THE USE OF SUSTAINABLE DEVELOPMENT PRINCIPLES AS A VERDICT CONSIDERATION BY ADMINISTRATIVE COURT JUDGES: A CASE STUDY IN DENPASAR ADMINISTRATIVE COURT

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ABSTRACT

This paper seeks to describe the use of Sustainable Development Principles as the verdict consideration by the Administrative Court Judges. Based on a review of laws, regulations, and verdicts that specifically regulate administrative and environmental justice court, and contextualized with various literatures and court verdicts, the results of the study indicate that the principles of sustainable development are almost never used as the consideration by the administrative judges in resolving the environmental disputes. In the event of an environmental dispute that results in the resolution of a dispute to the administrative court, the principles should be used by the judges as the consideration in making a verdict, so that the judges' verdicts provide justice for both the environment and community. In reality, judges almost never use the principles of sustainability as the consideration for making verdicts. Judges' decisions tend to be formalistic and procedural, so that the verdicts cannot accommodate the interests of environmental sustainability. This is because the judges are too rigid in implementing the regulations; they tend to use the principles in laws governing administrative justice and tend to ignore laws governing the environment.

Keywords: Sustainable Development, Verdict, Administrative Court.

INTRODUCTION

The principles of sustainable development are used as the guidelines in carrying out development activities so that these activities do not cause negative impacts on the environment. In making policies or decisions that are given to companies to carry out an activity, government officials have to be guided by the principles of sustainable development, so that the activities carried out by the company do not cause damage to the environment.

In reality, the efforts or activities carried out by the company have the potential/have caused environmental damage/pollution and losses to the community. Until 2005, one billion tonnes of toxic tailings waste was disposed of by PT. Freeport McMoran Indonesia to the Aghawagon-Otomona-Ajkwa River. In 2006, PT Lapindo Brantas' activities caused a leak of hydrogen sulfide (H2S) gas in the exploration of the TMMJ Rig gas field in Ronokenongo Village, Porong District, Sidoarjo Regency. Until 2018, 11 companies had carried out activities that caused forest and land fires and illegal logging in Riau Province (Kafrawi, 2020).

This led to a lawsuit by the community or environmental organizations against the government officials as the ones providing the permissions and also to the companies as the holders/recipients of the permissions to the Administrative Court.

The administrative court that resolves the dispute will eventually produce a product called a verdict. In the Administrative Court Verdicts whose disputes are related to environmental issues, there is a tendency that they do not take the side of protecting the interests of the community and the interests of environmental preservation.

In deciding the verdicts on environmental disputes, the Administrative Court Judges rarely use the principles related to the environment including the principles of sustainable development as a basis for consideration to decide on the verdicts. In the end, the Administrative Court Verdicts do not provide legal protection for the community and protection for the forest preservation.

Principles of Sustainable Development as the Consideration for Administrative Judges

Regarding sustainable development, Tracey Strange dan Anne Bayley stated that :

> *Sustainable development is about integration: developing in a way that benefifi ts the widest possible range of sectors, across borders and even between generations. In other words, our decisions should take into consideration potential impact on society, the environment and the economy, while keeping in mind that: our actions will have impacts elsewhere and our actions will have an impact on the future.(Strange & Bayley, 2008)*

Environmental principles specifically those that are related to economic activities are stipulated in the 1945 Constitution of the Republic of Indonesia. Article 33 verses (4) of the 1945 Constitution of the Republic of Indonesia states that:

> *"The national economy is held based on the principles of economic democracy together with the principles of togetherness, efficiency, justice, sustainability, environmental, independence, and by maintaining the balance, progress and the unity of the national economy".*

The green nuances in the article are contained in the words "*sustainable*" and "*environmental*". According to Jimly Asshiddiqie, the word "*sustainable*" is actually related to the concept of sustainable development (Asshiddiqie, 2010). By regulating the principles of sustainable development in the 1945 Constitution of the Republic of Indonesia, those principles should become the spirit in various regulations that are related to environmental issues. The Administrative Court has the authority to examine, decide and resolve disputes that contain environmental aspects such as disputes which are related to environmental permits, forest utilization permits, and mining permits. In the case of the Administrative Court resolving disputes related to the environment, the principles of sustainable development should be taken into consideration by the judges in resolving and deciding on the verdicts for the disputes, so that there is synchronization between the Administrative Court Law and the 1945 Constitution of the Republic of Indonesia. Until present time, the principles of sustainable development have not been regulated in the Administrative Court as one of the principles used by the judges as the basis for examining the decisions of the government officials. In addition, there has been no

Administrative Court verdicts whose object of disputes are related to environmental issues that use the principles of sustainable development as a basis for examining by the judges. This shows that there is no synchronization between the Administrative Court Law and the 1945 Constitution of the Republic of Indonesia.

