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ADMINISTRATIVE COURT JUDGES' EFFORTS TO PROVIDE LEGAL PROTECTION IN ENVIRONMENTAL DISPUTES (Decision Number 59/G/2023/PTUN.JKT)

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Abstract

The enactment of Law Number 32 of 2009 concerning Management and the Environment has been based on a legal basis and a philosophical basis that has elements of protection for Human Rights. In the provisions of Perma Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, it not only expands the objects of Environmental disputes but also adds a PTUN touchstone in testing the validity of Decisions or Actions taken by Officials/State Administrative Agencies, namely human rights provisions. As the third touchstone, it does not mean that Human Rights Provisions can be set aside in testing environmental disputes. Because environmental disputes are closely related to Human Rights. So that PTUN Judges can classify which Decisions or Actions are classified as violating the Law, AUPB or Human Rights Provisions. This research method is carried out by reviewing literature sources, namely by examining legal principles and norms. This article aims to provide an understanding of Judicial Activism in Environmental cases by the Panel of Judges, which is not impossible based on the Theory of Legal Protection in order to realize the objectives of the law, namely justice, benefit and legal certainty.

Keywords: ***Environmental Disputes, Judicial Activism, Human Rights***

INTRODUCTION

Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to receive health services.[1]This is the philosophical basis of the birth of Law Number 32 of 2009 which then became a provision for the government in carrying out government affairs, especially environmental protection and management. The philosophical basis of the birth of Law 32 of 2009 is to essentially guarantee legal certainty and provide protection for the rights of every person to obtain a good and healthy environment.[2]

The existence of administrative courts as judicial institutions in resolving environmental disputes is a form of progress in environmental law enforcement. Legally, this reflects the spirit of implementing judicial power as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia in enforcing and trying environmental cases. The importance of maintaining administrative courts as a path for enforcing environmental law is to realize the legal principles of environmental management and protection as stated in Article 2 of the UUPPLH, namely the principle of state responsibility, the principle of justice, the principle of good governance, and the principle of participation in environmental management and protection.[3]

[1]Article 28 F of the 1945 Constitution of the Republic of Indonesia

[2]Article 28 H paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management

[3]Moch. Gandi Nur Fasha, et al., (2022), Legal Policy of Elimination of Administrative Lawsuit Rights in Environmental Agreements in the National Legal System, Indonesian Legal Development Journal, Vol 4, Number 2, pp. 275-276

The principle of the judge's active role in the State Administrative Court leads to the teaching of free evidence in order to obtain material truth in the trial process.[4]The active role of judges in the State Administrative Court (PTUN) is an absolute requirement, because there is an imbalance in position between citizens and the government. Therefore, PTUN functions to balance the positions of the two disputing parties.

There are two considerations underlying the active position of a judge, namely if the decision taken by the state administration is disputed as part of positive law which must be in accordance with the applicable legal order (rechtsorde), so that the judge is burdened with seeking material truth, secondly the judge's activeness in order to balance the position of the plaintiff and the defendant, because the position of the defendant is stronger than the position of the plaintiff, this is because the defendant has more complete information, facilities and infrastructure than the plaintiff.[5]In order to build a progressive and clean state administrative court, judges must have progressive thinking, making themselves part of society, because judges are social beings, so that they are able to provide good service to society, especially in adjudicating disputes through trials.[6]

The State Administrative Court Procedure Law is based on the principle of active judges, proving that the activeness of the case examination process lies entirely with the leader of the trial, namely the panel of judges, so it does not depend on the initiative or activity that comes from the parties in the case, as in ordinary civil cases. So if all these initiatives to complete a case process lie in the hands of the examiner, namely the panel of State Administrative Judges. The judge will determine and limit the responsibility, expert examination and other matters. Thus, it is necessary to have the power of a panel of judges who understand the law.[7]

Yudhistiro explained, Environmental law enforcement (environmental law enforcement) on environmental protection and management is not limited to court efforts. The utilization of administrative environmental law enforcement related to permits and their utilization will have more potential to reach the level of arrangement. This is when compared to law enforcement through the courts which usually losses caused by pollution and environmental damage have occurred.[8]

The principle of the draft Principles on Human Rights and the Environment states that “human rights, an ecologically sound environment, sustainable development and peace are intradependent and indivisible”. It is unclear whether the underlying objectives of human rights and environmental protection norms are exhaustive or truly inseparable.[9]The inclusion of human rights law provisions into a country's constitution reflects the recognition, protection, and guarantee of human rights. In principle, this illustrates the distinctive characteristics of a country that implements the concept of a state of law.

