

Environmental Control and Management Continuation Through the Ruling of the State Administrative Court

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Abstract

Changes in environmental law provisions that have the potential to cause inconsistencies in these decisions must be harmonized with the legal system. Without consistency in decisions regarding environmental public administration disputes, it will be difficult for the government to make decisions and guideline for determining policies related to environmental protection and management. The aim of this research is to determine the consistency of environmental administration dispute decisions in state administrative courts. The writing method uses a normative juridical approach with statutory regulations, the legal sources used are primary and secondary legal sources relating to state administrative law and those relating to environmental regulations, apart from that the author uses a case study approach. The results of the research show that the implementation of regulations related to state administrative decisions in the environmental sector is still inconsistent, with the government placing more emphasis on remedial (retroactive) efforts in environmental problems which are manifested in the form of government intervention to restore environmental conditions after pollution and/ or damage occurs. environment. Considering that the majority of environmental law enforcement is in the field of government administration, inconsistencies in environmental state administration decisions must be resolved immediately to realize good environmental protection and management. In fact, the decision of the state administrative court judge is not only intended to resolve a dispute but will also serve as a guideline for government agencies/ officials in realizing sustainable environmental protection and management.

Keywords: Consistency, Environment, Protection, Sustainability.

INTRODUCTION

Changes in environmental law provisions that have the potential to cause inconsistencies in these decisions must be harmonized with the legal system. Without consistency in decisions regarding environmental public administration disputes, it will be difficult for the government to make decisions and guideline for determining policies related to environmental protection and management.

The provisions of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) state that a good and healthy environment is a fundamental and constitutional right for every Indonesian citizen. Furthermore, Article 33 paragraph (3) of the 1945 Constitution states that land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Thus, the use of natural resources to realize people's prosperity must continue to maintain a good and healthy environment so that it can be enjoyed by present and future generations.

Protection of environmental sustainability often faces challenges from "development", namely human efforts to cultivate and utilize nature to increase their prosperity. To utilize nature, humans can damage the sustainability and balance of the environment. As an illustration of global environmental damage, UN Secretary-General Antonio Guterres, following the publication of the IPCC scientists' working group report (Intergovernmental Panel on Climate Change) on August 9, 2021, warned of a "code red for humanity" due to global warming which is the cause of extreme weather disasters around the world today.

In the next 20 years, the damage will get worse and risk being uncontrollable if humans still carry out their usual activities and do not extremely reduce carbon dioxide emissions. The earth's temperature will rise by 1.1°C, resulting in high-intensity rains, tropical cyclones, floods, and longer dry seasons causing large-scale fires, all of which have been increasingly felt in recent times.

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Environmental preservation in Indonesia itself is still classified as poor on a global scale, according to the 2022 Environmental Performance Index (EPI) report. The EPI measures the level of environmental sustainability in countries through dozens of indicators which are summarized in three big pillars, namely:

1. Environmental health, in the form of air quality, water pollution, waste treatment quality, and so on;
2. Climate, in the form of climate change mitigation policies, greenhouse gas emissions, and so on; And
3. Ecosystem vitality, in the form of biodiversity quality, fisheries sustainability, agriculture, water resources, and so on.

Furthermore, EPI then processes the data related to the indicators above into a score on a scale of 0-100, where the higher the number, the better environmental sustainability is considered, and vice versa. Based on the EPI data scoring, Indonesia scores low for all indicators, with details of an ecosystem vitality score of 34.1, an environmental health score of 25.3, and a climate change mitigation policy score of 23.2 out of 100. In total, Indonesia gets a score of 28, 2 out of 100. This score places Indonesia in 164th place out of 180 countries researched. At the Asia regional level, Indonesia is ranked 22nd out of 25 Asia Pacific countries or 8th out of 10 ASEAN countries. EPI data also shows a low score received by countries that prioritize economic development growth compared to environmental sustainability. On the other hand, countries that have a long-term commitment to performance and investment in conserving biodiversity, preserving natural resources, and reducing greenhouse gas emissions achieve high scores.

To protect the environment while at the same time making use of natural resources for the prosperity of the people, the development carried out must be carried out sustainably. For this reason, good policies are needed, which can guarantee the management of natural resources which, in addition to being profitable for the people's prosperity, also preserves the environment. This policy must be embodied in a legal form, which will become the basis of various instruments for the protection and management of the environment in a sustainable manner.