The principles of sustainable development have been regulated jurisdically in Law No. 32 of 2009. Article 1 number 3 of Law No. 32 of 2009, states that:

> *"Sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into the development strategies to ensure the unity of the environment as well as the safety, ability, welfare, and quality of life of the present and future generations"*

That provision becomes the guideline for the government officials in making policies or making decisions that have the potential to cause negative impacts on the environment. If the decision of the government officials causes environmental damage/pollution and is requested to be resolved to the Administrative Court (Supomo, 2018), the Administrative Court Judge should use the principles of sustainable development as the consideration in deciding on the verdicts.

The principles of sustainable development are almost never used as the basis for the judges to decide on the verdicts for the cases that were examined and decided by the Administrative Court. This is because the Administrative Court Law has not included the principles of sustainable development as a test tool for judges in resolving and deciding disputes that are related to the environment. In addition, the judges also lack the courage to make innovations and breakthroughs to use the principles of sustainable development as a consideration in their verdicts. When the Administrative Court judges dare to use the principles of sustainable development in resolving the environmental disputes, then there will be a development of Good Governance General Principles in the practice of Administrative Court judges in resolving and deciding on the verdicts on environmental disputes.

With the promulgation of Law No. 30 of 2014 concerning the Government Administration, the regulation of Good Governance General Principles accommodates the environmental principles. This principle is contained in the principle of benefit that is stipulated in Article 10 of Law No. 30 of 2014. Environmental principles contained in the principle of benefit, namely,

> *"Benefits that must be considered in a balanced manner between: (1) the interests of the present generation and the interests of the future generations; (2) the interests of humans and their ecosystems".*

The benefit principle which includes a balance manner between the interests of the present generations and the future generations as well as the balance between human interests and their ecosystems should be the guideline for the judges in resolving and deciding on the verdicts on environmental disputes.

The sustainable concept contained in the principle of benefit that is stipulated in the Government Administrative Law is not exactly the same as the principles of sustainable development. The following is a comparison of the principles of benefit in the Government Administrative Law and the principles of sustainable development.

Table 1
COMPARISON OF PRINCIPLE OF BENEFIT AND PRINCIPLE OF SUSTAINABLE DEVELOPMENT

Principles of Sustainable Development	Principles of Benefit in the Government Administrative Law
▪ Conscious and planned efforts ▪ Integrate environmental, social and economic aspects into the development strategies ▪ To ensure the unity of the environment, safety, ability, welfare, and quality of life of the present generations and the future generations	▪ Providing balanced benefits between the interests of one individual and the interests of other individuals; individual interests with the community interests; citizens interests and foreigners interests; one community group interests and other community groups interests; government interests with community members interests ▪ Providing balanced benefits between the interests of the present generation and the interests of the future generations ▪ Providing balanced benefits between the human interests and the ecosystem

The table above shows that the principles of environmentally sustainable development are specific principles that are applied in the field that contains environmental aspects such as the fields of forestry, mining, and the utilization of other natural resources. On the other hand, the principles of benefit are more generally applicable to all fields, especially the principles of benefit in a balanced manner between the interests of one individual and the interests of other individuals; individual interests with the community interests; citizens interests and foreigners interests; one community group interests and the interests of other community groups; government interests with community members interests. The benefit principles that are balanced between the interests of the present generation and the interests of the future generations and the interests of humans and their ecosystems are only a small part of the principles of benefit. Thus, the judge can use the principles of sustainable development as a test tool to reinforce the principles of benefit in the Government Administrative Law for the environmental cases.

Based on the things that are mentioned previously, it can be concluded that even though the Government Administrative Law regulates the concept of sustainability in the principles of benefit contained in Article 10, the judges can still use the principles of sustainable development as a test tool for the judges to reinforce the principles of benefit in resolving the environmental disputes based on Article 10 verse (2) of the Government Administrative Law. In such a case, the new Good Governance General Principles (AUPB) will emerge through jurisprudence.