From a normative perspective, the examination of the legitimacy of disputed objects in environmental disputes at the State Administrative Court is increasingly interesting to study further. Based on the provisions stipulated in Perma No. 1 of 2023 concerning Guidelines for Adjudicating Environmental Disputes, an additional legal basis is introduced in addition to applicable laws and regulations and the principles of good governance, namely provisions regarding Human Rights.

Based on the background description, the formulation of the problem in this article can be narrowed down as follows, namely what is the legal protection in legislation related to the environmental principle of the indubio pro natura principle? How do PTUN judges consider deciding environmental disputes in order to provide legal protection?

[4]See General Explanation Point 5 of Law Number 5 of 1986 concerning State Administrative Courts

[5]W. Riawan Tjandra, State Administrative Courts Encourage the Realization of Clean and Authoritative Government, Jaya University Yogyakarta, Yogyakarta, 2009, p. 71

[6]Satjipto Rahardjo, Dissecting Progressive Books, Kompas, Bandung, 2009, p. 43

[7]Ni Komang Dewi Novita Indriyani Weda, et al., Application of the Principle of Active Judges (Dominus Litis) in trials at the State Administrative Court, Journal of Legal Preferences, Vol.2, No.1 February 2021, p. 28

[8]Yudistiro, Failure in environmental law enforcement, Judicial Journal, Volume 4, Judicial Commission, Jakarta, 2011, pp. 159-181.

[9]M. Mc Dougal et al., Human Rights and World Public Order, p. 38.

LITERATURE REVIEW

1. Scientific article written by Wahyu Risaldi and friends in 2018 with the title "Application of the Indubio Pro Natura and In Dubio Pro Reo Principles by Judges in Environmental Cases" which has been published by the Kanun Journal of the Faculty of Law, Syiah Kuala University. The similarity with the research that the researcher wrote is that both assess Indubio Pro Natura from the purpose of the birth of the PPLH Law. The difference is, previous research focused more on the Application of the In Dubio Pro Natura Principle by Judges in General Courts, namely the criminal field, while the research that the Author will do is the Judge's Consideration in applying the In Dubio Pro Natura Principle within the scope of the State Administrative Court.
2. Scientific article written by Meda Desi Kartikasari in 2020 with the title "Examining the Roots of Thinking on the Principle of In Dubio Pro Natura in Law Enforcement". The article has been published in the Verstek journal of the Faculty of Procedural Law, Sebelas Maret University. The similarity of this article with the Author's Thesis is that both are in Dubio Pro Natura. This article focuses on what kind of law enforcement is related to the perspective of the principle of in dubio pro natura compared to the principle of in dubio pro reo, but does not limit the judiciary specifically as the object of research. Meanwhile, the difference between the Author's writing is the research that the researcher will write is that the author limits the study to the scope of the State Administrative Court.
3. A scientific article written by Endri in 2022 with the title "The Principle of In Dubio Pro Natura in Environmental State Administrative Disputes: Concept and Implementation in the Journal of State Administrative Law". The similarity between the article and the author's thesis is that both examine the use of In Dubio Pro Natura in the State Administrative Court. The difference between this study and the author is that the article concludes that the Indubio Pro Natura Principle only applies to scientific uncertainty so that the Principle is activated. Meanwhile, the author wants to go beyond the previous opinion to answer concerns in the field that many environmental disputes have not met expectations by linking them to the Legal Protection Theory approach.

METHOD

The type of research is normative legal research. Legal materials use laws and regulations that are used as a basis in the Discussion Section, namely Law Number 5 of 1986 concerning State Administrative Courts and its amendments, Law Number 39 of 1999 concerning Human Rights, Law Number 32 of 2009 concerning Environmental Protection and Management, Perma Number 1 of 2023, and Judge's Decisions related to the environment. Data collection techniques are carried out by literature studies and document observations. This research is prescriptive, aims to provide recommendations for the development of the legal field in general, and specifically as input for judges in deciding environmental disputes.

