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Study of State Administrative Court Decisions as Enforcement of Guidelines for Handling Environmental Cases

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Abstract

In the process of examining and deciding cases, environmental judges need materials related to the environment, especially studies of environmental decisions. The study of environmental decisions opens up space for discourse on legal challenges and findings in environmental cases. One of the challenges faced in environmental cases is the inconsistency of decisions that will affect the granting of rights related to the environment to the wider community. Furthermore, the study of environmental decisions highlights issues that are very important in examining environmental cases, such as scientific evidence on environmental damage due to forest fires, industrial activities, mining activities, and others. The objectives to be achieved in this research are to know and analyze substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management and the placement of environmental judges. This research is legal research with the type of research that is normative research. Cases that go to court and are registered as environmental cases do not entirely contain legal substances related to the environment. There were many cases registered with the "LH" register whose legal substance was not directly related to the environment, namely criminal cases regulated in the Oil and Gas Law and cases of corruption in the Oil and Gas sector.

Keywords: Decision, State Administrative Court, Environment

1. Introduction

Various policies and lifestyle changes to prevent and overcome environmental damage are massively carried out. However, the government's efforts need to be supported by environmental law enforcement through the courts. In dealing with environmental cases, namely state administration, the role of judges is very important as the party representing the state provides rights related to the environment. The State Administrative Court (PTUN) is a judicial institution domiciled at the provincial level and authorized to examine and decide on administrative disputes at the first level. (Kasan & Rasji, 2021) Therefore, judges need to take sides with the environment through their decisions.

In the process of examining and deciding cases, environmental judges need materials related to the environment, especially studies of environmental decisions. Because every citizen has the right to a good and adequate environment. Thus, the government through its apparatus is obliged to fulfil good environmental facilities as a form of fulfilling the rights of its citizens. (Prastiti, 2022) The study of environmental decisions opens up space for discourse on legal challenges and findings in environmental cases. One of the challenges faced in environmental cases is the inconsistency of decisions that will affect the granting of rights related to the environment to the wider community. Furthermore, the study of environmental decisions highlights issues that are very important in examining environmental cases, such as scientific evidence on environmental damage due to forest fires, industrial activities, mining activities, and others. Besides that,

To support the provision of the results of the study of environmental decisions, the research team will carry out indexation and analysis of ± 164 environmental decisions. From the results of the decision review, the research target is to find various findings ranging from the substance aspect to the procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, to environmental case management issues and placements. environmental judge.

Decision indexation is a series of activities consisting of downloading; sorting out; reading, and analyzing court decisions based on certain criteria to see certain trends or problems in law enforcement by using court decisions as to the object of study.

The indexation activity of environmental case decisions was carried out by the research team from November 2021 to May 2022 with the object of the decision in the form of environmental case decisions live in a State Administrative Court (TUN) both at the first level; appeal; appeal; and Review (PK). The decisions indexed are decisions issued in the period 2009 to 2019 for TUN cases

The problem or the object of the problem in this research can be identified as follows:

How Substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges.

This research will provide concrete guidelines for institutional actions that can and should be adopted to promote better and more consistent and predictable outcomes in the case of the environment. Even if an adequate legal framework has been adopted, it must be applied by the courts competently and consistently manner to effectively implement the environmental protections for which the law was drafted. This research will show how courts too often fail to apply the law. However, because this research is based on empirical detail and good analysis, it also shows the steps that need to be taken by the Supreme Court to correct this deficiency to more fully implement the public interest that the law wants to protect.

The findings in this study are followed up with recommendations for policymakers, especially the Supreme Court. The Research Team recommends that the Supreme Court take steps to overcome the problem of inconsistency of decisions in environmental cases, one of which is through thematic training for judges in areas with specific tendencies in environmental cases. The research team assessed that this recommendation was something that the Supreme Court could do as a follow-up to the Environmental Judge Certification Training which had been conducted regularly by the Supreme Court.

2. Method

This research is legal research with the type of research that is normative research. This research aims to find substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges. This research is

focused on the judge's decision in environmental cases. Normative research uses primary and secondary legal materials. (Marzuki, 2013)

3. Results

The following are the primary legal materials in this research as follows:

1. the 1945 Constitution of the Republic of Indonesia;
2. Code of Civil law;
3. UU no. 32 of 2009 concerning Environmental Protection and Management;
4. SK KMA No. 36/KMA/SK/II/2013;
5. Decisions of Judges in Environmental Cases;
6. Other relevant laws and regulations.

Secondary legal materials are all publications on the law that are not official documents, such as textbooks, legal dictionaries, legal journals, (Marzuki, 2013) opinions of scholars, legal cases, results of seminars, workshops, symposia including sources of legal material in the form of publications using the internet related to this research material (added an interview method to the Surabaya High Court). This research is library research. Library research is research that uses library materials as a source of information and data sources. These include books, magazines, newspapers, laws and regulations, etc (Khaesarani, 2022).