Verdicts of the Administrative Court in the Environmental Cases

In practice, the principles of sustainable development are almost never used by the judges in examining and resolving disputes whose objects are verdicts in the environmental field. An example is a case handled by the Denpasar State Administrative Court.

The Verdict of Denpasar Administrative Court No. 1/G/2013/PTUN.Dps

The Indonesian Forum for the Environment Foundation (hereinafter abbreviated as WALHI) sued the Governor of Bali for issuing the Bali Governor's Decree Number: 1.051/03-L/HK/2012 concerning the Granting of Permits for Enterprise of Natural Tourism in the Ngurah Rai Forest Park Area, Bali Province covering an area of 102, 22 Ha (one hundred and two point twenty-two hectares) to PT Tirta Rahmat Bahari dated June 27, 2012. The legal standing of WALHI is based on article 92 of Law Number 32 of 2009 on the Protection and Management of the Environment (UUPPLH), namely that in order to implement the responsibilities for environmental protection and management, the environmental organizations have the right to file claims in the interest of preserving environmental functions.

The Governor's Decree authorized the establishment of tourism accommodation facilities in the form of: 75 lodging units, 5 Kiosk Units, 8 Dining Place Units, 10 Holdock units, 2 Spa Units, 4 Outbound Units, 2 Management Office Units, 1 Water Play Unit, 2 units Lobby, 5 Coffee Shop Units, 1 Restaurant Unit, 1 Pool Unit, 1 Multipurpose Building Unit, 1 Public Activity Area Unit, 1 Camp Area Unit, while the Toilet, Gazebo and meditation area are adjusted accordingly.

The reason WALHI sued the Governor of Bali to the Administrative Court is because the Decision issued by the Defendant is against the Principles of State Responsibility, Principles of Sustainability and Preservation, Principles of Harmony and Balance, Principle of Justice, Principle of Ecoregion, Principle of Participatory, Principle of Local Wisdom, and Principle of Good Governance as stated by Article 2 of Law Number 32 of 2009 concerning the Environmental Protection and Management.

The defendant responded to the lawsuit from the plaintiff by stating that the plaintiff's argument is incorrect because they make it seems as if the dispute object KTUN contradicted the principles of state responsibility, principles of sustainability, principles of balance, principles of justice, principles of ecoregion, principles of participatory, principles of local wisdom, and the principles of good governance as stated in Article 2 of Law Number 32 of 2009 concerning the Environmental Protection and Management (PPLH). Granting the permits is in fact intended to overcome the accumulation of waste in the mangrove forests, which means that it is actually an activity that plays a role in maintaining the environmental sustainability.

For the dispute, the Denpasar Administrative Court with Verdict Number: 01/G/2013/PTUN.Dps., decided as follows:

1. Grant the Plaintiff's Claim;
2. Declare void: Decree of the Governor of Bali Number: 1.051/03-L/HK/2012 concerning the Granting of Permit for Enterprise of Nature Tourism in the Forest Area Utilization Block (TAHURA) Ngurah Rai, Bali Province covering an area of 102.22 Ha (one hundred and two point twenty-two hectares) to PT Tirta Rahmat Bahari on June 27, 2012;
3. Ordering the Defendant to revoke the Bali Governor's Decree Number: 1.051/03-L/HK/2012 concerning the Granting of Permits for Natural Tourism Enterprise in the Forest Area Utilization Block (TAHURA) Ngurah Rai, Bali Province covering an area of 102.22 Ha (one hundred and two point twenty-two hectares) to PT Tirta Rahmat Bahari on June 27, 2012;

The verdict from Denpasar Administrative Court No. 1/G/2013/PTUN.Dps. Granted WALHI's claim. In this verdict, the judge considered the aspects of forest sustainability. The

verdict was welcomed positively by many parties and new hopes emerged for better protection of the environment. However, the defendant as the losing party, namely the Governor of Bali, filed an appeal to the Surabaya Administrative High Court. The High Court gave a different verdict from the verdict of the Denpasar Administrative Court. The High Court decided that the decision of the Denpasar Administrative Court was incorrect and rejected the whole Plaintiff's/Comparative's claim.

The legal considerations used by the judges in their verdicts are as follows: In this dispute, the interests of the Plaintiff based on Article 53 verse (1) of Law Number 5 of 1986 are considered vague/unclear. Law violations and/or AUPB based on Article 53 verse (2) argued by the plaintiff is only limited to opinion, and the environmental damage argued by the Plaintiff is only limited to mere "*concern*". The elements of the interests from the Plaintiff (Article 53 verse 1) are not proven. Therefore, matters concerning the accusation of the defendant violating the laws and regulations (Article 53 verse 2) both in the lawsuit and the verdict of the Denpasar Administrative Court do not need to be assessed and considered anymore.