RESULTS AND DISCUSSION

1. Legal Protection in Environmental Disputes at the PTUN

Legal Protection according to Philipus M. Hadjon is defined as "an action to protect or provide assistance to legal subjects, by using legal instruments."[10]Legal protection according to Soekanto is basically protection given to legal subjects in the form of legal instruments. Soekanto explains that in addition to the role of law enforcement, there are five others that influence the process of law enforcement and its protection as follows:[11]

1. Legal factors, namely written regulations that are generally accepted and made by legitimate authorities.
2. Law enforcement factors, namely parties involved in law enforcement, both directly and indirectly.
3. Factors of facilities or infrastructure that support law enforcement, such as skilled human resources or adequate tools.
4. Social factors, namely the environment in which the law applies and is implemented. Acceptance of applicable laws in society is believed to be the key to peace.

[10]Philipus M. Hadjon, Introduction to Indonesian Administrative Law, Gajah Mada University Press, Yogyakarta, 2011, p. 10.

[11]Hukumonline Team (2023, August 12). Hukum Online.com. Legal Protection: Definition, Elements, and How to Obtain It. Accessed August 12, 2023. https://www.hukumonline.com/berita/a/perlindungan-hukum-contoh--dan-cara-memperolehnya-lt61a8a59ce8062

5. Cultural factors, namely as a result of work, creativity and feeling which are based on human will in social life.

Julius Stahl in his theory said that to achieve a state of law, several elements must be met. First, the protection of human rights, second, the separation of powers to realize checks and balances, third, the existence of a government that complies with laws and regulations, fourth, the existence of administrative justice as law enforcer, while Albert Venn Dicey stated that a state of law must fulfill the following elements; first; supremacy of law; second, equality before the law between the community and officials; third, the realization of human rights through laws and court decisions.[12]

Sjachran Basah stated that the aim of state administrative justice is to provide legal guarantees and protection for the people and also for state administration in the sense of maintaining and preserving the balance between the interests of society and the interests of individuals.[13]The State Administrative Court is associated with the protection of human rights by the state, that protection of the people is a mandate of the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph 4 (four) which states ... to form a Government of the Republic of Indonesia that protects all Indonesian people ...,. Supandi further defines that protection of all Indonesian people is not only from external threats, but also includes actions by State Administrative Agencies or Officials that violate the law which have implications for causing losses to the people.[14]

The basis of Human Rights related to State Administrative Courts can be seen in the basic provisions of the legal standing that can be used by the parties in the Human Rights Law which states, "Everyone, without discrimination, has the right to obtain justice by filing applications, complaints, and lawsuits, both in criminal, civil, and administrative cases and to be tried through a free and impartial judicial process, in accordance with procedural laws that guarantee objective examination by honest and fair judges to obtain a fair and correct decision."[15]

Furthermore, regarding the parties that can be involved in the law enforcement process, this can be seen in Article 100 of the Human Rights Law which states, "Every person, group, political organization, community organization, non-governmental organization or other community institution has the right to participate in the protection, enforcement and advancement of human rights." Environmental Protection and Management is a series of structured and integrated efforts to maintain the sustainability of environmental functions and prevent pollution or environmental damage. These efforts include planning, utilization, control, maintenance, supervision, and law enforcement.[16]The important role of the PTUN in adjudicating environmental disputes can be seen in Article 38 of the PPLH Law which states "In addition to the provisions referred to in Article 37 paragraph (2), environmental permits may be cancelled through a decision of the state administrative court."[17]

With the enactment of Supreme Court Regulation (Perma) Number 1 of 2023, there is an increase in the variety of evidence, especially written evidence and electronic evidence. In the context of environmental cases, valid evidence includes:[18] This context requires that judges, as stated by Enrico Simanjuntak in his writing above, that considering the very important role and position of judges in the context of law enforcement, then the understanding of protection, respect and fulfillment of human rights is increasingly important to be internalized and explained by judges in the legal decisions they determine. Judges should have awareness and concern for human rights issues.

[12]Hamzani, Achmad I. (2014). Initiating Indonesia as a Legal State That Makes Its People Happy. Yustisia Journal, Vol.3, (No.3), p.137. https://doi.org/https://doi. org/10.209 61/yustisia.v3i3.29562

[13]Sjachran Basah, Existence and Benchmark of Administrative Court Bodies in Indonesia, (Bandung: Alumni, 1989), pp. 3-4.

[14]Supandi, State Administrative Judicial Law, Publisher PT Alumni, Bandung, Second Edition, 1st Printing, 2016, p. 420.

