

LEGAL RECONSTRUCTION RELATED TO HANDLING GREENWASHING PRACTICES AS AN EFFORT FOR CUSTOMER PROTECTION IN INDONESIA

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Abstract - *There is currently a proliferation of businesses engaging in greenwashing practices in Indonesia. These practices are even carried out by large companies hiding behind products that claim to be environmentally friendly. Greenwashing practices have negative impacts on consumers in Indonesia. Faced with this situation, Indonesia has not had sufficient regulations to enforce laws against these greenwashing practices. The loopholes provide opportunities for businesses to engage in greenwashing practices. This research aims to inventory and explain the existing conditions related to the regulation of greenwashing in Indonesia and to develop a model to address greenwashing practices as an effort to protect consumers in Indonesia. This research used qualitative research with the specification of doctrinal legal research, where legislation becomes the main focus of the study. Therefore, the research collected and analyzed secondary data (primary and secondary legal materials) and then analyzed them qualitatively. The results showed that Indonesia has not explicitly prohibited greenwashing practices. However, there are two regulations indirectly related to greenwashing practices: Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 8 of 1999 concerning Consumer Protection. There is a need for regulatory strengthening to address greenwashing practices in order to provide consumer protection in Indonesia.*

Keywords: *Legal Reconstruction; Greenwashing; Consumer Protection.*

INTRODUCTION

Environmental issue is one of the strategic and serious topics discussed frequently by all circles, and it has become a global focus of attention. This becomes even more complex when discussing environmental issues from the perspective of climate change. **Kadek Wibawa** stated, “the impacts of climate change felt by communities include rising temperatures, floods and droughts, crop failure leading to hunger, and displacement of people” (Wibawa et al., 2023). Climate change can directly or indirectly affect human health. Direct impacts on human health include changes in weather conditions such as temperature, rainfall, sea level rise and the frequency of extreme weather events. Extreme weather events can threaten human health and even lead to fatalities (Lewandowsky, 2021).

The industrial world is the main sector involved in causing environmental problems. Many industries have emerged to meet societal needs, but some of them do not pay attention to environmental issues. More industries prioritize profits over maintaining environmental sustainability. Over time, the existence of a society that cares about the importance of environmental preservation has started to increase. This awareness reflects an increased understanding, concern, and individual responsibility towards the environment, as well as the impact of their decisions and behaviors in daily life. One important aspect of environmental awareness is its influence on consumer purchasing decisions. Modern customers tend to pay more attention to environmental aspects and seek products that are more environmentally friendly and support sustainable business practices.



This issue has implications for the attitudes of entrepreneurs or companies, which are changing their marketing strategies by creating environmentally friendly branding to attract public interest. Claims of being environmentally friendly, such as the use of themes like 'green,' 'natural,' and 'sustainable,' are often used in product promotions to build the image of an environmentally friendly company. However, the use of such jargon is often not based on credible evidence or research. This practice is known as greenwashing. It aims to foster a perception among consumers of the environmental friendliness of their products, thereby generating profits for these products. The claims made by companies can hinder genuine efforts in environmental management. Many consumers are attracted to and purchase these products because they believe in these claims, even though the claims do not match the actual situation.

Will Kenton argued that greenwashing is a mechanism of conveying false and misleading information, where a company's products are made to appear environmentally friendly (Rejeki Wulandari, 2021). In the context of Indonesia, many large companies engage in the practice of greenwashing. **Dwi Sasetyaningtyas** has reported on a major company in the bottled water industry. This company claims to use plastic bottles that are 100% recyclable (Sasetyaningtyas, n.d.). in addition **Dwi Sasetyaningtyas** stated that the company claims to collect 12,000 tons of plastic bottles each year for recycling; although this appears to be a progressive step in reducing waste, it can be considered greenwashing when looking at other aspects of the company (Sasetyaningtyas, n.d.).