The legal materials collected in this study were produced from a literature study. Therefore, the technique of collecting legal materials used in this research is literature review and documentaries.

The collection of legal materials is carried out by tracing, namely (1) tracing Substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, to issues of environmental case management and the placement of environmental judges.

Problems regarding substance aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges. Described based on the legal materials obtained then the next step is to conduct an analyze an interesting idea to be displayed in this study on primary legal materials and secondary legal materials. Primary legal sources consist of statutory regulations, judges' decisions, and official records of making laws and regulations. While secondary legal sources consist of the results of legal publications such as books, journals, analyses of decisions, etc. (Kristiadi et al., 2022) After all the materials have been collected, the next activity is to analyze the primary and secondary legal materials that have been obtained. The analytical technique in this study was carried out in an analytical prescriptive manner, which aims to produce a prescription about what should be the essence of legal research that adheres to the character of legal science as applied science. (G, 1975)

The data collection procedures in this study are indexation of decisions begins with searching and downloading decisions by the research team on environmental case decisions contained in the Decision Directory (<http://cepatan3.mahkamahagung.go.id>) as the official website for the publication of the ruling managed by the Supreme Court (MA). The search process is carried out from October to January 2022, at which time the Decision Directory website experienced technical problems where the site was often inaccessible causing some decision data to be inaccessible. The decisions that were traced and downloaded are as follows:

1. Decisions whose case registers use the code "LH" (Environment), namely for decisions issued from March 2015 to 2019. (Surat Keputusan Mahkamah Agung No. 037/KMA/SK/III/2015 Tentang Sistem Pemantauan Dan Evaluasi Sertifikasi Hakim Lingkungan Hidup., 2015) One of the objectives to be achieved by examining the decisions given in one of the "LH" codes is to see how far the court and The Supreme Court categorize a case as an "environmental" case; and
2. Decisions related to (applicable to decisions issued from 2009 to March 2015) This was done considering that during that time the Supreme Court had not yet applied a special code (LH) for environmental causes. These

decisions are decisions that in the lawsuit, demands, and/or orders containing one or more of the aforementioned Laws. The sorting of decisions is not carried out using a search engine because of the poor facilities in the Decisions Directory.

- a. Living natural resources, as regulated in Law (UU) Number 5 of 1990 concerning Biological Natural Resources and their Ecosystems;
- b. Environment, as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH);
- c. Forestry, as regulated in Law Number 41 of 1999 concerning Forestry (Forestry Law) and Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction;
- d. Water resources, as regulated in Law Number 7 of 2004 concerning Water Resources;
- e. Fisheries, as regulated in Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004;
- f. Minerals and coal, as regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining; and
- g. Oil and gas, as regulated in Law No. 22 of 2001 about Oil and Gas.
- h. Plantations, as regulated in Law Number 39 of 2014 concerning Plantation.

The decisions that have been downloaded are then sorted by sector and issued to be recorded in a table. The information contained in the table includes:

TUN verdict:

1. Case registration number
2. Court name
3. Plaintiff
4. Defendant
5. Also Defendant
6. Classification
7. Object of the lawsuit
8. Amar PN's decision
9. Panel of judges and registrar substitute for PN
10. PN decision date
11. Case registration number at the High Court (PT)
12. The decision of the PT
13. The panel of judges and substitute clerks at PT
14. PT decision date
15. Cassation case registration number
16. The decision of the cassation
17. The panel of judges and the clerk of the cassation substitute
18. Date of cassation decision
19. Cassation case registration number
20. The decision of the cassation
21. The panel of judges and the registrar instead of PK
22. PK decision date
23. General Principles of Good Public Governance (AUPB) which considered
24. The rule of law
25. Keywords

For decisions containing interesting legal issues and/or considerations, a summary of the decision is also made. The summary of the decision aims to make it easier for the public to understand the case and the contents of the decision quickly, without the need to read the entire text of the decision. Furthermore, for some decisions that contain the same legal issues and/or describe a certain trend (trend), the decisions and legal issues are summarized and described in a digest. The decision indexation activity produces 3 (three) outputs that have been compiled by the research team, namely:

1. Decision indexation data set (document in excel form containing the list indexed decisions along with important information related to decisions) a total of 164 decisions, which consist of:

Decision	First Level	Appeal	Cassation	PK	Total
TUN's verdict	19	8	103	34	164

The number of decisions indexed does not reflect The actual number of environmental issues bear a few things in mind. First, indexation is done by the sampling method (chosen randomly). Second, not all decisions, especially decisions in the TUN case at the end of 2019 have been decided by the court; and have been uploaded by each court into the Directory of Decisions. Indexed decisions it is an ongoing case (starting from the first level to legal remedies and the entire decision is found in the Decisions Directory), or stand-alone (only the first instance decisions are found or only legal remedies are found in the Decisions Directory). Summary of decisions, a total of 27 summaries and 3 digests.