[15]Law Number 39 of 1999 concerning Human Rights, Article 17

[16]Law Number 32 of 2009 concerning Environmental Protection and Management, Article 1 paragraph (2)

[17]Law Number 32 of 2009 concerning Environmental Protection and Management, Article 38

[18]Article 19 of Perma Number 1 of 2023 Guidelines for Adjudicating Environmental Cases.

This is because judges are one of the components in the state structure that has an obligation under the law to protect and respect human rights.[19] From the concept above, we can see that the connection between State Administrative disputes in the Environmental field and the Principle of Human Rights is very clear. This is stated in various provisions, both in the Human Rights Law, the Environmental Law, and the Supreme Court Regulation. PTUN is present as a form of representation of legal protection in the aspect of state administration and as a form of protection of human rights.

2. Perspective of District Court Judges in resolving environmental disputes
a. Judicial activism in PTUN decisions with environmental dimensions

The State Administrative Court (PTUN) has the main function to cancel administrative decisions that are considered contrary to legal provisions and principles in the Indonesian government system. The existence of PTUN is an unavoidable need along with the dynamics and development of society. In the context of a democratic country, the government bears great responsibility to ensure the fulfillment of the rights and needs of citizens. Therefore, an institution is needed that can supervise and control the running of government, especially in assessing and controlling policies issued by state apparatus.[20]

The symbolic meaning of TUN emphasizes the importance of the active role of judges in resolving disputes, not only by applying the law rigidly, but also by considering the dynamics and complexity of existing problems. The law is not always able to answer all the needs of society appropriately, so that an overly rigid approach actually limits the role of judges. The classical view that sees judges only as legal mouthpieces is considered no longer relevant, because it is unable to deal with the ever-evolving complexity of modern law.[21]

The principle of active judges, which is part of the freedom or independence of judicial power, in the State Administrative Court system can be seen explicitly stated normatively in the following articles: Article 58, Article 63 paragraph (2), Article 72, Article 80, Article 85, Article 107 of Law Number 5 of 1986 concerning State Administrative Courts.[22]

The evidentiary system in state administrative disputes is a limited free evidentiary system, meaning that judges are free to determine and use the available evidence, but are limited in accordance with the provisions of the law. In the evidentiary process, judges are active because they are free to find material truth, by paying attention to things that happen during the evidentiary process in court.[23]

With the existence of Perma 1 of 2023, it increases the variety of evidence, especially written evidence and electronic evidence. The types of evidence in environmental cases are contained in Article 19 of Perma Point a. letters or writings, including: (1. letters as referred to in Article 13 paragraph (2), 2. strategic environmental studies, 3. Amdal, 4. UKL-UPL. 5. statement of commitment to environmental management and monitoring, 6. Environmental Quality Standards or environmental damage standard criteria, 7. minutes of sampling in accordance with Indonesian national standards, 8. documents on environmental carrying capacity and capacity, 9. independent monitoring and supervision reports, 10. environmental audit results reports, 11. satellite imagery; and/or 12. Scientific Evidence in the form of letters or other writings that can be supported by expert testimony), point b. expert testimony, point c witness testimony, d. confessions of the parties, e. judge's knowledge, f. Electronic evidence, in the form of electronic information, electronic documents; and/or printouts of electronic information and/or electronic documents.

Supreme Court Regulation Number 1 of 2023 stipulates that if there are differences of opinion among experts, the judge examining the case may request the presence of another expert at the expense of the parties or choose the expert opinion that is considered correct by providing reasons in his legal considerations. Although the

[19] https://leip.or.id/wp-content/uploads/2024/07/Modul-Pelatihan-Calon-Hakim-FINAL-.pdf, accessed Thursday 06/03/2025.

[20]Ahlul Fiqri, (2023), Paradigm of the Implementation of the Dominus Litis Principle in Indonesian State Administrative Courts, Justices Journal, Vol. 2 No. 4 (2023), Pg. 203

[21]Ibid, pp. 203-204

[22]Aju Putrijanti, (2013), The Principle of Active Judges (Domini Litif Principle) in State Administrative Courts, Journal of Legal Issues, Volume 42, No. 3 July 2013, p. 321

[23]Ibid, p. 322

assessment of losses requires scientific evidence, the active role of the judge is very important, especially when plaintiffs from the community have difficulty presenting experts due to limited funds. In such situations, the judge must provide legal interpretation and logic by reviewing other evidence based on the facts of the trial, although documentary evidence has a primary position in resolving State Administrative disputes.

