Enforcement of environmental law through citizen lawsuit in administrative court

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Abstract. Environmental law had been enforced through by non-litigation or litigation. CLS is a litigation strategy used to file lawsuit against government for failing to deliver and fulfill citizen's rights. The damage of the environmental can be harmful to humans. CLS used to file to General Court, however some cases were granted, and others were denied. The CLS regulation for environmental dispute existed following the Supreme Court Regulation Number 1 of 2023 which provided Guidance to Adjudicate Environmental Cases. Based on research as spesific finding there was no CLS was presented to the Administrative Court one year following the stipulation. Despite the importance of technical assistance for judges, the Supreme Court only provided it in 2024.The Administrative Court weilds significant power and authority to enforce environmental laws and protect the environmental for future generations. Specifically, CLS it demonstrates that government through the court body, tried to fulfill environmental citizen's rights.

1 Introduction

Indonesian Constitution 1945 in Article number 28 H, states that everyone has the rights to a good and healthy environmental. Government has stipulated regulations to safeguard and regulate the environmental because its use can be destructive. The regulations about environmental has been evolved due to adjustment with the development. Law Number 32 of 2009 concerning of Protection and Management of Environment is the regulation about environment. Some regulation in Law Number 32 of 2009 concerning of Protection and Management of Environmental has been changed by Law Number 6 of 2023 concerning Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation become law. Environmental deterioration will endanger both humans and ecosystem itself. Indonesia is a country known for its biodiversity, as it is located between two continents and has a tropical climate that allows many types of vegetation to thrive.

The government engages in different collaborations and initiatives to improve and sustain the environmental, including changes in policies, actions and approaches. The Indonesian Government has established policies to reduce greenhouse gas emissions to control climate change through the National Program "Indonesia's FOLU Net Sink 2030" as stipulated in

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Presidential Regulation Number 98 of 2021, which has achieved zero emissions in the forestry and land sectors in 2030. The Social Forestry Program aims to improve community welfare through empowerment patterns and while still being guided by sustainability aspects. The Social Forestry Program will open up opportunities through communities around forests to apply for forest area management tights to The Government, with this program which is involving local communities as the main and closest parties who maintain forest sustainability. The forest and climate program financial cooperation module (FORCLIME FC) is one of the programs that contributes to Indonesia's Climate Change Policy in reducing greenhouse emissions form deforestation and REDD+. This program was built based on cooperation between The Indonesia government and German Federation Government which aims to implement forest conservation strategies and sustainable forest management so that emission reduction target are achieved and improving the economic and social conditions of society. PROPER is an effort using society and market to put pressure on industry to improve environmental management performance. The empowerment of society and market is carried out by disseminating credible information so that it can create an image of reputation[1].

Legal politics regarding enforcement of environmental law in Indonesia that preventive and repressive efforts have been regulated by taken the law enforcement effective, consequential and consistent against pollution and environmental damaged that has occurred. Repressive law enforcement can be done through litigation process which can give legal certainty for the parties. Law Number 11 of 2020 concerning Job Creation had been changed some important points of the Law Number 32 of 2009 concerning of Protection and Management of Environmental, while the changes aim to give easier way of environmental permission and other related things. Hario Danang Pambudhi et al, stated that Job Creation Law and its derivatives showed the shifting of the politics of environmental law justice through simplifies the permission, strict liability disorientation, and restricted of environmental rights. This cannot be considered trivial so that the worst impact does not occur on environmental quality [2].

Citizen Lawsuit (hereinafter is CLS) began in common law system and has been implemented in United States, United Kingdom, India, Australia. The plaintiff could be citizen whose rights have been violated due to the government's negligence. The plaintiff's CLS demand does not require to cancellation of the government's decrees, acts, or rules because each has judicial body to settle the complaint. Notification is important in CLS, because it serves as the foundation for cancelling CLS, if no notification sent to defendant within 60 days. CLS's demand for government is to issue a policy to stop losses arising as a result of governance negligence and it cannot ask for material compensation. CLS's aims are to protect the citizen from potential losses by government activities and to increase the ability to file a case against government negligence [3].

Before Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases has been stipulated, there are no specific regulation about CLS in Indonesia, although there have been CLS lawsuits submitted and rejected by the General Court. CLS brought, accepted and settled by the General Court, are civil and environmental cases and based only on private law. Rejection of the CLS by the General Court due to the lack of specific regulation about CLS. For the accepting, examining and settling the CLS based on the Article Number 10 of Law Number 48 of 2009 concerning Judiciary Authority.