In the past, the environmental protection policy approach emphasized retroactive actions, which were manifested in the form of government intervention to restore environmental conditions after environmental pollution and/or damage occurred. Furthermore, based on Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) there is a strengthening of the principles of environmental protection and management, where one of the principles is as stipulated in Article 2 letter a UUPPLH which states:

"Protection and Management is implemented based on the principle of state responsibility", which started in the Elucidation: "What is meant by "principle of state responsibility" is: a. the state guarantees that the use of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the present and future generations, b. the state guarantees the rights of citizens to a good and healthy environment, c. the state prevents activities from exploiting natural resources that cause pollution and/or damage to the environment."

The provisions of Article 2 letter a UUPPLH show that it is the state that is primarily responsible for all activities that occur in the environment, including being responsible for the sustainability of environmental functions for future generations. Therefore, in addition to the function of the state to regulate and manage, the state also functions to take firm action against all activities that may cause environmental pollution and/or damage, whether carried out by individuals or by legal entities or corporations. The responsibility attached to this country is one of the obligations owned by the government in carrying out government functions.

The government has issued various policies and made efforts to prevent environmental pollution and/or damage, but these efforts must be supported by law enforcement through the courts. The role of the court is very important as a representative of the state in providing rights related to a good and healthy environment.

The orientation of environmental law enforcement in Indonesia includes structuring and enforcement (compliance and enforcement). That is, enforcement of environmental law is not only aimed at punishing environmental destroyers or polluters but also (and especially) aimed at preventing acts or actions that can cause environmental damage and/or pollution.

Therefore, environmental law enforcement is not only repressive but also preventive. Preventive environmental law enforcement is aimed at preventing actions or actions that can cause environmental damage or pollution. The legal instruments aimed at enforcing preventive environmental laws are permits and supervision. Repressive law enforcement is aimed at tackling environmental destruction and/or pollution by imposing or imposing sanctions (penalties) on environmental destroyers or polluters which can be in the form of criminal sanctions (imprisonment or fines), and/or administrative sanctions (government coercion, forced money, and license revocation).

J.B.J.M. ten Berge stated that in the context of preventive and repressive law enforcement, preventive measures through supervision and the court as one of the law enforcement institutions have an important role to impose sanctions on parties who are proven to have violated laws and regulations related to environmental protection as a measure repressive.

Enforcement of environmental administration (state administration) law by the State Administrative Court is an integral element in the integral sub-system of environmental law enforcement. Environmental administrative law enforcement has several strategic benefits when compared to civil and criminal law enforcement. These strategic benefits, namely: a) Administrative law enforcement in the environmental field can be optimized as a preventive tool (preventive); b) Administrative law enforcement (which is preventive) can be more efficient from a cost standpoint than criminal and civil law enforcement; c) administrative law enforcement has more capacity to invite community participation. Community participation is carried out starting from the licensing process, monitoring arrangement/supervision, and participation in filing objections and asking state administration officials to impose administrative sanctions.

In line with this, with the increasingly important and strategic role of the government in enforcing environmental law, the role of the State Administrative Court in enforcing environmental law is automatically significant, namely in carrying out juridical control over the legitimacy of government administrative decisions or actions in carrying out environmental law norms. However, in practice, several criticisms still arise that question the suboptimal role of the State Administrative Court in carrying out the function of enforcing environmental law and the existence of inconsistencies in several environmental decisions.

The lack of optimal performance of this role is of course inseparable from various causal factors which are interrelated to one another. One of the reasons for the inconsistency of state administrative justice decisions in environmental disputes is partly due to the rapid development of environmental law, both in the form of legislation and various policies that have an impact on the application of law in environmental state administrative disputes.

Developments in environmental law arrangements that may result in inconsistencies in these decisions must be harmonized by the legal system. Without consistency in decisions on environmental state administration disputes, it will be difficult for the government to adopt the rules of decision and guide them in establishing policies related to environmental protection and management. Considering that the largest part of enforcing environmental law is in the area of government administration, the inconsistencies in environmental state administration decisions must be resolved immediately to realize good and sustainable environmental protection and management. Based on the description above, the legal issues that can be formulated as the main problem of this paper are how legal protection for sustainable environmental management and control through decisions of state administrative courts.

METHODOLOGY

The writing method uses a normative juridical approach with statutory regulations, the legal sources used are primary and secondary legal sources relating to state administrative law and those relating to environmental regulations, apart from that the author uses a case study approach.

RESULTS AND DISCUSSION

Inconsistency of Legislation

In the development of several laws and regulations that have an impact on the settlement of environmental state administrative disputes, among others:

Law Number 30 of 2014 Concerning Government Administration. The affected aspect is the object of state administrative disputes. UUAP expands the object of dispute not only to state administrative decisions (Government Administration Decisions) but also regulates Government Administrative Actions, as well as expanding the criteria (elements) of State Administrative Decisions that can be used as objects of dispute in the State Administrative Court as stipulated in Article 87 UUAP.