In response to that appeal verdict, WALHI filed a cassation to the Supreme Court. Cassation verdict No. 151/K/TUN/2014 reinforces the appeal decision No. 183/B/2013/PT.TUN.SBY. In the cassation, the cassation request submitted by the Cassation Appellant: the Indonesian Forum for the Environment (WALHI) was rejected.

The verdict of the Administrative High Court which was corroborated by the Supreme Court's cassation verdict did not accommodate futuristic environmental considerations. Environmental considerations using the precautionary principles are not accommodated by the judges in their verdicts. In fact, the judges have the opposite view, namely that natural tourism enterprise activities have not been carried out and are only limited to plans. Therefore, the damage to the forest park area has not yet occurred but is only a matter of concern. The plaintiff is considered not to be at loss because the forest damage has not occurred, so the plaintiff is considered not to have a legal interest which is used as a basis for filing a lawsuit.

The verdict did not understand the lawsuit of the environmental organization properly, because the verdict was only focused on the plaintiff's loss. Tumai Murombo stated that:

> *"The way the right is framed and subsequent legislation giving content to this right have all practically given a measure of rights to the environment and animals that can be enforced by environmental organizations and concerned citizens without them showing any particularized interest or injury suffered as a result of the impugned action or inaction. If a public interest organization seeks to bring litigation, it must obviously show that one of its objectives is to protect the environment, that is, that it was established to further the interests of environmental protection in one way or the other (Murombo, 2010)"*

The law provides environmental rights so that violations of environmental rights that threaten its sustainability are enforced through environmental organizations. Environmental organizations have to show that one of the goals of the organization is to protect the environment, without having to show the losses suffered by the environmental organizations as the plaintiff. The loss should be focused on the losses due to the damage or potential environmental damage, not the losses suffered by the plaintiff as stated in the verdict.

Cases in the environmental field cannot be examined without being based on futuristic considerations. Consideration of risks that potentially cause environmental damage should be taken into consideration to make the verdicts, so as to prevent the environmental damage or

pollution from occurring. In the event of a lawsuit which is carried out when there has been a damage/pollution, it is not in accordance with the principles of environmental preservation, namely the principle of preventing environmental damage or pollution from occurring and the principle of building without damaging the environment.

This view, which does not take into account the futuristic aspects of the environment, causes the principles that develop in the environment not to be accommodated by the judges in their verdicts. It is not surprising that the court verdicts, especially the Administrative Court in terms of environmental cases, almost never use the principles of prudence and the principles of sustainable development as the consideration in their verdicts. This is what causes the Administrative Court verdicts such as the decision in the Tahura case as mentioned above do not accommodate the interests of environmental preservation.

The verdict on the case above has a bad impact on the forest conservation, considering that forests have a large function in this life. Forests have important values for human life. Forests provide products that are important for human life such as wood, oil, rubber, paper materials and so on, causing many activities to be carried out in the forest area in order to extract natural resources from the forest that are useful for human life. On the other hand, forests have environmental values. Well managed forests will guarantee the availability of good groundwater sources for human life and have the function of preventing erosion and the danger of flood. In a wider scope, forests contribute to the lives of people in the world. Forests have a function to renew the atmosphere because they produce oxygen which serves to reduce the level of CO2 in the air. A well-preserved forest can also maintain the diversity of biological natural resources that exist in the forest. Efforts need to be made to utilize the forest while still maintaining its sustainability based on the principles of "*sustainable development*", in the sense of maintaining a balance between economic values and environmental values of the forest.

