is obliged to:

(e) developing and implementing devices that are pre-emptive, preventive and proactive.

Elucidation of Article 10 of the UUPPLH stipulates that what is meant by proactive actions is actions at the production level by applying environmental standardization, such as ISO 14000.

Based on the provisions of the Indonesian UUPPLH, ISO 14001 has been set as the Indonesian National Standard. (SNI 14001-1997). This determination is carried out by the Indonesian National Standardization Agency (BSN). This determination also shows Indonesia's attitude to comply with international environmental law enforcement by utilizing the market mechanism approach.

The Indonesian UUPPLH is an umbrella law which underlies various sectoral laws that grow and develop along with the development of environmental law enforcement in Indonesia. Law Ratification of the Climate Change Convention Law of the Republic of Indonesia Number 16 Year 2016 concerning Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change, Law Number 41 of 1999 concerning Forestry, and so on are various national provisions of Indonesia originating from Environmental Law In-

ternational.

Although there are many sources of International Environmental Law, there are many obstacles in its enforcement. Law enforcement is still deadlocked and seems to be blunt in protecting the environment. Many developed countries are reluctant to comply with various international conventions and declarations that have been mutually agreed upon by the international community. Developed industrial countries are reluctant to comply with various schemes related to reducing their emissions in the industrial sector, so they are not compliant with climate change. This is also followed by developing countries who are reluctant to protect their forests from illegal logging because wood is a natural resource that can be a fast, low-cost export material and generate huge foreign exchange for them. It is these reluctance that makes international environmental law difficult to enforce.

International law and national law in the environmental field only contain obligations that must be obeyed. Environmental law also reduces their rights to extract natural resources that make big money. Therefore, then look for other ways to achieve the goal of protecting and preserving the environment that has been declared. One of the forms and efforts taken is to use a market based approach. This approach is not merely a legal approach but is an economic approach that has an extraordinary impact on compliance with the rule of law. This market approach begins with the purchase of goods and services by the public. The goods purchased are only goods that already have good environmental management responsibilities. The proof is indicated by the ISO 14001 label in their products or services. Company management can voluntarily obtain ISO 14001 certificates at various issuing institutions. The product or service to be certified must meet various criteria, one of which is the compliance criteria for environmental law in their country and compliance with international environmental law. Those who already have this compliance are then given an ISO 14001 certificate. Goods and services that have obtained this certificate will be purchased and used by the public, while similar types of goods without an ISO 14001 certificate will not sell on the market. Through this market mechanism, environmental law enforcement is no longer a legal approach in the form of rights and obligations but uses a market approach (buying and selling). Incentive approaches based on market mechanisms (mar-

ket based incentives), namely an economic approach based on the rewards given by buyers to sellers.

The government also plays an important role in this market mechanism approach. The role of the government is to provide incentives for companies that are willing and willing to use the ISO 14001 scheme in producing goods and services. Importing countries can make this certificate as a condition for goods imported into their countries. Exporting countries can also play a role in making this ISO 14001 certificate as one of the export requirements for companies engaged in the environmental sector.

The meeting between the same requests and offers using ISO 14001 will be the key to voluntary enforcement of international environmental law. The willingness and awareness of all components, both the people who buy environmentally friendly products, as well as companies that produce goods and services that are compliant with confusion, including the government which requires the export and import of goods and services marked with ISO 14001 will make environmental law enforcement with a market mechanism approach successful. .

The approach offered by ISO 14001 is a management approach. Management standards carried out by ISO 14001 are the same as ISO 9001 management standards that have been known and used internationally. ISO 9001 is management to achieve international quality standards, while ISO 14001 is a management standard for achieving international environmental standards. These two standards are known as Management System Standards (SSM).

The workings of ISO 14001 are continuous improvements to environmental management. This management follows up on what the managers have agreed to commit to managing their business environment. Environmental management with a sustainable system is in accordance with the concept of sustainable development. This concept is in line with the development of international community awareness that is increasingly concerned and aware of the right to a healthy and good environment in accordance with the Universal Declaration of Human Rights.

ISO 14001 is an environmental management system that is recognized by member countries of the World Trade Organizations (WTO). The problem that arises is when ISO 14001 is considered by the exporting country to be a tool by the importing country to inhibit their goods and services. Export-

ing countries from developing countries assume that ISO 14001 has the potential to become a technical barrier to trade. Even though it is only a technical obstacle, this is contrary to the free trade system that has been designed by the WTO. In the free trade system regulated by the WTO it has been determined that trade should not be hampered by technical matters. This is consistent with what has been agreed in the WTO Agreement on Trade and Tariffs. This agreement states that a country must not use any instrument to prevent the smooth flow of world trade in goods and services. Countries must provide equal opportunities to each country to sell goods and services competitively among WTO Member States. There is no country that can be benefited and no one can be disadvantaged.