4. Discussion

Substance Aspects to Procedural Aspects of Environmental Law, such as Issues on Imposing Criminal Cases for Corporate Management, Scientific Evidence, Environmental Permits, Implementation of Strict Liability, Citizen Lawsuit, to Issues of Environmental Case Management and the Placement of Environmental Judges.

4.1 Overview of Findings

The indexation and analysis of 164 environmental TUN case decisions conducted by the research team found various environmental issues that are often disputed in the TUN courts, namely as follows:

Forestry:

1. Employ forest area
2. Forest function conservation
3. Utilization of forest products
4. Property application
5. Protected forest area
6. Geospatial information
7. Swap Forest area
8. Forestry business license.

Environment:

1. Environmental destruction
2. Environmental pollution
3. Environmental Permit
4. Reclamation Permit
5. Disturbing the order
6. eviction.

Conversion of Biological Resources and Their Ecosystems (KSDHAE):

1. Wildlife conservation permit

Mining:

1. Mining license
2. Overlap mining business permits.

Plantation:

1. Plantation business license
2. Reserve plantation land.

Etc:

1. Determination of cultural heritage

The lawsuits were filed by:

1. Corporation (60 decisions);
2. Individual (50 decisions);

3. Organization (31 decisions).

The search for decisions also found that the absence of an analysis of Environmental Impact or AMDAL is the basis for the lawsuit that is most often used by plaintiffs, especially in lawsuits related to business licenses, which are 54 decisions. In addition to the AMDAL, other reasons that were also found as the basis for the lawsuit were:

1. The TUN decision which is the object of the lawsuit is deemed to have harmed or has the potential to harm the plaintiff;
2. The defendant is not authorized to issue the TUN Decree that is being sued;
3. The defendant issued a decision that exceeded his authority;
4. The TUN official who issued the TUN Decree had violated the General Principles of Good Governance (AUPB).

The research team found that the types of TUN decisions that are often contested are as follows:

1. Mineral and coal mining business license (68 decisions);
2. Plantation business license (17 decisions);
3. Cultivation rights (14 decisions).

Based on the category of officials issuing the TUN Decisions, it was found that the TUN Decisions that were frequently challenged by the Administrative Court were as follows:

1. Regent's Decree (SK) (39 decisions);
2. Ministerial Decree (18 decisions);
3. Governor's Decree (15 decisions);
4. SK Head of Agency (10 decisions);
5. Mayor's Decree (9 decisions)
6. SK Head of Service (8 decisions).

In deciding the TUN case, apart from relying on the laws and regulations, invitation, TUN judicial judges are also guided by the AUPB. 38 However, the research team's findings show that not all environmental TUN decisions include AUPB in their legal considerations. Of the 164 decisions indexed, AUPB was only considered in legal considerations for 77 decisions with the following details:

1. 9 decisions of the first instance;
2. 1 decision at the appeals level;
3. 46 decisions of cassation;
4. 21 PK decisions.

In terms of the distribution of cases, environmental TUN lawsuits are spread over 7 PTUN, namely:

1. Jakarta (26 cases);
2. Samarinda (23 cases);
3. Bandung (11 cases);
4. Banjarmasin (4 cases);
5. Palangkaraya (2 cases);
6. Attack (7 cases);
7. Pontianak (2 cases).

The number of environmental TUN cases that enter the Jakarta Administrative Court is due to:

1. There is a lawsuit against the TUN Decree issued by the central government, either the Minister, the head of the Agency/Agency or the Directorate General of the Ministry/Institution;
2. The Jakarta Administrative Court also handles lawsuits against the KTUN issued by the Governor of DKI Jakarta as well as heads of government institutions, such as Decree of the Head of the Civil Service Police Unit, Head of Division, and Head of Service in the Provincial and City Administration areas of Jakarta (Central, North, South, East, West and the Thousand Islands).

Of the 26 decisions made by the Jakarta Administrative Court, 15 lawsuits were granted, 7 cases were rejected, and 4 lawsuits were declared unacceptable (Niet Onvankelijk/ NO). TUN decisions that are often challenged in the Jakarta Administrative Court include:

1. TUN decisions issued by the National Land Agency, especially related to land use rights.
2. TUN decrees issued by the Ministry of Environment and Forestry, especially related to business permits and environmental permits.
3. TUN decisions issued by the Governor of DKI Jakarta, especially related to building permits, reclamation, natural tourism permits, and business plans for development activities.

Meanwhile, in the Samarinda Administrative Court, of the 23 decisions handed down, 11 of them granted the lawsuit, 8 rejected the decision, and 4 others were declared NO.

1. Mining business license;
2. Plantation business license;
3. Reclamation permit;
4. Permit for disposal of liquid waste into rivers,
5. Borrow-to-use forest area permit
6. Permit to build a building.