In relation with the sustainable development principles, Eduardo Silva said that:

> *"For policy and programmatic purposes, development economists have broken the concept of sustainable development down into three interrelated components: a healthy, growing economy (which may necessitate structural adjustment); a commitment to social equity (or meeting basic needs); and protection of the environment. This definition raises two immediate difficulties. First, the terms are too general: as a result. Careful attention must be paid to their specific content as this will heavily color policy prescriptions. Second, fulfilling all three terms, no matter how defined, is problematic because of inherent distributional-and therefore political-tensions between them.(Silva, 1994)"*

Economic development describes the concept of sustainable development into three interrelated components, namely healthy economic growth, commitment to social interests, and protection of the environment. This concept raises two difficulties. The first difficulty is that the term is too general so that there needs to be a serious attention paid in order to accommodate the three components in carrying out the development. The second difficulty is that it is difficult to fulfill the three components because there are political tensions between the three components themselves. Rapid economic growth will usually sacrifice the interests of environmental preservation and can also cause conflict within the community. Economic development that pays attention to the interests of the environment and the interests of the community will experience obstacles to obtain as much profit as possible, so that business people tend to try to fulfill all the formal requirements to be able to carry out their activities but then ignore their commitment in the environment preservation and the community interests.

This also happened in the case which was handled by the Denpasar Administrative Court, namely that the forest was used for various purposes including for the sake of natural tourism development. Business people tend to try to fulfill all the formal requirements that exist. Nevertheless, the implementation of their activities tends to ignore the interests of forest conservation and the interests of the community. In the case of matters that are related to forest utilization permits which are resolved through the administrative court, the Administrative Judges must also assess the case from the aspect of forest preservation or the interests of the wider community. If this is not conducted, then the Administrative Judge will tend to support the implementation development in the forestry field that solely emphasizes on the economic aspects which tend to benefit only certain parties and are far from the goal of realizing the public welfare.

The Verdict of Denpasar Administrative Court No. 2/G/LH/2018/PTUN.DPS

In the environmental case stated in the Decree of Denpasar Administrative Court No. 2/G/LH/2018/PTUN.DPS, the judge did not use the principles of sustainable development as the consideration in the verdicts made.

In that case, the plaintiff also consisted of the residents who were potentially affected by the construction of the Steam Power Plants as well as the Indonesian Environmental and Peace Lovers' Society (Greenpeace Indonesia) who acted on behalf of the environment. The Plaintiff filed a lawsuit against the Governor of Bali as the defendant and PT. PLTU Celukan Bawang as the intervention defendant. The Governor of Bali was sued for issuing the Bali Governor's Decree Number: 660.3/3985/IV-A/DISPMPT concerning the Environmental Permit for the Construction of the Steam Power Plant (PLTU) of PT PLTU Celukan Bawang in Celukan Bawang Village, Gerogak District, Buleleng Regency, dated April 28, 2017.

The reason for the community to file a lawsuit was because they were predicted to be affected by the environmental impacts from the construction of the Steam Power Plant (PLTU). While Greenpeace Indonesia sued based on the following reasons:

1. PLTU activities will contribute significantly to the release of greenhouse gas (GHG) emissions;
2. The estimation of the impact of the PLTU activities on climate change is not conducted.

In the verdict, the plaintiff's claim was declared not accepted for the following reasons:

1. From the fact presented in the court, it was revealed that from the letter evidence and also the testimony from the witnesses, it was not proven that the environmental permit issued by the Governor of Bali had caused direct and tangible losses to the plaintiff, because there absolutely has been no activity/business from the PLTU Celukan Bawang;
2. The Panel of Judges is of the opinion that related to the impact or potential for the pollution of the environment as argued by the Plaintiffs, it was only in the form of estimates or assumptions (possibilities) without any existence of scientific evidence.

Because the plaintiffs had not experienced a real loss, so the judge was of the opinion that the plaintiff did not meet the eligible criteria to be the plaintiff. Under the administrative court law in Indonesia, the plaintiff has the right to file a lawsuit to the administrative court if the plaintiff has suffered concrete losses due to the enactment of a decision issued by a government

official. On this basis, the plaintiff's claim was declared not accepted because the plaintiff was not eligible to file a lawsuit to the administrative court.

This is of course against the environmental law in Indonesia which states, *"Environmental Disputes are disputes between two or more parties arising from activities that have the potential and/or have had an impact on the environment".* Therefore, the plaintiff can file a lawsuit to the court on the grounds that the activity has the potential to cause a negative impact on the environment, and the facts that the activity has caused a negative impact are not necessarily be included. However, the potential for negative impacts must be accompanied by reasons which are supported by scientific evidence, and it is not easy for the plaintiff to prove it.