In the decisions issued, the state administrative court (PTUN) tends not to fully provide education to officials as defendants in state administrative disputes with environmental dimensions. This can be seen from legal considerations that are still formalistic and do not accommodate the rights of the community to a good and healthy environment. Indifferent perspectives The Panel of Judges in case Number 56/G/TF/LH/2024/PTUN.BDG granted the Plaintiff's lawsuit by taking a judicial activism approach in refuting or declaring the Defendant's exception "vague lawsuit" did not meet the requirements. This is stated in the considerations of the Panel of Judges which state;[24]

> "Considering, that regarding the above matter, the Panel of Judges considers that although initially the mention of the object of the dispute in the Plaintiffs' lawsuit and the Plaintiffs' lawsuit petition were not linear because the object of the dispute was only an action related to the neglect of open dumping and "did not mention overcapacity which ultimately caused the landslide", however, the Panel of Judges by using their authority in adjudicating environmental disputes to carry out "judicial activism" especially for State Administrative Court Judges who are inspired by the principle of dominus litis for the sake of the environment through achieving the settlement of the a quo dispute has refined the wording of the object of the dispute to "administrative actions of the Government in the form of Open Dumping and exceeding capacity (overcapacity) in the Final Processing of Waste at the Cipayung Final Processing Site (TPA) in Depok City which caused a shift in the Pesanggrahan river channel which caused the Plaintiffs' land to collapse/be threatened with landslides" then the exception of the vague lawsuit with the reasons as above does not make the a quo environmental lawsuit unacceptable."

Previously, in the examination of State Administrative (TUN) cases, the benchmarks used were limited to statutory regulations and the General Principles of Good Governance (AAUPB) in accordance with Article 53 paragraph (2) of Law Number 9 of 2004. However, with the issuance of Supreme Court Regulation (Perma) Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, the benchmarks were expanded to include provisions on Human Rights (HAM).[25]

Progressive Law brings the human paradigm closer to the behavioral factor. The progressive legal approach of law for humans is on human practice (procedure) for law and legal logic.[26]Progressive legal thinking emerged due to concerns about the quality of law enforcement which was considered less than satisfactory, especially during the reform era in Indonesia.[27]If we look at the tendency of law enforcement in Indonesia, it is more towards positivistic legal teachings by prioritizing and adhering to the text of the law.

In addition, in the previous provisions, KMA Decree No. 36/KMA/SK/II/2013 also stated: "In handling environmental cases, judges are expected to be progressive because environmental cases are complicated and there is a lot of scientific evidence, therefore environmental judges must dare to apply the principles of environmental protection and management, including the precautionary principle and carry out judicial activism."[28]

However, the Decree of the Chief Justice of the Supreme Court (SK KMA) Number 36/KMA/SK/II/2013 stipulates the Guidelines for Handling Environmental Cases. However, this regulation has been revoked and replaced by Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases.

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[24]Decision of the Bandung Administrative Court Number 56/G/TF/LH/2024/PTUN.BDG.

[25]See Article 26 of Perma Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, namely Human Rights Provisions. Testing by the Examining Judge of the Case regarding the validity of Government Administration and/or Government Administration Actions and/or Government Administration Actions can be carried out using the following test tools: a. laws and regulations, b. general principles of good governance and c. human rights provisions.

[26]Absori and M. Indra B, 2021, Legal Politics in a Progressive Legal Framework, Muhammadiyah University Press, Surakarta, Page 250

[27] Satjipto Rahardjo, "Progressive Law: Law That Liberates", in the Journal of Progressive Law, Doctoral Program in Law, Diponegoro University, Vol. 1 No. 1 April 2005, p. 5

[28]Endri, (2022), The Principle of In Dubio Pro Natura in Environmental State Administrative Disputes: Concept and Implementation, Jurnal Hukum Peratun, Vol 5 No.2 August 2022. p. 123

*Judicial Activism*is one way or endeavor in seeking, or exploring the basic reasons of the law which are used as the main basis in judicial decisions, so in this case the judge is given the opportunity to use his personal knowledge related to public policy, and other circumstances and factors. This step is taken to guide and facilitate the judge in resolving the problem.[29]The paradigm of PTUN Judges to move away from positivism is a challenge that arises in resolving State Administrative disputes, especially in environmental disputes.