Supreme Court Regulation Number 2 of 2019 Concerning Guidelines for Dispute Resolution on Government Actions and Authority to Adjudicate Unlawful Acts by Government Bodies and/or Officials (Illegal Government Act). The aspects affected are the competency of the state administrative court and procedures for examining disputes over government administrative actions. The Perma transfers the authority to handle disputes on unlawful acts by the government which have been examined and tried in the General Court environment to the State Administrative Court.

Law Number 6 of 2023 concerning Stipulation of Government Regulation in place of Law Number 2 of 2022 concerning Job Creation to become Law (UUCK). The affected aspect is Environmental Permits as the object of state administrative disputes. UUCK changed the provisions of Law Number 32 of 2009, including changing the provisions regarding environmental permits by removing environmental permits and replacing them with environmental approvals.

Supreme Court Circular Letter Number: 1 of 2017 concerning Enforcement of the Formulation Results of the State Administrative Chamber of 2017, number 1 which states that: choice of law in the event of a conflict between substantive legal principles and formal legal principles, by the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia that Judicial power aims to uphold law and justice, so it is considered more appropriate and fair if the TUN Judicial Judge prioritizes substantive justice over formal justice.

Developments in environmental law arrangements that may result in inconsistencies in these decisions must be harmonized by the legal system. Without consistency in decisions on environmental state administration disputes, it will be difficult for the government to adopt the rules of decision and guide them in establishing policies related to environmental protection and management. Considering that the largest part of enforcing environmental law is in the area of government administration, the inconsistencies in environmental state administration decisions must be resolved immediately to realize good and sustainable environmental protection and management through decisions of state administrative courts.

The Supreme Court as a state institution executing judicial (judicial) powers has overseen 4 (four) courts under it, namely the scope of general courts, religious courts, military courts, and state administrative courts, has endeavored to realize consistency of decisions, starting from establishing jurisprudence in a general way. routine as stated in the Supreme Court Circular Letter Number 2 of 1972 concerning Collection of Jurisprudence, application of the chamber system in examining cases as stated in the Decree of the Chief Justice of the Supreme Court Number 142/KMA/SK/IX/2011 concerning Guidelines for the Chamber System in the Supreme Court, determination landmark decision among others as the Decision of the Chief Justice of the Supreme Court Number 58/SK/KMA/IV/2013 concerning the Supreme Court Jurisprudence Issuance Team Concerning the Formulation of Rules of Law in Important Decisions (Landmark Decision), legal technical provision for judges, up to the uploading of all judges' decisions to the Directory of Supreme Court Decisions which can be freely accessed and controlled by the public. However, the efforts that have been carried out so well by the Supreme Court have not been able to resolve the problem of inconsistency and the variety of judges' decisions in environmental state administrative disputes.

The decision of the judge of the state administrative court is not only intended to resolve a dispute but also will be a guideline for government agencies/officials in realizing the protection and sustainable management of the environment. For this reason, the author will conduct a study and study of environmental state

administration dispute decisions in the framework of realizing sustainable environmental protection and management.

Judicial Power is an independent power to administer justice to uphold law and justice", reads Article 24 paragraph (1) of the 1945 Constitution. Justice referred to by the Constitution in the context of the environment must be interpreted as environmental justice as mandated by Article 28H paragraph (1) UUD 1945. Furthermore, Article 90 UUPPLH has provided space for anyone who feels aggrieved to file an environmental suit in court. Thus, the enforcement of law and justice by judges, including by judges in the State Administrative Court, must fulfill and realize environmental justice. The relationship between law and justice is an interesting matter. Because legal issues certainly will never be separated from the word fairness or justice. It has become an inevitability condition not) that the law must contain and guarantee justice.

Therefore, Asep Warlan Yusuf said that the law cannot be separated from the ultimate goal of life in the state and society itself, namely justice. justice). Through and with the law, individuals or communities can lead a just life. A just law is an orderly law without suppressing the human dignity of every citizen, or in other words is a law that always serves the interests of justice, order, order, and peace to support the realization of a physically and mentally prosperous societ

Ahmad Fadlil Sumadi said that in the provisions of Indonesian laws and regulations, justice has been clearly stated in the 1945 Constitution that the State is obliged to "provide guarantees" so that every community obtains "fulfillment of their basic rights" accompanied by "justice and legal certainty".