From a legal perspective, the prohibition of greenwashing practices in Indonesia is not explicitly and specifically regulated. However, this regulation is implicitly governed by Article 68 letter a of Law Number 32 of 2009 concerning Environmental Protection and Management. It states that "every entrepreneur/businessman is obliged to provide information related to environmental protection and management truthfully, accurately, openly, and in a timely manner." Based on the consumer perspective, Article 4 letter c of Law Number 8 of 1999 concerning Consumer Protection stipulates that "consumers have the right to true, clear, and honest information regarding the condition and guarantee of goods and/or services." Based on these two provisions, there is an explicit prohibition of greenwashing practices in Indonesia. However, in fact, these regulations have not been effective and efficient in preventing the widespread practice of greenwashing in Indonesia. Without clear and strict regulations, it is difficult to establish good environmental claim standards and provide consumers with a basis for lodging complaints against greenwashing practices.

Based on the description, this research becomes highly important and holds strategic value, prompting the researcher to write a paper with the title ***"Rekonstruksi Hukum Terkait Penanganan Praktek Greenwashing Sebagai Upaya Perlindungan Konsumen Di Indonesia"***. This research aims to explain the existing conditions regarding the regulation of greenwashing practices in Indonesia and to formulate a legal framework concerning the handling of greenwashing practices as an effort to strengthen consumer protection in Indonesia.

RESEARCH METHODS

This research is a qualitative study with the specification of doctrinal legal research. Qualitative research emphasizes the social construction of reality, the close relationship between the research object and the researcher, and the situations that shape the research (Wibawa et al., 2023). This study is a qualitative research which tried to understand perception, comprehension, thoughts, interpretation, and individual action on a certain phenomenon, which in this case is the phenomenon of stateless person (Mahfud et al., 2022). Doctrinal legal research employs abstract legal principles as the measure of truth in legal studies (Hakim, 2016). The objects and references referred to in doctrinal research are the principles derived from norms, concepts, and doctrines that evolve within legal thought (Hakim, 2016).

The research collected secondary data as the main data for analysis. Secondary data were collected from existing sources. These data usually have been used by previous researchers or collected by relevant institutions. A literature review with secondary data as the source of information, both primary legal materials and secondary legal materials, has been conducted in this study (Saraswati,



2014). Some primary legal materials collected and used as the basis for analysis including: the Constitution of the Republic of Indonesia of 1945; Law Number 8 of 1999 concerning Consumer Protection; Law Number 32 of 2009 concerning Environmental Protection and Management; and Minister of Environment Regulation of the Republic of Indonesia Number 2 of 2014 concerning the Inclusion of Eco-label Logo.

This research is descriptive, employing qualitative analysis to explain phenomena with scientific reasoning applied systematically without using quantitative models (Kencana, 2014). Thus, descriptive research merely describes a situation or event (Kencana, 2014).

RESULTS AND DISCUSSION

1. The Existing Condition Regarding the Regulation of Greenwashing Practices in Indonesia

The success of a business activity in Indonesia's economy cannot be separated from the use of the environment as one of its resources. Based on Law Number 32 of 2009 concerning Environmental Protection and Management, national economic development, as mandated by the Constitution of the Republic of Indonesia of 1945, must be carried out based on the principles of sustainable development and environmental awareness. Sustainable development is an effort to integrate environmental, social, and economic aspects into development strategies to achieve environmental integrity, aiming to improve and enhance the quality of life of the current generation without compromising the rights of future generations to enjoy a good and healthy environment.

In the concept of Sustainable Development, the regulation of economic instruments in Law Number 32 of 2009 concerning Environmental Protection and Management can be considered as an effort to achieve sustainable development. It provides environmental protection through an approach that aligns with market economic principles. This ensures that environmental management efforts do not interfere the growth of the business and economic sectors in general (Rahman, 2019).

Greenwashing is a misleading marketing practice that falsely claims a product is environmentally friendly. In reality, this is merely an attempt by companies to profit from product sales. In fact, companies engaging in greenwashing are violating existing regulations in Indonesia. Indonesia has several regulations governing environmental protection and management, as well as regulations concerning business actors and their obligations towards the environment.