Since the case over the neglected of Indonesian worker in Nunukan, the Central Jakarta District Court Number 28/PDT.G/2003/PN.JKT.PST judge's verdict has acknowledged the CLS mechanism in Indonesia[4]. The case's result was Law Number 39 of 2004 concerning The Placement and to Protection of Indonesian Abroad, while nowadays, the above regulation has been changed by Law Number 18 of 2007 concerning The Protection of Indonesian Migrant Worker. These adjustments are made to reflect the currenct situation and development in Indonesia.

In the case number 374/Pdt.G/LH/2019/PN/Jkt.Pst, the Plaintiff sued the Government of the Republic of Indonesia, c.q. The President of The Republic of Indonesia, Minister of Environment and Forestry, Minister of Internal Affair, Minister of Health, Governor of Jakarta Province, Governor of Banten Province, Governor of West Java Province, with charges of having committed an unlawful act, violate human rights in this case negligence of fulfill the rights of environment and healthy life.The judge's verdict stated that the Defendants had committed unlawful act by not taking steps to control the air pollution so that it is important to tightened the air standard nationally [5]. Data taken from Supreme Court Decision Directory, that the defendants were requested to file an appeal to the High Court in Jakarta, under case number 549/PDT.G/LH/2022/PT.DKI. The judge's verdict, which was stipulated in October 17 of 2022 reinforced the decision made on September 16 of 2021 by the Jakarta Pusat District Court, with case Number 374/Pdt.G/LH/2019/PN/Jkt.Pst.

The enforcement of environmental law in Indonesia, has developed since Supreme Court release Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases. The consideration stated that the Supreme Court along with judiciary bodies have the authority to adjudicate environmental cases to give verdicts to give sustainable development, and environment protection, and guarantee its realization of environmental justice, and climate justice for the Indonesian people today and in the future. This Supreme Court Regulation emphasizes the rights of society to have environmental rights properly and protect the environmental from actions that cause damage. Adjudicate the environmental cases can be done through an administrative, civil and penal procedure.

This article focuses on the enforcement of environmental law through CLS mechanism in the Administrative Court, because the CLS mechanism is very needed to enforce the environment law and give protection to environmental and society. In Indonesia, the CLS mechanism is hardly ever applied to administrative disputes, particularly in the Administrative Court. Administrative issues pertaining to permissions letters are typically the subject of lawsuit in the Administrative Court for environmental matters. This new paradigm will have a significant effect on how environmental laws are enforced.

The novelty of this article is to know the enforcement of environmental matters using CLS mechanism after the stipulation of Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases and the role of the Administrative Court in giving environmental justice. Environmental law enforcement can not stand alone, but must be integrated with environmental policy, regulations, monitoring and management, the government should develop a policy framework, thoroughly considers environmental issues and include all stakeholders in the decision-making process and implementation of environmental law enforcement[6]. According to earlier study by Angela Christine Natalia Kaunang et al., there was no legislation regarding CLS in Indonesia at that time being, so the Court relied on Article Number 10 of Law Number 48 of 2009 of Judiciary Power. The General Court received the CLS, and it was handled in accordance with Private Law rule [7]. Another research study by Kenny Cetera et al., on the climate change issue, formal requirements about legal basis and time limit arise, making it impossible to apply CLS. Three different sorts of judge's verdict were used: two from the District Court and one from the Administrative Court. Because District Court frequently use the CLS mechanism, civil judge's verdict are used as a benchmark. The Administrative Court will consider government activities that produce universal losses as the foundation for launching a complaint, and these actions must be shown in the form of actual losses[4]. Based on the Supreme Court Judge's verdict Number 3555/K/PDT/ 2018, research study by Wisnu Sapto Nugroho et al., found that the law supports the enforcement of environmental law, the adoption of CLS mechanism in the General/District Court, and the preservation of ecocratic idea. Citizens can suit for environmental harm using CLS mechanism without having to provide evidence of their losses, which allows society to engage in sustainability and policymaking[8]. Obstacles of

the enforcement of the CLS in the environmental cases, first is the absence of legal rules about the CLS mechanism, second is the lack of understanding of law enforcement officials, three is lack of environmentally official judges in Indonesia, especially at the regional level[9].

This is doctrinal legal research which include literature review. Doctrinal legal research defines law as legal concepts, judge verdict and legislative rules. The literature review is based on fundamental principles legal principles, special environmental principles, judicial independence principles. The legal concerns will be analyzed using the ideas listed above.