This must be interpreted that the State must enforce the law so that the goals of the State can be achieved, which at the same time fulfills all the obligations of the State and provides fundamental rights to society, including the right to a good and healthy environment. The constitutional basis for fulfilling a good living environment has been stated in Article 28H paragraph (1) of the 1945 Constitution: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy living environment, and to receive health services."

This article is the basis for environmental justice that must be fulfilled by the state because the goals of the state will not be realized if the environment is not managed properly. Environmental justice is concerned with the equitable distribution of environmental rights and benefits among people's races, classes, and incomes. According to Collin, the procedural aspect of public participation in decision-making is a substantive right that is part of distributive justice. However, environmental justice does not only contain distributional aspects, but also procedural aspects as is the view of Arcioni and Mitchell which states that, in addition to distributional aspects, environmental justice is also related to public opportunities to participate in decision-making related to environmental management. Furthermore, there is a view that sees environmental justice more broadly than distributional and procedural issues, such as Bullard, who identified five basic elements of environmental justice, namely:

Individual rights to be protected from pollution;

Preference for pollution prevention;

Shifting the burden of proof on those who pollute or those who dispose of waste/emissions (dischargers) or to those who do not provide equal protection to minorities;

Evidence of discrimination in the environmental context is no longer measured based on the intention to provide different treatment, but based on differences in the environmental impact felt by the community (disparate impacts) and statistical evidence demonstrating that difference; 5) differences in risk sharing are addressed by targeted actions and resources (targeted action and resources).

Hadyn Washington expressed his opinion regarding environmental justice as follows:

"Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income concerning the development, implementation, and enforcement of environmental laws, regulations, and policies... It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."

Based on Hadyn Washington's opinion above, environmental justice is a fair treatment for everyone to have equal rights to a good and healthy environment. This right must protect all people both through regulations and law enforcement. In the case of the environment, the solution must be able to provide equal protection for all people involved in it.

Another understanding of environmental justice is given by Schlosberg in Haydn Washington, et al, as follows:

"Other definitions include equitable distribution of environmental risks and benefits; fair and meaningful participation in environmental decision-making; recognition of community ways of life, local knowledge, and cultural difference; and the capability of (human) communities and individuals to function and flourish in society (Schlosberg, 2007). Apart from Schlosberg (2007) (who does argue that environmental justice should include natural systems), most definitions of the term are all about justice for humans."

This understanding means that in a fair distribution of environmental risks and benefits, the community has the right to participate in environmental decision-making, recognition of people's way of life, local knowledge, and cultural differences, and the ability of communities and individuals (humans) to function and develop in society.

Another theory of justice was put forward by John Rawls, who introduced his theory of justice through his work *Theory of Justice*. John Rawls's theory of justice is a reference for philosophy, law, economics, and politics. Regarding the importance of justice, Rawls states that justice is the "first virtue" of "social institutions", as "truth" is the first of "a system of thought". A theory even though "elegant and economical" must be rejected or revised if the theory is not true. The same holds for laws and social institutions, no matter how efficient and well-managed, must be changed or abolished if they are unjust. Everyone has the right to be inviolable based on justice. For this reason, justice denies "the loss of liberty for some which are made right for the common good by others".

Elvie Wahyuni said that environmental law in Indonesia is currently growing, which is marked by the continuous renewal of environmental legislation in the context of environmentally sound "sustainable development", commonly referred to as *eco-development*. In addition, it is also in the context of finding solutions so that development can be carried out properly by taking into account "the carrying capacity and capacity of the environment".

One of the efforts to find solutions so that development can be carried out properly is by regulating the settlement of environmental problems through UUPPLH. The causes of environmental pollution and damage must be handled properly and seriously, because if the settlement of environmental disputes is not carried out properly and seriously, then environmental disputes will become a protracted problem and will then lead to negative access to environmental protection and management. In the end, the community will suffer losses.

Fulfillment of environmental justice will ensure the realization of national protection, advancement of general welfare, and national intelligence. Environmental justice is not only for the current generation but also for future generations. In this regard, John Rawls offers two principles related to ecological justice, namely: *First*, everyone now and in the future has an equal and indeterminate claim to a fully adequate set of essential and non-substitute ecosystem services, compatible with the same set of services for all; And *second*, such inequalities in the distribution of all other ecosystem services should benefit the members of the present and future generations who benefit the least.

Legal Protection Management and Control

Legal protection is an effort regulated by law, which is carried out by a person or several people, or an entity that aims to protect and defend the rights attached to the right holder based on statutory regulations. Philipus M. Hadjon stated that the principles of legal protection consist of the principle of recognizing and protecting human rights and the principle of a rule of law. Legal protection for the people is divided into two forms, namely: first, legal protection is preventive, which aims to prevent disputes from occurring, which directs the actions of the government to be careful and prudent in making decisions, including giving the people the opportunity to submit objections (*recorded*); and second, repressive legal protection, which aims to resolve disputes, both inside and outside the court.