The principle of environmental management and protection is prevention so that environmental damage does not occur. The principle of prevention requires futuristic analysis, study, or assessment. The settlement of State Administrative Disputes whose objects are decisions related to the environment must also pay attention to futuristic considerations, so that the State Administrative Court Decision is able to accommodate the interests of sustainability and prevent losses to the community due to environmental damage and/or pollution. Based on the above, decisions that have the potential to cause impacts such as decisions that have the potential to cause negative impacts on the environment should be able to become objects of dispute in the State Administrative Court.[30]

Sometimes in the process of resolving an environmental dispute, the Panel of Judges of the Peratun must depart from the standard that only applies the touchstone as stated in the Peratun Law, namely laws and regulations and general principles of good governance. It is better for judges to use another alternative, Judicial Activism, by prioritizing pro natura using the third touchstone, namelyhumanist approach by referring to the principles of Human Rights. This must be based on the belief that Government Decisions or Actions have legal and material consequences for the Environmental Rights of the Community.

In addition, judges also need to apply the precautionary principle in handling environmental cases. This principle requires that precautionary measures be taken when there is a potential for serious or irreversible environmental damage, even if there is no complete scientific evidence of the impact. The application of this principle has been recognized in various international and national legal instruments, including the 1992 Rio Declaration, which is often referred to by judges in deciding environmental cases.[31]

In the case of Decisions or Actions issued by Government Officials are unable to guarantee the safety, Health, life of the Community, and in the long run fail to guarantee the sustainability of the life of living creatures and the preservation of ecosystems and environmental functions. In addition, the absence of guarantees, balance, harmony, and environmental harmony worsens the situation. The judge must ensure that the object of the Dispute also cannot fulfill the principle of intergenerational equity and the right to the environment which is part of human rights. Furthermore, the use of natural resources in the context of the Object of the Dispute is considered unwise because it causes more harm than benefit to the Community directly affected.

In preparing the verdict, the Panel of Judges can impose sanctions in the form of administrative sanctions and even administrative fines. The amount of administrative fines is based on the type of violation criteria committed. Violation criteria include having a business license but not having an environmental approval or both, taking actions that exceed the provisions of the established quality standards, ignoring obligations in business licenses and environmental approvals, and preparing an AMDAL without a valid AMDAL compiler certification.[32]This is solely an attempt by PTUN Judges to be required to be active, even to the point of carrying out judicial activism, so as to produce decisions that are humanistic and pro natura.

b. Analysis of case number 59/G/LH/2023/PTUN.JKT

Decision of Case Number 59/G/LH/2023/PTUN.JKT between Marlince Sinambela et al. against the Minister of Environment and Forestry of the Republic of Indonesia regarding the lawsuit against the Decree of the Minister of Environment and Forestry No. SK.854/MENLHK/SETJEN/PLA.4/8/2022 concerning the environmental

[29]BA Garner, Black's Law Dictionary, Eighth Edition (USA: West, a Thomson USA Business, 2004) p 862.

[30]Fransisca Romana Harjiyatni, Fighting for Environmental Justice Through State Administrative Courts (Study of Decision Number 30/G/LH/2017/PTUN.MKS), Jurnal Mimbar Hukum, Vol 32 Number 2, June 2020, p. 20

[31]https://www.hukumonline.com/berita/a/kenali-deklarasi-rio-yang-dirujuk-hakim-lingkungan-lt58db11bbd773f/?utm_source=chatgpt.com

[32]Samhan Nafi' BS, Administrative Law Enforcement in Environmental Protection and Management in Indonesia, Unes Law Review Journal, Vol 6 No. 4 June 2024.

feasibility of zinc and lead mining activities by PT Dairi Prima Mineral in Silima Pungga-Pungga District, Dairi Regency, North Sumatra, dated August 11, 2022.[33]

The following is a case study that is compiled based on the legal events stated in the Decision, namely starting from the process of issuing the Object of Dispute, the administrative efforts that have been taken by the Plaintiff, the filing of a lawsuit against the Object of Dispute, and the trial process until the decision of the Panel of Judges:

1. That on August 11, 2022, the Minister of Environment issued Decree Number: SK.854/MENLHK/SETJEN/PLA.4/8/2022 concerning the Environmental Feasibility of Zinc and Lead Mining Activities in Silima Pungga-Pungga District, Dairi Regency, North Sumatra Province by PT. Dairi Prima Mineral.
2. On November 18, 2022, the plaintiff became aware of the disputed object after receiving an invitation to socialize regarding the issuance of the disputed object.
3. On November 30, 2022, the Plaintiffs filed a written administrative objection through their attorney.
4. On January 27, 2023, the Plaintiffs filed an administrative appeal to the President of the Republic of Indonesia.
5. On February 14, 2013, the Plaintiff filed a lawsuit at the Jakarta State Administrative Court Clerk's Office through the Court Information System.
6. On March 29, 2023, the Panel of Judges issued an interim decision Number 59/G/LH/2023/PTUN.JKT which granted the intervention request from PT. Dairi Prima Mineral.
7. On April 17, 2023, the Defendant and the Second Intervening Defendant submitted their responses to the court electronically.
8. On July 18, 2023, after going through the trial process, the Panel of Judges at the Jakarta PTUN decided to grant the Plaintiff's lawsuit and declared the disputed object void.
9. However, at the cassation level, the Supreme Court granted the cassation request from Marlince Sinambela and friends, annulled the appeal decision, and tried the case itself by granting the plaintiffs' lawsuit.

In terms of formality, the Panel of Judges based its considerations on the legal interests of the Plaintiffs by referring to Article 28H of the 1945 Constitution of the Republic of Indonesia. Based on this approach, the Panel considered that the Plaintiffs, as residents of Dairi Regency, had an interest in protecting the environment from potential pollution and/or damage. Therefore, the objections (exceptions) from the Defendant and the Intervening Defendant II stating that the Plaintiffs did not have legal standing (disqualificatoir) were considered baseless and were rejected by the Panel of Judges.

Likewise, the Defendant's exception stating that the lawsuit is vague. The Defendant argued that in their lawsuit, the Plaintiffs did not fully explain the facts that showed their legal standing in social life. In addition, the Defendant also argued that the lawsuit was unclear because the posita did not explain whether the Plaintiffs filed the lawsuit on behalf of individuals or as representatives of a group. However, the Panel of Judges considered that the Plaintiffs had fulfilled the formal aspects of the lawsuit, such as identity, legal basis for the lawsuit, and petitum, which had been adjusted to the direction for improvement during the preliminary examination stage. Therefore, the exception filed by the Intervening Defendant II was rejected.

To assess the truth of the Plaintiffs' arguments regarding the validity of the disputed object, the Panel of Judges conducted a legality test (rechtmatigheid toetsing) of the object ex tunc, namely by considering the legal situation at the time the decision was issued. In terms of authority, the Panel referred to the provisions of Article 1 number 35, Article 24, and Article 63 of Law Number 32 of 2009 concerning Environmental Protection and Management, as amended by Law Number 11 of 2020 concerning Job Creation. This is also linked to Article 1 number 103, Article 98 paragraph (1) letter a, and Article 97 paragraph (4) of Government Regulation Number 22 of 2021 concerning Environmental Protection and Management. Based on this, the Panel considered that the Defendant had the authority to issue the decision that was the object of the dispute.

In this decision, the Plaintiff stated that the preparation of the Addendum ANDAL of PT Dairi Prima Mineral did not involve meaningful community participation. The Panel of Judges, after considering the evidence and witness statements, considered that even though there was community involvement, the representation present did not reflect the participation of directly affected residents. The Panel emphasized that community participation should not only be a formality, but must be effective and comprehensive so that the community understands the impact on the quality of life and the environment. The Panel also reviewed it from a welfare state perspective, where the state is obliged to protect the rights of the community and respond to objections with clear solutions. Based on the provisions of the

[33]Directory of Supreme Court Decisions of the Republic of Indonesia

Dairi Regency RTRW (Regional Regulation No. 7/2014 in conjunction with Article 134 paragraph (2) of Law No. 4/2009) and trial evidence, the Panel assessed that the PT DPM mining area in Dairi was prone to disasters and unsuitable for mining. Therefore, the issuance of the Decree by the Defendant was declared to be in conflict with Article 97 paragraph (2) letter a and paragraph (3) letter a of PP No. 22/2021. In addition to violating laws and regulations, the object of the dispute also violates the principles of environmental law, especially the precautionary principle, which requires decision makers to continue to take preventive measures even though there is uncertainty in the information. The Panel emphasized the importance of implementing the in dubio pro natura principle, namely prioritizing environmental protection in decision making. Based on procedural and substantial violations of environmental law and principles, the Panel granted the lawsuit, canceled the object of the dispute, and ordered the Defendant to revoke it.