The search for decisions also found that the TUN panel of judges at the cassation level began to consistently apply the reasons for the cassation request in their legal considerations. Of the 103 cassation decisions studied, 6 decisions contain legal considerations that the panel of judges at the cassation level is not authorized to try facts because of their role as *judex jurist*.

4.2 Finding Legal Problems

Of the 164 decisions indexed, several interesting legal considerations and legal issues were found, namely:

1. Terms of Kabul and Legal Efforts for Positive Fictitious Applications

Within the scope of the TUN judiciary, there are fictitious positive and fictitious institutions or mechanisms for the decisions of TUN officials. According to Indroharto, a fictitious TUN decision is the silence of the TUN's body or position, not doing anything and not issuing any decision on the application submitted, even though what is being requested falls within the area of authority that is its obligation. (Indroharto, 2000)

Fictitious shows that the TUN decision being sued is not form. It is only the silence of the TUN body or official, which is then considered to be equated with a written TUN decision. Negative fictitious indicates that the TUN decision being sued is considered to contain a rejection of the application that has been submitted by the individual or civil legal entity to the TUN agency or official. (Irvan Mawardi, n.d.) This negative fictitious is regulated in Article 3 of Law no. 5 of 1986 concerning State Administration Courts.

In 2014, the DPR and the Government passed Law no. 30 of 2014 concerning Government Administration (UU AP). Philosophically, the existence of this law aims to maximize the implementation of authority by government administrative officials for the welfare, prosperity, and justice of the community. The presence of this law will also become the material legal basis for every official in carrying out government administration, to complement the formal law as regulated in the State Administrative Court Law (UU No. 5 of 1986, in conjunction with Law No. 9 of 2004 and Law no. 51 the year 2009).(Government statement in a working meeting with Commission II DPRI related to AP bill, 2022)

However, it turns out that the AP Law has several legal problems, especially those related to the TUN judiciary. In addition to regulating the material law of government administration, this Law also regulates several provisions of procedural law (formal law) that conflict with the state administration judicial procedural law that has been regulated in the Administrative Court Law, one of which is regarding fictitious decisions. If the

Administrative Court Law recognizes a fictitious negative institution, then the AP Law uses a positive fictitious, namely, the silence of the TUN officials is legally considered to have granted the applicant's request.

The silence of the TUN officials as regulated in the AP Law is not automatically granted. Article 53 paragraph (4) of the AP Law stipulates that to obtain a decision on the acceptance of the application, the applicant applies to the court. However, the AP Law does not further stipulate whether the judge is obliged to grant the applicant's request or not.

To fill the legal vacuum, decisions and regulations of the Supreme Court (Perma) have provided guidelines for whether or not the applicant's application is granted as contained in decisions number: 175 PK/TUN/2016 and 341 K/TUN/LH/2017, as well as PERMA No. 8 of 2017 concerning Guidelines for Proceedings to Obtain Decisions on Acceptance of Applications to Obtain Decisions and/or Actions of Government Agencies or Officials. In both the decision and the PERMA, the Supreme Court thinks that the applicant's application does not automatically have to be granted, but is still examined and assessed for the completeness of the application requirements. Because the "positive fictitious" institutions in the AP Law are intended to make improvements to the quality of services based on law, not the other way around. (Legal Consideration Of Decision No.: 175 PK/TUN/2016). The court's decision regarding this positive fictitious petition is also final and binding: there is no appeal, cassation, or PK.

2. Elements of Real State Loss in Environmental Cases

One of the interesting legal issues found by the research team in the indexation of TUN decisions is the necessity of an element of real loss due to the issuance of the TUN Decree in environmental TUN disputes. This element is an interpretation of Article 53 paragraph (1) of Law no. 5 of 1986 concerning the State Administrative Court as amended through Law no. 9 of 2004 and the last amendment through Law no. 51 of 2009. The article stipulates that: "A person or civil legal entity who feels that his interests have been harmed by a TUN Decision may file a written lawsuit to the competent court containing a demand that the disputed TUN Decision be declared null and void, with or without a claim. compensation and/or rehabilitation".

The paradigm of "there must be a real loss" as a signal to be able to file against the TUN Decree has been expanded since the birth of the AP Law, article 87 letter e of the AP Law stipulates that: "With the enactment of this Law, the TUN Decree as referred to in Law no. 5 of 1986 concerning the State Administrative Court as amended by Law no. 9 of 2004 and Law no. 51 of 2009 must be interpreted as: e. Decisions that have the potential to have legal consequences." (Legal Position Policy Paper Recommendations Of The State Civil Apparatus Commission In Disputes In The Administrative Court, 2017)

In practice, the research team found that not all judges paid attention to Article 87 letter e of the AP Law, as found in the following decisions:

1. Decision number: 36/G/LH/2018/PTUN.SMD, April 3, 2019 with the parties Dudin Waluyo Asmoro Santo against the Mayor of Samarinda;
2. Decision number: 40/G/2018/PTUN.JPR, dated February 6, 2019, with the party's CV. Alco Timber Irian against the Director of Contributions and Distribution of Forest Products, et al;
3. Decision number: 41/G/LH/2018/PTUN.PBR, 28 January 2019, with the parties The Environmental Foundation and People's Legal Aid (YLBHR) against the Head of the Office of Investment and One-Stop Services, Indragiri Hilir Regency, et al;
4. Decision number: 151 K/TUN/2014, dated 22 May 2014, with the parties the Indonesian Forum for the Environment (WALHI) against the Governor of Bali.