Thus, the focus of preventive legal protection is to prevent disputes from occurring, while repressive legal protection aims to resolve disputes. Fitzgerald cites the term legal protection theory from Salmond that law aims

to integrate and coordinate various interests in society because, in a traffic of interests, protection of certain interests can be done by limiting the interests of other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected. Legal protection is an effort to protect a person's interests by allocating a human right for him to act to protect his interests.

Respect for human rights to the environment is a very important aspect, because the environment has limitations, so control of human behavior over the environment becomes absolute. One of these controls is carried out through various instruments, mechanisms, and policies, both at the local, national, and international levels, to achieve a balance that is referred to as sustainable development. By protecting human rights to a good and healthy environment, a mutualistic and tolerant relationship between humans and the environment can be built, in that both of them need and depend on one another.

The right to the environment is access to intact natural resources, which allows humans to live and survive, including good ecological rights, starting from the rights of certain species to individual rights to enjoy and live in good nature. The right to the environment is formulated as one of the human rights seen in Article 25 paragraph (1) *Universal Declaration of Human Rights* (UDHR), which confirms that:

"Everyone has the right to an adequate standard of living, both for the health and welfare of himself and of his family, including food, clothing, and health care as well as social services and social security when experiencing unemployment, illness, disability, widowhood, old age or lack of livelihood. beyond his means. "Furthermore, Article 12 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights confirms that: *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"*.

In Indonesia, many arrangements regarding the right to a good and healthy environment have been regulated in various laws and regulations. These various arrangements in essence state that a good and healthy environment is the basic right of every Indonesian citizen. Therefore, the state, government, and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development.

The placement of the right to a good and healthy environment has an essential meaning as a citizen's right, in this case, the state as the ruler must guarantee and protect citizens' rights to the environment. The right to a good and healthy environment, as a subjective right as stated by Heinhard Steiger C.S, is the broadest form of protection for a person.

So that in this case, the right to a healthy environment is a basic human right that must be protected and fulfilled by the state. The right to a good and healthy environment is closely related to the obligation to protect the environment. This means that the environment and its resources are a commonwealth that everyone can use, which must be safeguarded for the benefit of society and future generations. The protection of the environment and its natural resources has a dual objective, namely to fulfill the interests of society as a whole and to fulfill the interests of individuals.

Edith Brown Weiss provides the view that the concept of intergenerational justice has created environmental obligations to the earth (*planetary obligations*) three types of protection, namely: option protection (*conservation of options*), quality protection (*conservation of quality*), and protection of access of present and future generations to environmental resources (*conservation of access*).

These three aspects of protection do not only apply in an intra-generational context but also in an inter-generational context, where Weiss based his theory on John Rawls's theory of justice. These three aspects aim for each generation to have a level of utilization at least equal to the level of utilization of the previous generation while encouraging conditions for each generation to improve. All three also serve to set limits for the state and society when exploiting their own resources, and most importantly change the assumptions of development from those that encourage consumption and exploitation to those that want sustainable use of natural resources and protect the environment.

Efforts to protect and manage the environment are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. For this reason, the responsibility of the

state which is the duty of the government in carrying out its functions and authorities for the welfare of its citizens in managing a sustainable environment as stated in Article 28H paragraph (1), Article 28I, and Article 33 paragraph (3) and (4) of the 1945 Constitution brings the consequences of implementing national development activities in various sectors must always protect the environment.

CONCLUSION

Based on the background and main problems that have been formulated as the problem formulation, as well as the discussion and analysis that has been described previously, it can be concluded as an answer to the problem formulation as follows, (1) Environmental state administrative disputes are disputes between citizens or communities against government administration bodies/officials at the State Administrative Court as a result of decisions and/or government administration actions in the environmental field, (2) Legal protection and control Environmental management can realize sustainable development (sustainable development) has not been effective and efficient for the sake of development in realizing people's welfare due to the government's inconsistency in taking preventive policies both in the context of controlling regulatory norms and in the context of law enforcement (repressive) in resolving environmental disputes both through civil lawsuits and criminal law, as well as decisions on environmental disputes through decisions of state administrative courts, (3) The state or government should function effectively and in an integrated manner through juridical means of state administrative court decisions to prevent and deal with pollution and environmental damage and must go through a permit revocation system, and (4) In reality the licensing system has not been able to function as a controller so that a business and or activity does not cause pollution and environmental damage.

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