Greenwashing practices are not only prevalent among multinational companies, but also many national companies. Especially amid the current climate crisis, many companies in Indonesia are leveraging environmentally friendly product labels as a marketing strategy to increase profits without providing concrete evidence of their commitment to environmental sustainability.

The obligations of individuals engaged in business are regulated in Article 68 letter a of Law Number 32 of 2009 concerning Environmental Protection and Management. It states that "Every person engaged in business and/or activities is obliged to provide information related to environmental protection and management truthfully, accurately, openly, and in a timely manner."

From an environmental perspective, Article 68 of Law Number 32 of 2009 concerning Environmental Protection and Management also emphasizes that entrepreneurs are required to maintain the sustainability of environmental functions and comply with regulations on environmental quality standards. Referring to this article, it can be understood that greenwashing practices constitute a violation of regulations regarding environmental protection and management because these business actors have provided inaccurate or misleading information to the public and have not maintained the sustainability of environmental functions, thus affecting the effectiveness of genuine environmentally friendly planning (Rahman, 2019).

In addition, for businesses selling products with environmentally friendly claims, they should ideally pass the eco-label logo inclusion stage as regulated in Minister of Environment Regulation No. 2 of 2014 regarding the Inclusion of Eco-Label Logos. According to Article 1 number 1 of Minister of Environment Regulation No. 2 of 2014, "The eco-label logo is a logo whose copyright is owned by the Ministry of Environment stating that a specific product has met environmental aspects including the acquisition of raw materials or natural resources, production processes, distribution, use, and/or disposal of product waste." This is also supported by Article 35 of Government Regulation



No. 46 of 2017 concerning Environmental Economic Instruments, which states that "Any person who produces and/or imports goods and services, including technology, traded within the territory of the Republic of Indonesia, may include an Environmentally Friendly Label as stipulated by the provisions of laws and regulations." During the raw material processing process, the eco-label system ensures that product waste is disposed of in an environmentally friendly manner.

Article 4 paragraph 3 of Law No. 8 of 1999 concerning Consumer Protection elaborates on consumers' basic rights to receive accurate, clear, and honest information about the condition and guarantees of goods and/or services. Further regulations can be found in it. Furthermore, in Article 8 of Law No. 8 of 1999 concerning Consumer Protection, it prohibits companies from deceiving customers by indicating that the product or service meets certain quality standards. In addition, Law No. 8 of 1999 concerning Consumer Protection prohibits companies from making or selling products or services that do not comply with the conditions, guarantees, or specifications stated in the label, tag, or product or service description.

From the consumer perspective, greenwashing is considered to have adverse effects on consumers, such as financial losses and violations of consumer rights. Thus, it leads to skepticism and distrust towards manufacturers making false claims about environmentally friendly products. Article 8 of Law No. 8 of 1999 concerning Consumer Protection regulates prohibited acts for entrepreneurs, including prohibiting those from producing or trading goods and services that do not comply with the conditions, guarantees, and promises stated on the product label.

This is reiterated in Article 9 paragraph (1) letter a, which prohibits entrepreneurs from offering, promoting, advertising goods and/or services incorrectly, and/or as if the goods have met or have discounts, special prices, certain quality standards, certain styles or modes, certain characteristics, and specific uses (Devona Valencia dkk., n.d.). The articles accommodate greenwashing practices as they align with the characteristics of greenwashing, which violate consumers' rights to receive accurate and clear information.

Based on Article 62 of the Consumer Protection Law, individuals who violate these prohibitions can be subject to a maximum prison sentence of 5 years and a maximum fine of IDR 2 billion. Unfortunately, there is no other law governing public protection from greenwashing practices other than those rules. It is due to the discussions about greenwashing practices in the country have not evolved into policy. As a result, regulations and law enforcement against these practices have not been prioritized.