The legal considerations in these decisions essentially state that the plaintiff must be able to prove that there has been a real loss suffered by the plaintiff as a result of the issuance of the TUN Decision. If referring to Article 87 letter e of the AP Law, TUN decisions that have the potential to cause legal consequences can be sued to the Administrative Court.

Related to that, according to its characteristics, environmental cases are unique cases, where the losses incurred can be predicted even though they cannot be seen with the naked eye at the outset. For example, the establishment of a factory that dumps liquid waste into the river does not immediately feel the impact when the factory just dumps its waste into the river, but the consequences can only be felt after some time. However, the consequences of this disposal were predictable from the start of the plant's operations. If a new environmental lawsuit can be filed after the pollution has occurred and has an impact, there will be more losses arising from the act. Because of that, "potential loss" is appropriate to apply in environmental cases to prevent adverse impacts on the environment.

3. Period of filing a lawsuit against TUN

Article 55 of Law no. 5 of 1986 (UU Administrative Court) states: "A lawsuit can be filed only within a grace period of ninety days from the time the decision is received or announced by a state administrative body or official". In dealing with environmental cases, the 90 (ninety) day period is often a problem, especially regarding when to start calculating that period.

One of the interesting findings in the study of this decision is the Supreme Court's legal considerations in decision no. PK/TUN/2016 between Joko Prianto, et al vs the Governor of Central Java and PT. Semen Indonesia which was decided on October 5, 2016. In the section on the legal considerations of the decision, the Panel of Judges led by Dr Irfan Fachruddin, SH, CN, thinks that in examining the timeframe for filing a lawsuit in an environmental case, judges should not rely solely on Article 55 of the Administrative Court Law. According to the Assembly, the State Administration dispute in the environmental sector is a special case that has a special character and is different from other State Administration disputes in general. Therefore, in addition to paying attention to Article 55 of the Administrative Court Law, judges must also pay attention to Article 89 paragraph (1) of Law no. 32 of 2009.

The Panel of Judges also argues that by the special character of the environmental TUN dispute, the factual element of environmental pollution and/or damage is not absolute, because the environmental TUN dispute is only administrative. In other words, what is being tested is the administrative aspect of the disputed object's Environmental Permit. Therefore, the grace period for filing the quo lawsuit is calculated as 90 (ninety) days from the time it is known that there is potential for environmental damage and/or pollution (potential risk/potential loss) due to the issuance of an Environmental Permit for the object of dispute from the said facility.

4. Obligation to Announce Environmental Permits Through Multimedia;

Article 49 Government Regulation (PP) No. 27 of 2012 concerning Environmental Permits stipulates that every environmental permit that has been issued by the minister, governor, or regent/mayor must be announced through mass media and/or multimedia. The announcement is made within 5 (five) working days from the date of issuance.

In practice, TUN officials interpret Article 49 of the PP singly. That is, after announcing through mass media and/or multimedia, TUN officials feel that their responsibilities have been completed. TUN officials feel they do not have the obligation to conduct socialization directly (face to face) with the community potentially affected. TUN officials tend to generalize the level of technological literacy of the Indonesian people, without paying attention to the fact that most of the rest of society has not been friendly to technology.

To overcome the problems mentioned above, the court has given affirmation that it is appropriate that every issuance of the environmental permit must be announced through mass media and multimedia. However, according to the Supreme Court, in conducting socialization, TUN officials must also consider the level of education and habits of the people in the village who are generally traditional farmers who are far from access to the internet and newspapers. The government cannot generalize that all people are considered to have been aware of the existence of an Environmental Permit and its consequences for the environment. The court's attitude is contained in the number of the decision: 99 PK/TUN/2016 and 465 K/TUN/LH/2018.