This verdict did not consider the reasons delivered by Greenpeace Indonesia, namely the impact of the activities of the PLTU in the form of releasing the greenhouse gas emissions and not predicting the impact of PLTU activities on climate change. In the process of examining the case at the Denpasar Administrative Court, there were Legal Opinions of the Court Companions (amicus curiae brief) submitted by the Indonesian Center for Environmental Law (ICEL), the Research Center for Climate Change of the University of Indonesia (RCCC UI), Earth justice, Environmental Law Alliance Worldwide (ELAW), Client Earth, Center for Environmental Rights, EDOs of Australia, Environmental Justice Australia, and The Access Initiative. The contents of the Amicus Curiae Brief are as follows:

> *"The decree of the Governor of Bali No.660.3/3985/IV-A/DISPMPT (Environmental Permit for the Construction of Steam Power Plants (PLTU) given to PT. PLTU Celukan Bawang) is based on ANDAL that does not consider the climate impact of PLTU Celukan Bawang. As stated above, Law No. 32 of 2009 requires that ANDAL must evaluate all significant environmental impacts of a project. Courts and policy makers around the world have interpreted similar laws as requiring a climate impact assessment of the proposed project. In the case of PLTU Celukan Bawang, the CO2 emissions and the contribution of these emissions to climate change are significant. In addition, the locations of the factories in low-lying coastal areas are vulnerable to the sea level rise and the sensitivity of surrounding coral reefs and other marine resources to climate change impacts make climate impact assessments important to understand the environmental risks that are related to the project. The undersigned below urge this Court to pay attention to the best practices referenced in this submission to guide the implementation of the climate change impact assessment for the PLTU Celukan Bawang project (Amici Curiae Brief,* 2019*)"*

In practice, the letter was not taken into consideration by the Judge of the Administrative Court in making their verdict. In essence, the verdict of the Denpasar administrative court judge did not accommodate the interests of environmental preservation, but based on formalistic considerations, namely not fulfilling the requirements as a plaintiff to appear before the court because there was no plaintiff's interest in this case, namely the interest in the form of concrete losses suffered by the plaintiff.

Legal Solutions

Based on the analysis of the two cases mentioned above, the use of the principles of sustainable development as a consideration for judges in resolving environmental disputes experiences difficulties due to the rechtsmatigheid nature of the testing of the administrative court judges. Harjiyatni stated that:

> *"The judgment of the Administrative Court judge is "rechtmatige" is reinforced in the Technical Guidelines of Administrative and Technical of State Administration Judicature Court.(Harjiyatni, 2018)"*

This is because the principles of sustainable development are related to the substance problems, while rechtsmatigheid testing is related to formal procedural problems. The use of the principles of sustainable development as a consideration in the verdict is the authority of the judge. Judges find it difficult to apply the principles of sustainable development, because those principles deal with substance (essentially wisdom) rather than procedure, while the examinations by the Administrative Court Judges are to test the government behavior procedures in making decisions rather than testing the substance. The nature of the test which is rechtsmatigheid and the absence of the principles of sustainable development in the considerations by the judges have caused the Administrative Court verdicts to not afford the consideration of environmental harmony.

Testing of the government officials' decisions does not have to be related to merely juridical testing but also substance testing. In relation with this matter, Philip Harter said:

> *"Thus began the intense judicial review of agency policy decisions and the application of law. This evolved into courts taking a "hard look", as the process became known, at whether the agency had engaged in reasoned decision making. In particular, the agency must consider the relevant factors, inclusively and exclusively, and must explain the basis for its decisions. That is, it must describe the facts, and the evidence supporting the facts, and the relationship between the facts found and the choice made. The intensity increased if the agency were changing direction. These cases were largely directed at making the administrative process more rational and open* (Seerden et al., 2002)*"*

Besides testing the formal procedural matters, the court will examine whether the government agencies consider relevant factors, and explain the basis for their decisions. It means that the judges must describe the facts, and evidence that supports the facts, as well as the relationship between the facts which are found and the choices that are made. The principles of sustainable development can be used as a test tool for the judges in resolving the administrative disputes in the field of environment, when the judges have the authority to thoroughly examine the disputes from both the formal procedural aspect and the substance aspect.

In addition to the above reasons, this problem occurs because the Administrative Court Judges tend to not understand the issues in the field of environment and its sustainability. The judges tend to also use the basis of Administrative Law alone which is used as an assessment and consideration in deciding on their verdicts. In order to overcome this, it is possible to establish ad hoc judges who have expertise in the field of environmental law. The basis for establishing an ad hoc judge is Article 9A of Law No. 51 of 2009 which mentions the following:

1. In the Administrative Court environment, a special court can be formed which is regulated by the Law.
2. Ad hoc judges may be appointed at the Special Courts in order to examine, to adjudicate and to decide on the verdicts on cases that require expertise and experience in certain fields and within a certain period of time.