In Indonesia, the authorized institution to receive complaints about products or actions suspected of greenwashing is the Ministry of Environment and Forestry. The Ministry of Environment and related state institutions are earnestly protecting the public from greenwashing practices. The government can issue specific regulations that define greenwashing and its standards to ensure the success of these efforts. If consumers want to file a complaint, they must be clear. To achieve long-term sustainable production and consumption, the government must establish standards and actively monitor products claiming to be environmentally friendly. These requirements should be extended to advertising and e-commerce. However, society needs collective awareness to drive discussions and anti-greenwashing campaigns. Additionally, participation can be more active, such as filing lawsuits in court, and as consumers, we must always be critical to learn more about greenwashing.

Based on this description, the practice of greenwashing which is widely carried out by companies can be considered to be an activity that is contrary to the laws and regulations in force in Indonesia and is a fraudulent act because it has deceived consumers with unfounded environmentally friendly claims.

2. Developing a Legal Construction Related to Handling Greenwashing Practices as an Effort to Strengthen Consumer Protection in Indonesia

The idea of customer protection arises from the weak position of consumers compared to business owner. The ratio of someone to be protected, in this case is the consumer, is the party who is disadvantaged or can be said to be weak. The form of protection given to the injured party (in this



case the consumer) is legal protection, because one of the characteristics and objectives of the law is to provide protection and guidance to the community.

As users of goods and services, consumers deserve to feel safe in using them. However, businesses often overlook the potential losses consumers may incur if the goods and/or services they use turn out to be problematic. Generally, business actors/entrepreneurs can be defined as individuals or legal entities that produce goods and/or services to meet the needs of society or consumers to obtain profit from these goods and/or services.

Seeing the reality of greenwashing which has a negative impact on environmental and social aspects, effective efforts are needed to eradicate greenwashing practices in the trade industry sector in Indonesia. This can be implemented in the form of regulatory updates that specifically regulate the prohibition of greenwashing which will later become a reference for the government in eradicating greenwashing, and guidelines for the public in identifying public fraudulent practices by companies.

Considering the legal reality in Indonesia, there is currently no clear regulation specifically addressing greenwashing practices. Furthermore, the absence of specific regulations regarding greenwashing also implies the suboptimal enforcement of the law against businesses employing this strategy in their product marketing. Essentially, greenwashing practices can be categorized as actions that cause harm, which can be reviewed in terms of environmental management and consumer protection.

In Indonesia, the lack of socialization and law enforcement regarding greenwashing practices has made individuals more flexible in carrying out these fraudulent practices. It cannot be denied, this has a clear negative impact on environmental sustainability and is detrimental to investors who have invested more funds (Julius Adi Chandra, Muktiono, 2022). Another impact, it becomes an obstacle for consumers in filtering the right information when buying products. The escalation of greenwashing practices in recent years has also brought distrust among consumers and fueled deep suspicion (Aryoso & Santi, 2023).

Indonesia, as one of the countries committed to the Sustainable Development Goals (SDGs), is obligated to promote a shift in development patterns towards one based on the principles of equality and human rights in social, economic, and environmental development agendas. SDG Goal 12th focuses on Sustainable Consumption and Production (SCP), which guarantees the implementation of production and consumption patterns that are sustainable. The implementation of production and consumption is closely related to industrial and trade activities, where Goal 12.6 emphasizes the encouragement for companies, both large and transnational corporations, to adopt sustainable practices and integrate sustainability information into reporting cycles.

In the guidelines for sustainable consumption and production actions issued by the Ministry of Environment and Forestry of the Republic of Indonesia and the Ministry of National Development Planning (Bappenas), one of the efforts in the business action menu cluster is to encourage the implementation of environmentally friendly products and consumer information. This has been implemented through encouraging consumption of products that have ecolabel certification.

The presence of an ecolabel can be a guide for consumers in choosing and ensuring environmentally friendly products that will be consumed. Ecolabeling must be applied correctly by every aspect of the Indonesian economy. There is widespread manipulation of public opinion regarding environmentally friendly claims for a product or what is known as the practice of greenwashing.