5. Application of AUPB in Environmental Cases;

In essence, the principle has an important role in filling the legal vacuum of legal ambiguity.(Pratiwi & Dkk, 2016) Therefore, the existence of the AUPB is very important when the Administrative Court judge examines a case, where the legal basis has not been explicitly regulated in the legislation (legal vacuum/vacuum of the norm), or when the arrangements exist but are very vague (law ambiguity/vague of law). norms). (Pratiwi & Team, 2016)

UU no. 5 of 1986 does not explicitly regulate the AUPB. AUPB began to be strictly regulated in law since the birth of the Administrative Court Law of 2004. Recognition of the AUPB as a positive legal norm will be very useful for judges in exercising their independence and judicial power to examine all government actions that are considered arbitrary; against the law; or abuse their power with appropriate and accurate considerations with clear indicators and by prioritizing aspects of legal certainty.(Pratiwi & Dkk, 2016)

In dealing with State Administration cases related to the environment, judges also often use AUPB to assess State Administration decisions or actions. The research team found that the principle of legal certainty and the principle of accuracy are the AUPB most often used by judges in legal considerations. At the cassation level, for example, the principle of legal certainty was found to be used in 36 decisions, while the principle of accuracy was found to be used in 26 decisions. Furthermore, the Supreme Court also often uses other principles, such as the principle of professionalism; the principle of accountability; and the principle of impartiality in adjudicating TUN cases. AUPB is most often used in environmental cases related to environmental permits; plantation business licenses; mining licenses; environmental pollution; and environmental destruction.

However, the research team also found that there were far more decisions on environmental cases that did not use AUPB in their legal considerations. Of the 19 decisions at the first level, for example, only 9 decisions used AUPB. At the appeal level, out of 10 decisions, only 1 decision used AUPB. Meanwhile, at the cassation level, out of 103 decisions, only 46 decisions used AUPB. At the PK level, out of 35 decisions, only 21 decisions used AUPB.

6. Permissions

The research team also found interesting legal considerations in environmental TUN case decisions related to licensing, namely as follows:

- a. Issuance of TUN decisions regarding waste disposal permits must be based on the study of the impact of wastewater disposal on fish and animal farming and plants, soil and groundwater quality, and public health. This is as referred to in decision number: 187 K/TUN/LH/2017.
- b. A decision regarding a permit will expire if the decision is returned, revoked, and expires. As referred to in decision number: 273/G/2017/PTUN-JKT. Termination of a business license directly is a form of arbitrariness. According to the court, before the business license is terminated, the TUN officials must give administrative sanctions in stages, namely giving a written warning which if not implemented can be continued with a second sanction in the form of a temporary suspension of business activities. This is as referred to in decision number: 37/G/2017/PTUN-PLG.
- c. The granting of a lease-to-use forest area permit is not the authority of the regional government, but the authority of the Minister of Environment and Forestry. The lease-to-use permit for the Leuser forest area cannot be justified, because it contradicts Article 150 of Law no. 11 of 2006 concerning the Aceh Government and the City District Government, which states: That it is not allowed to issue forest concession permits in the Leuser ecosystem area. This is as referred to in decision number: 7/G/LH/2019/PTUN.BNA

7. AMDAL

Regarding AMDAL, the research team found interesting legal considerations, namely as follows:

- a. The issuance of a business license is a procedural defect because it is not equipped with an environmental document in the form of an AMDAL as stated in the Legislation. This is as referred to in decision number: 409 K/TUN/2015.
- b. The AMDAL Assessment Commission must include representatives from community elements who potentially affected, as referred to in decision number: 580 K/TUN/2018.

8. Public Information Related to the Environment

Concerning public information related to the environment, the research team found the following interesting legal considerations:

- a. Cultivation rights (HGU) do not include information that is excluded from obtaining given to the public as referred to in Article 11 paragraph (1) letter C of Law Number 14 of 2008 concerning Openness of Public Information. This is as referred to in the decision number: 121/K/TUN/2017.
- b. Geospatial information or maps in shapefile format have no legal force because they have not been authorized by the competent authority. Therefore, it is prohibited to disseminate geospatial information in that format, as referred to in decision number: 239/K/TUN/2017. This decision is considered not to reflect the spirit of public information disclosure, especially public information related to the environment, and therefore needs further attention. (Research, 2022)

9. Mining Activities for Strategic Interest

The research team also found legal considerations related to large-scale government activities that have an impact on the environment, namely in decision number: 039/G.PLW/2017/PTUN.Smg. In the ruling, the court ruled that mining and drilling above the Groundwater Basin (CAT) was in principle not justified. However, for the sake of the very strategic interests of the nation and state, according to the panel of judges, it can be excluded with very strict restrictions in certain and measurable ways so as not to disturb the aquifer system. The determination of the Environmental Permit should be accompanied by the approval of the official who determines the status of the area. The agreement functions as a policy and environmental and development policy, as well as the urgency of the interests of the nation and state.

The Research Team recommends to the Supreme Court reformulate the criteria for environmental cases to be registered with the LH register. In formulating these criteria, the Supreme Court cannot only rely on the law used in the lawsuit or indictment as it is currently in effect, considering that in the end, it also contributes to the registration of other cases which are legally unrelated to the environment. The law can only be the first filter in sorting environmental cases. Meanwhile, further sorting needs to be done by carefully examining the contents of the lawsuit and indictment.