The provisions mentioned above open the opportunity for the establishment of special courts in the Administrative Court environment. This is not surprising, considering the fact that the Administrative Court has the duty and authority to examine administrative disputes in which the object of the dispute covers various kinds of decisions, such as decisions in employment disputes, decisions in land field, decisions in mining field, decisions in environmental field, and decisions in forestry field and so on. Each decision has different characteristics according to the purpose of the decision.

In certain cases such as the administrative disputes in the environmental field, ad hoc judges are much needed in order to control the career judges in examining and deciding on the verdicts of the cases, so that the judge is truly independent in examining, deciding on the verdict and resolving the administrative disputes. In addition, the costs for the ad hoc judges are cheaper than career judges.

Cases in the environmental field usually involve large capital owners who can have a strong influence on the independence of the court/judge. Therefore, ad hoc judges are expected to be able to control the judge to work objectively and with their specific expertise, ad hoc judges can help realize the verdicts that provide legal protection for the justice seekers and accommodate the interests of environmental sustainability. In the Netherlands, the cost of the ad hoc judges is cheaper, because the ad hoc judges work and are paid incidentally, rather than being made permanent employees who are paid monthly. This is different from Indonesia where ad hoc judges are employed as permanent employees and have the same rights and obligations as judge's career.

Decisions in the environmental field have different functions and purposes. The environmental permit decision has the function of controlling so that the activities do not cause any damage to the forest. Therefore, environmental permits are accompanied by the obligations for the permit holders to maintain the environment properly. In carrying out their duties and authorities, Administrative Judges should understand the functions and purposes of environmental permit decisions, so that they can make decisions that provide protection for justice seekers without ignoring the interests of environmental preservation. In order to achieve this, ad hoc judges who have specific expertise in the field of environmental law are needed. It does not have to be that every decision in each field is provided with ad hoc judges, but for similar cases, for example the cases that have the aspects of environment, there needs to be one specialty. For example, the decisions in the fields of forestry, environment, and mining can be made into one specialty.

Black stated, Ad hoc comes from Latin word, in English it is referred to as "*for this*", "*for this special purpose*" which mean for special purposes (Black, 1990). Ad hoc is a method used for specific problems or tasks, and is not intended to be adapted to other purposes. Ad hoc judges are the judges who are appointed from outside the career judges who meet the professional requirements, dedicated and possess a high integrity, live up to the ideals of a country of law and the welfare of the country whose core is justice, understanding and respecting human rights and basic human obligations (*Glosarium Online,* 2019). Administrative disputes in which the object of the decision is in the environmental field such as an environmental permit is a specific problem in the field of Administrative Courts. Administrative disputes whose objects are environmental permits are concerned with the issues related to broader interests, namely those that are related to environmental functions for the community.

In connection with the special judge handling cases that have environmental aspects, a Decree of the Chair of the Supreme Court of the Republic of Indonesia Number: 134/KMA/SK/IX/2011 has been issued concerning the Certification of Environmental Judges. One of the reasons behind the issuance of the Supreme Court Decree is that:

> *"The quality of the environment and natural resources is decreasing and threatening the survival of human life, other living things, and ecosystems due to the ineffective enforcement of environmental and natural resources laws"*

On that basis, Article 2 of the Supreme Court's Decree stipulates that "*Environmental cases must be tried by environmental judges who are certified and have been appointed by the Chair of the Supreme Court"*. What is meant by environmental cases is regulated in the Supreme Court Decree (Law, 2011) as follows:

1. *Violations of administrative regulations in the field of environmental protection and management, including but not limited to regulations in the fields of forestry, plantation, mining, coastal and marine, spatial planning, water resources, energy, industry, and/or conservation of natural resources;*
2. *Violations of civil and criminal provisions in the field of environmental protection and management, including but not limited to regulations in the fields of forestry, plantation, mining, coastal and marine, spatial planning, water resources, energy, industry, and/or conservation of natural resources.*

Based on the aforementioned provisions, it shows that environmental cases, including the ones in the environmental field, need environmental judges who are certified so that the settlement of the case becomes more effective and provides environmental justice.