In fact, ISO 14001 is not an obstacle to trading, but instead the WTO is used as an international standard for trade that sells goods and services related to the environment. Goods and services traded in the WTO system are required to use international standards issued by ISO including ISO 14001 standards. The WTO has determined that trade standards between member countries should use international standards from ISO, not the national standards of each Member State. National standards that exist among ISO members are not the same. There are high standards and there are low standards. This standard also occurs in environmental standards. The British environmental standard for environmental management is the British Standard (BS) 9700. This standard is very strict and does not comply with environmental standards in developing countries let alone goods and services from poor countries. Likewise, Japan's environmental standards Japan Standard (JS), it is very difficult to be followed by environmental standards in developing countries such as the Indonesian National Standard (SNI) for example. To avoid this the WTO has set ISO 14001 Standard as an international standard for environmental management. So that harmonization and synchronization are achieved to determine environmental quality. The same environmental quality is expected to further facilitate international trade as envisioned by the WTO. ISO international standards are no longer a barrier to trade but instead ISO becomes the glue and link between high and strict developed country standards and low and not so strict developing country standards.

Conclusion

The conclusion of this paper is that ISO series 14001 has the ability to provide reinforcement for environmental law enforcement with a market mechanism approach. Efforts to implement and strengthen the ISO 14001 need to be carried out by the WTO which states that the environmental standard in the field of environment is ISO 14001. Indonesia as a member of ISO and WTO has implemented ISO 14001 in its environmental law enforcement Indonesia by incorporating ISO 14001 into Law Number 23 Year 1997 on Environmental Management and stipulates ISO 14001 as the Indonesian National Standard (SNI 14001) by the National Standardization Agency (BSN).

References

- Bambang H. Hadiwiardjo, 1997. *ISO 14001 Panduan Penerapan Sistem Manajemen Lingkungan*, PT. Gramedia Pustaka Utama, Jakarta.
- Boiral, O. 2007. *Corporate greening through ISO 14001: a rational myth?*, *Organization Science*. 18 (1).
- Bowet. D.W. 1990. *The Law of International Institutional*, Stevenson and Sons Limited, USA.
- Verman, Lal C. 1973. *Standardization a New Dicipline*, Archon Books.
- Daud Silalahi and Edisi, 2008. *Hukum Lingkungan Dalam Sistem Penegakan Hukum Lingkungan Indonesia*, Alumni, Bandung.
- Findley, Roger W. and Danie A. 1992. *Farber, Environmental Law in a nut Shell*, West Publishing Company, USA.
- Francioni, Francesco and Tullio Svcozazi, 1991. *International Responsibility for Environmental Harm*, Graham & Trotman, London.
- Gailard, Jhon, *Industrial Standardization : its Principle and Application*, H.W Wilson Co, New York 1994.
- Huala Adolf and Chandrawulan, A. 1995. *Masalah Hukum Dalam Perdagangan Internasional*, PT Rajagrafindo Persada, Jakarta, 1995.
- Jeffrey, J. and Peirce, P. 1997. *Aarne Vesilind, Ruth F. Weiner Environmental Pollution and Control, 4th ed.* Publisher: Elsevier Science & Technology Books.
- Iñaki Heras-Saizarbitoria Editor, *ISO 9001, ISO 14001, and New Management Standards*, Springer International Publishing AG, New Zealand, 2018
- Jackson. Jhon, 1994. *The World Trading System Law and Policy of International Economic Relation*, The MIT Press Cambridge, Sixth Printing.
- Kenneth Kakuru and Irene Ssekyana, 1994. *Environmental Law*, Volume 1, Editors: 2009 Kraus. Jhon., *The GATT*

- Negotiation A Business Guide to The Result of Uruguay Round*, International Chamber of Commerce (ICC) Publishing S.A, Paris.
- Kusnadi Hardjasoemantri, 2001. *Hukum Tata Lingkungan, (ed VII)* Gadjah Mada University Press, Yogyakarta.
- Lee, W. Kuhre, 1996. *Sertifikasi ISO 14001 Sistem Manajemen Lingkungan*, Prenhellindo, Jakarta.
- Lili Rasjidi and Wiyasa, I.B. 1993. *Hukum Sebagai Suatu Sistem*, Remaja Rosdakarya Bandung.
- Mitchell. Bruce, 2000. *Resources and Environmental Management, 1st ed*, Edisi Indonesia B. Setiawan dkk, *Pengelolaan Sumber Daya Lingkungan, ed satu*, Gadjah Mada University Press, Yogyakarta.
- Mochtar Kusumaatmadja, ETTY R Agoes, 2010. *Pengantar Hukum Internasional*, Binacipta, Bandung.
- OECD, 1989. *Economic Instrument for International Protection*, Head of Publication OECD, Paris.
- Richard Posner, 1986. *Economic Analysis of Law, Third Edition*, Walter Kluwer, 9th edition, Digitized By The Internet Archive In 2012.
- Sands Philipe, 1995. *Principles of International Environmental Law I, Frameworks, Standard and Implementation*, Manchester University Press Manchester and New York.
- Patricia Birnie, W. and Alan E. Boyle, 2012. *International Law and The Environment*, Oxford University Press inc, New York.
- Vincenzo Zeno-Zencovich, 2017. *Comparative Legal Systems, A Short Introduction* Coordinamento editoriale: Gruppo di Lavoro Impaginazione: Tipografia Colitti – Roma.
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