The Research Team also recommends to the Supreme Court to provide capacity building related to case classification to the clerks as the front line in the registration of environmental cases. Capacity building also needs to be given to substitute clerks and operators, to ensure that the correctness and completeness of information on decision data displayed in the Decisions Directory have been carried out properly.

The inconsistency of decisions and several legal issues mentioned above need to be addressed by the Supreme Court further. This is considering that inconsistency of decisions can lead to injustice and legal uncertainty. In this regard, to minimize the occurrence of inconsistencies in decisions, the Research Team recommends to the Supreme Court to:

- a. Cross-examine environmental decisions that are inconsistent with the list of judges who have participated in environmental judge certification to ensure whether there are benefits of certification to the judges concerned and to environmental law enforcement;
- b. Carry out thematic training in certain areas based on case trends. The thematic training includes: (1) training related to forest fires and illegal logging in areas where there is still a lot of forest cover; (2) training related to environmental pollution in industrial areas; and (3) training related to wildlife trade in areas where there are conservation areas and/or there are many protected wild animals;

- c. Establish a forum for environmental judges (such as the forum for environmental experts that was previously established by the Ministry of Environment and Forestry) as a medium for exchanging information and learning among environmental judges. This forum is necessary considering that knowledge and learning among judges are usually not only obtained through the certification process but also from discussions with fellow judges regarding their experiences in examining similar cases;
- d. Implement inter-room plenary meetings in the examination of environmental cases at the cassation and/or PK level where the parties or legal substance are the same but are submitted separately (criminal, civil, and TUN) as possible based on the Decree of the Head of the Supreme Court No. 017/KMA/SK/II/2012 jo. SK KMA No. 142/KMA/SK/IX/2011 concerning the Application of the Room System; (Decision Of The Supreme Court No. 017/KMA/SK/II/2012 No Point VIII Angka 1, 2012)
- e. Ensure that environmental judges are placed in areas that hear a lot of environmental cases and in the following areas:

TUN Judge	Placement
	State Administrative Courts, and/or Appellate Courts in the following areas: <ol style="list-style-type: none"> a. New expansion b. Rich in natural resources, biological resources and ecosystems c. Conservation d. Development priority e. The business centre or legal entity domicile f. Indicates the existence of ecosystem/environmental pressure.

- f. Using the quality of legal considerations in decisions that have been issued by the judge concerned as a standard in the selection of environmental judge certification.
4. Apart from the issues of legal substance, there are also emerging legal issues and future trends in environmental cases that need to be responded to by the Supreme Court to be considered for inclusion in the environmental judge certification curriculum, which are as follows:
 - a. Conditions for granting positive fictitious applications;

Article 3 paragraph (2) PERMA No. 8 of 2017 concerning Guidelines for Proceedings to obtain a Decision on Acceptance of Applications to Obtain Decisions and/or Actions of Government Agencies or Officials has regulated 4 criteria for positive fictitious applications. In practice, 1 decision was found (decision number: 175 PK/TUN/2016) which stipulates that in addition to the 4 criteria, the Supreme Court also checks the completeness of the application files submitted to government agencies or officials to obtain a decision, while checking the completeness of the documents in the application for acceptance requirements positive fictitious applications are not regulated in PERMA.
 - b. The element of “potentially causing legal consequences”;

In assessing the legal standing or interests of the plaintiffs in environmental TUN cases, judges tend to use the argument that there must be real losses experienced by the plaintiffs, as formulated in Article 53 paragraph (1) of the Administrative Court Law. This shows that the judge has ignored the element of “potentially causing legal consequences” as regulated in Article 87 letter e of Law no. 30 of 2014 concerning Government Administration. By its characteristics, environmental cases are unique cases, where environmental losses that arise are not instantaneous losses that can be seen immediately but can only be seen or felt sometime after the incident. Environmental losses can be predicted scientifically even though they cannot be seen with the naked eye at first.
 - c. Public information disclosure;

The judge recognizes information related to the environment that is open and excluded, especially when the objection submitted to the Administrative Court relates to a request for public information that has been declared open information by the Information Commission, as well as the impact of opening and/or closing the information.
 - d. Socialization related to environmental permits;

Article 39 of Law no. 32 of 2009 and Article 49 of PP No. 27 of 2012 concerning Environmental Permits stipulates that every environmental permit that has been issued by the minister, governor, or regent/mayor must be announced in a way that is easily known by the public, through mass media and/or multimedia. However, socialization through face-to-face meetings with people who will be affected by environmental permits still needs to be done. This is as referred to in the Supreme Court decisions number: 99 PK/TUN/2016 and 465 K/TUN/LH/2018, which consider that the level of education and habits of the people in the village who are generally traditional farmers who are far from internet access and newspapers also need to be noticed.

e. Environment as the person in law;