Article 6 verse (1) in the decree of the Supreme Court states that what is meant by an environmental judge is:

> *"An environmental judge is a judge who has been appointed by a Decree of the Chair of the Supreme Court and fulfills the following criteria: a. Administrative requirements; b. Competency requirements; c. Participate in the training; d. Declared passed by the Selection Team."*

The competency requirements as referred to in Article 6 verse (1) above are:

1. *The ability to understand national and international environmental law norms;*
2. *The ability to apply the law as an instrument in judging environmental cases;*
3. *The ability to do legal discovery (rechtsvinding) to realize the environmental justice; and*
4. *The ability to apply procedural guidelines in judging environmental cases.*

The matters discussed above show that in resolving cases in the field of environment, including forestry, judges have to be active to realize the environmental justice. This is because the provisions regarding environmental judges also apply in the Administrative Court. Article 5 verse (2) of the Supreme Court's Decree states that:

> *"Environmental judges who are in the general court environment and in the state administrative courts have the authority to adjudicate environmental cases in accordance with their authority".*

The provision shows that the environmental cases in the Administrative Court are handled by the environmental judges who have the authority to be active in making legal discoveries in order to realize environmental justice.

In the event that a certain Administrative Court institution does not have an environmental judge, then the detachment environmental judge will be appointed. Article 21 in the Decree of the Supreme Court states that:

1. *Environmental cases at the first level court and appellate court in the general court and state administrative court have to be tried by a panel of judges whose chairpersons are environmental judges.*
2. *In the event that a first-level court in the general court and state administrative court does not have an environmental judge, the Chair of the appellate court appoints detachment environmental judges in their territory.*

3. *In the event that an appellate court in the general court and the state administrative court has no environmental judges, the Chair of the Supreme Court appoints detachment environmental judges.*
4. *In the event that an appellate court does not have a first level environmental judge, the Chair of the Supreme Court appoints a detachment environmental judge as proposed by the Chair of the High Court.*

Environmental cases have to be tried by environmental judges in the first and appellate courts, both in the general court and the administrative court. Environmental judges are still few in number to date, so in the event that the court does not have an environmental judge, the Chair of the Supreme Court appoints detachment environmental judges. Article 1 number 3 of the Supreme Court Decree states, *"Detachment is the assignment of judges for a certain period of time in the context of handling environmental cases outside the court area where the judge is in charge"*.

This detachment provision has not been implemented properly because there are too few environmental judges. Many cases that contain aspects of the environment, including forestry, which is tried by judges who are not, certified environmental judges. Article 27 of the Provisions for the Transition of the Supreme Court Decree state that:

> *"In the event that there are no certified environmental judges, the environmental cases are examined, tried and decided by the General Court or the State Administrative Court in accordance with the applicable laws and regulations*".

These provisions provide opportunities for certain environmental cases to be examined without environmental judges.

Environmental judges are career judges, the existence of career judges can be controlled by the ad hoc judges so that they can complete forest utilization permits that provide justice for the community and sustainability, so that in this case, ad hoc judges are still needed even though there are environmental judges present.

The existence of environmental judges will be in vain in the event that the Administrative Court is confined to formalistic procedural authority. Such a judge's authority causes the judge to be unable to reach out to substantial issues regarding the environment and its sustainability. The existence of environmental judges is in vain, in the case of the principles of sustainable development not being used as a test tool by the judges in resolving the environmental permit disputes. The judges' verdicts that accommodate the interests of environmental preservation are very needed, given the important functions of a good and healthy environment for the life and welfare of mankind.

For this reason, ad hoc judges who have expertise or experience in the field of environment are required, so that the Administrative Court is able to make verdicts that accommodate economic interests, community interests, and environmental conservation interests.

CONCLUSION

The failure to use the principles of sustainable development in resolving environmental disputes in the Administrative Court causes the settlement of environmental disputes through the Administrative Court to provide less legal protection for the community and protection towards the forest sustainability. It cannot be negotiated that the principles of development have to be

used as the principles for a test tool for the judges in resolving the environmental disputes in the Administrative Court. There must be a development of Good Governance General Principles as a basis for testing for the Administrative Court Judges. This can be done by: (1) revising the Administrative Court Law and incorporating the principles of sustainable development as a test tool for the judges in the new Administrative Court Law, and (2) through breakthroughs or innovations conducted by the judges in resolving the environmental disputes, by using the development principles as a consideration in the judge's verdicts, so that the verdicts become jurisprudence.

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