The author found that this case had been decided at the cassation level by the Supreme Court. In its consideration, the Panel of Judges considered that the ANDAL process of PT Dairi Prima Mineral did not reflect real participation of the affected community, because there was no mechanism for selecting or direct involvement in the appointment of representatives. Community involvement was considered not only formal, but must ensure a comprehensive understanding of the impact of the activity. The Panel also applied the concept of sustainable development to prevent the risk of disasters in the future. Therefore, the Supreme Court overturned the appeal decision and granted the residents' cassation, and upheld the first-level decision that prioritized environmental justice through the principle of In Dubio Pro Natura.

It is interesting to study more deeply the considerations in this decision, because there are a number of breakthroughs from the Panel of Judges. The author summarizes the core analysis of the decision's considerations as follows:

1. The Panel of Judges comprehensively applied the Theory of Legal Protection for the Community, considering that community participation is not just a formality, but must take place continuously to truly ensure that there are no direct negative impacts. The government must also carry out supervision, not only before the decision is issued.
2. In testing the validity of the disputed object, the Assembly not only refers to statutory regulations, but also applies environmental principles, especially the precautionary principle, considering the potential disaster risks from mining activities.
3. The Panel provided education to the Defendant regarding the principle of in dubio pro natura, which requires that decisions be taken with environmental protection as the main priority.
4. Another educational aspect is the government's obligation to supervise the impacts and losses that may arise after the issuance of the decision, not only at the stage before the decision. This decision is also an important reference for the development of environmental law, showing that environmental court decisions can go beyond the positivistic approach in order to achieve environmental justice.
5. In case Number 59/G/LH/2023/PTUN.JKT, the Panel of Judges used the perspective of the State Administration Theory, especially the Theory of Validity and the Theory of Legal Protection. Therefore, the Panel considered the issuance of the disputed object (Environmental Feasibility Decision) to be contrary to environmental regulations and legal principles, especially the precautionary principle.
6. This ruling sets an important precedent in protecting community rights against the environmental impacts of mining activities. The Dairi community welcomed the ruling and urged the government to revoke PT Dairi Prima Mineral's environmental approval.[34]
7. . In the consideration of the cassation law, the nature of the involvement of the directly affected Community in the preparation of the ANADAL of PT Dairi Prima Mineral is not limited to the formality of implementation, but the effectiveness and success of conveying the message to the entire Community. The decision has received legitimacy from the Cassation which reversed the previous Appellate Level decision by granting the cassation application and granting the Plaintiff's lawsuit.

CONCLUSION

[34] https://www.mongabay.co.id/2023/08/02/menang-gugatan-warga-dairi-desak-klhk-cabut-persetujuan-lingkungan-pt-dairi-prima-mineral/accessed May 2025

From the results of the discussion above, we can draw the following conclusions:

1. The presence of PTUN is a form of legal protection in the aspect of state administrative law. This is reflected in realizing the protection of State Administrative Court justice using the touchstone of statutory regulations. While in the statutory regulations themselves are intertwined with the provisions of Human Rights, both in terms of the basis for filing a lawsuit, the basis for testing to the judge's considerations in deciding environmental disputes. So that the presence of the third touchstone of Environmental Disputes becomes a legitimacy that making Human Rights as the touchstone of an object of TUN dispute is something that is common from the beginning.
2. In deciding environmental cases, PTUN judges are not only fixated on scientific evidence but in essence the Judge must seek substantive truth. The approach used as in Decision Number 59/G/2023/PTUN.JKT is by using the Theory of Legal Protection to examine the nature of public participation as an essential element of Environmental Licensing so that it violates the Law and Principles of Environmental Law, namely indubio pro natura. The final status of the Decision was legitimized by the cassation judge. So from this perspective it can be a guideline for environmental Judges, because they are required to have the effort to be more active and progressive in implementing judicial activism in the form of imposing administrative sanctions on government officials who in issuing Decisions or Actions are proven to be unable to guarantee the safety, health, and lives of citizens and cannot fulfill the principle of intergenerational equity.

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