The development of environmental law in several other countries such as India, The United States of America, Ecuador, New Zealand, (Magallanes, 2019) Colombia (Team, 2018) produce jurisprudence in which the environment, forests, and rivers are recognized as persons in law who have their rights. However, because of its different characteristics from the person in law in general, to ensure that the environment obtains its rights as a person in law, it must still be represented by another party, in this case, the state.¹In this regard, when the government (in its capacity as the plaintiff) and judges (in their capacity as arbiter) are suing or deciding environmental cases, they are carrying out their duties as representatives of the state in protecting environmental rights. Citing Indian court decisions in the Ganges and Yamuna cases, the court held that injury or damage to the environment should be equated with injury or damage to humans. (Magallanes, 2019)

f. Judge independence;

The judge must act and show his independence when he is a direct victim of an event that has an impact on the environment, but at the same time also becomes a case breaker in that incident. Sampean River Case, Situbondo. this was examined by 2 judges who are also victims of environmental damage in the Sampean river. The two judges only chose the option `o_p_t_o_u_t` in the class action lawsuit without resigning from the case. Related to that case, the Supreme Court in "`C_l_a_s_s_A_c_t_i_o_n_&_...._`" p. 43 states that even if a judge who is also a victim continues to adjudicate class action cases, he has chosen to opt out where he is out of the lawsuit and is not bound by the decision on a group lawsuit, it does not remove the judge's direct interest in the case. So that the reason for the judge's interest in the case as argued by the defendant/cassation applicant in his cassation memorandum was accepted by the Supreme Court (see Supreme Court Decision No. 2537/K/Pdt/2010).

g. Citizen Lawsuit

The definition, characteristics, and several examples of citizen lawsuit cases have been regulated in SK KMA No. 36/KMA/SK/II/2013. While the characteristics; demands; and notification procedures in citizen lawsuits are not included in it.

Cases that go to court and are registered as environmental cases (register "LH") do not entirely contain legal substances related to the environment. There were many cases registered with the "LH" register whose legal substances were not directly related to the environment, namely criminal cases regulated in the Oil and Gas Law and cases of corruption in the Oil and Gas sector. On the other hand, some cases were not registered as LH cases but had legal substance related to environmental law enforcement, namely anti-SLAPP cases and requests for public information related to the environment. The research team concluded that a case can be categorized as an environmental case if the substance of the lawsuit relates to the following matters:

- a. Destruction that has an impact on the disruption of environmental quality stone;
- b. Pollution of water, air, and soil;
- c. Land use; water and air;
- d. Large-scale fires, eg land and forest;
- e. Large-scale development, for example, housing; hospital; hotel; factory; power plants; etc.
- f. Zoonoses;(Researcher, 2022)
- g. Permits related to and/or impacting the environment;
- h. Access to information relating to and/or impact on the environment;

As for cases related to public order (such as making noise, blasting, or roaming cattle) and oil trading, the Research Team thinks that these cases cannot be categorized as environmental cases.

It was found that there were inconsistencies in decisions in several similar environmental cases even though the provisions had been confirmed in SK KMA No. 36/KMA/SK/XII/2013, which are as follows:

- a. Criminal reports in civil lawsuits for compensation for pollution;(verdict No: 1808 K/Pdt/2009., 2009)
- b. Inclusion of strict liability in the lawsuit;
- c. The burden of proof in strict liability in forestry cases and environmental pollution cases;(verdict No: 118/Pdt.G/LH/2016/PN.PLK, 2016) (Verdict No.: 118/Pdt.G/LH/2016/PN.PLK, 2016)
- d. Application of strict liability and force majeure in forestry cases and environmental destruction cases; (139/Pdt.G-LH/2016/PN.JMB, 2016) (540/Pdt/2017/PT.DKI, 2017) (284/Pdt.G/2007/PN.JAK.SEL, 2007)
- e. Application of environmental quality standards in proving the existence of pollution; (44/Pdt.G/LH/2018/PN.Bgl., n.d.) (44/Pdt.G/LH/2018/PN.Bgl., n.d.)
- f. The use of the basis of punishment in cases of land burning and/or forest. Found 3 laws that regulate the crime of clearing forests and or land with different criminal threats, namely Law no. 41 of 1999 concerning Forestry; UU no. 32 of 2009 concerning Environmental Protection and Management; and Law no. 39 of 2014 concerning Plantations. The problem of ambiguity in the sentence imposed cannot be separated from the overlapping criminal provisions in the two laws themselves which both regulate land burning. Article 108 of the PPLH Law and Article 108 of the Plantation Law show that there are differences in the number of criminal threats, especially the special minimum criminal threat, whereas in the PPLH Law the defendant will be sentenced to a minimum of 3 years and a minimum fine of 3 billion rupiahs, while in the Plantation Law it is not there is a specific minimum penalty.
- g. Utilization of the protected forest by residents (actions to use forest carried out by people living in or around the forest). (1367 K/Pid.Sus-LH/2016, 2016) (2647 K/Pid.Sus-LH2016, 2016)(2095 K/Pid.Sus-LH/2017, 2017)

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