According to an evaluation of existing laws and regulations related to greenwashing in Indonesia, there is still a legal vacuum that strictly regulates the prohibition and handling of greenwashing in Indonesia. Reflecting on the problem of the absence of regulations that specifically regulate the problem of greenwashing and the lack of optimal systems for dealing with greenwashing in Indonesia at this time, a new idea is needed as a solution to this problem. Hence, there is a need for an integrated system through optimizing the existing system which is accommodated in Law Number 32 of 2009 concerning Environmental Protection and Management and Law No. 8 of 1999 concerning Consumer Protection, and supported by revisions to related legislation to support the new integrated system being presented.



Regarding to the increasingly prevalent practice of greenwashing and considering the limited effectiveness of current regulations that do not comprehensively address it, it is indeed appropriate to take steps to strengthen the prohibition of greenwashing in Indonesia. One effective measure would be to revise relevant regulations. This effort can be realized through amending the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management with the following substantive changes :

1. The addition of provisions in the General Provisions section of Law Number 32 of 2009 concerning Environmental Protection and Management in the form of an explanation regarding greenwashing practices;
2. The addition of provisions to Article 68 of Law Number 32 of 2009 concerning Environmental Protection and Management regarding the obligation of every person engaged in business and/or activities to provide accurate information regarding the guarantees, quality, and/or conditions of environmentally friendly products in accordance with applicable procedures;
3. The Addition of a new article between Article 69 and Article 70 of Law Number 32 of 2009 concerning Environmental Protection and Management, namely Article 69A. In paragraph (1), it regulates the prohibition for anyone engaged in business and/or activities, namely prohibited from: (a) conducting production activities that are not in line with the principles of good and healthy environmental management; (b) engaging in the production, promotion, and marketing of a product/good/service through greenwashing practices or those that do not meet the promised quality/conditions; and (c) falsifying certification for environmentally friendly products. Furthermore, in paragraph (2), it lists categories of greenwashing actions, namely: (a) engaging in covert business activities; (b) claiming a product is environmentally friendly without basis; (c) claiming a product is environmentally friendly when its veracity is uncertain and/or ambiguous interpretation; (d) claiming a product is environmentally friendly when it is irrelevant; (e) making claims no worse than similar non-environmentally friendly products; and (f) providing inaccurate information regarding the guarantees, quality, and/or conditions of the promised product;
4. The addition of sanctions to Law Number 32 of 2009 concerning Environmental Protection and Management in the form of administrative sanctions, such as written warnings, temporary cessation, revocation of permits or certifications, and suspension of business licenses. Thus, violations of these provisions are not only subject to imprisonment and fines.

The idea of adding provisions related to greenwashing in the revision of Law Number 32 of 2009 concerning Environmental Protection and Management is a progressive step in the context of legislation in Indonesia, establishing a new legal basis for the prevention and mitigation of greenwashing practices, which are susceptible to occurring in the national market arena.

CONCLUSION

The proliferation of greenwashing practices in Indonesia has long-lasting adverse effects, both in terms of consumer protection and environmental management. This issue leads to consumer losses because they perceive these products as environmentally friendly. Many people are also willing to pay a premium for such products, even though the quality they receive does not match the promises made. The current existing condition in Indonesia, there is no explicit and clear regulation specifically addressing greenwashing, although there are implicit provisions indirectly related to greenwashing, such as Article 68 letter a of Law Number 32 of 2009 concerning Environmental Protection and Management, as well as Articles 4, 8, 9, and 62 of Law Number 8 of 1999 concerning Consumer Protection.

Regulating greenwashing more rigorously in Indonesian regulations is something urgent and significant to do. Some revisions that can be made include: revising Law Number 32 of 2009 concerning Environmental Protection and Management by adding: clear and firm formulations regarding greenwashing; adding obligations to provide accurate information regarding the conditions of environmentally friendly products following applicable procedures; prohibition of greenwashing practices; and strengthening sanctions for businesses engaging in greenwashing in Indonesia.

DECLARATION OF CONFLICTING INTEREST

The authors declared that there is no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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