2 Discussion

2.1 Environmental Law Enforcement Through Citizen Lawsuit Mechanism

Based on research results by Ni Luh Ayu Desi Putri Pratami, there are certain CLS characteristic to be aware of. First, the defendant is Government. This cannot be classified as CLS if there is another defendant that is not the government. If there is another party as defendant, and this party is not government, then this cannot classify as CLS. Second, the CLS that is contested is the government's negligence in the upholding the citizen's rights; this need to be clarified as to what kind of negligence has occurred and which rights the state has failed to uphold, and the plaintiff has to provide evidence to support their claim. Three, since the plaintiff is Indonesian citizen and need not have been the one who was directly damaged, the plaintiff does not need to provide evidence of the alleged material loss in order to establish a case. Four, CLS is sufficient when it notifies the government in the form of summons that a CLS will be filed for neglecting to uphold citizen's right and gives the government the authority to do so until a lawsuit is brought. Five, the CLS petition merely asks the government to establish guidelines to ensure that violations of citizen's rights won't occur in the future. Sixth, since the Plaintiff does not belong to a group that has suffered substantial injury or has comparable losses or legal action, the plaintiff is not entitled to material compensation. Seventh, since the Administrative Court debating the matter, the petitum cannot request that the government's decree be revoked. Eighth, the CLS petition is not permitted to ask the Constitutional Court to verify an Act's constitutionality, as the authority belongs to them, nor to ask the Supreme Court to verify regulations against an Act[10].

Another CLS characteristic was presented by Bagus Oktafian Abrianto et al, CLS is the access of individuals or citizens to file lawsuits in court in the name of public interests, intended to protect citizens from the possibility of loss as a result of action or omissions from the government, gives citizens to sue the government who fail to fulfill their obligations and the plaintiff do not need to prove the existence of tangible or direct losses [11]. According to Enrico Simanjuntak, the legal issued raised by the citizen lawsuit mechanism are about unilateral relationships, not bilateral relationships based on private law, regarding how the government manages and executes its public authority about to manage and provide public services to citizens. The qualification for the object of administrative dispute, which was previously ineligible for submission to the Administrative Court, has been modified by Law Number 30 of 2014 concerning Government Administration and is now subject to lawsuits [12] . This argument is logic, because it is the responsibility and obligation of the government to provide regulations to keep the environmental healthy.

Compare with the previous research, this research results found that there is no lawsuit based on CLS mechanism as regulated in Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases. The previous research was held before the Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate

Environmental Cases stipulated and it was used in private lawsuit. This article emphasizes in the Administrative Court's role enforcing environmental laws and protecting the civil's rights in environmental.

Two concepts are used in the adjudication environmental cases: the first is the sustainability principle which is derived from international environmental law, and it is specified in Article Number 2 Law Number 32 of 2009 concerning Protection and Management of Environmental Resources. Article Number 2 Law Number 32 of 2009 concerning Protection and Management of Environmental Resources includes the following concepts: state responsibility, sustainability, harmony and balance, unity, benefit, caution, justice, eco-region, biodiversity, polluters pay, participative, local wisdom, good government, and region autonomy. Article Number 4 Law Number 32 of 2009 concerning Protection and Management of Environmental Resources states that environmental resources should be protected and managed through: planning, utilization, control, maintenance, supervision, and enforcement. The Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases is the first regulation about adjudicate environmental cases in private, penal and administrative procedural law.

There are four important points should be review in this article. Prior to the Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases stipulated, environmental cases filed in the Administrative Court were governed primarily by Law Number 5 of 1986 concerning Administrative Procedural Law and its amendments. First, the plaintiff is an individual or legal entity whose interests have been affected by the government's decree, whereas the defendant is the Government. It was demanded that government's decree granting authority to use environmental resources be cancelled.

Article Number 10 of Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases clearly stated that citizens have right to file a lawsuit on behalf of the public interest against the government, government bodies, and/ or private organizations that implement governance matters with reason omission or did not implement the legal obligation according to regulations. This provisions exclusively regulates Plaintiffs in Citizen Lawsuit. This shows that the Plaintiff is a citizen, not an individual, which is different from the Plaintiff in a regular lawsuit based on Law Number 5 of 1986 of Administrative Procedural Law and its amendments.

Second, before filling the complaints, CLS requires notification addresses to be sent to the government, government agencies, and/ or private companies, as well as copies to Regional Administrative Court Head and should be sent before they put the lawsuit. This is the unique quality of CLS. According to Article Number 11 of Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases notification must be sent in writing. Additionally, the requirement to conduct an administrative review must be removed in order to refer CLS to the Administrative Court. The notification should be sent within 60 (sixty) days before the lawsuit. After 60 (sixty) days, the case may be filed. The Head of Administrative Court will review the notification in the dismissal process. The Head of Administrative Court will decide whether the lawsuit is inadmissible if no notification is received. Notification declines the mandatory of administrative review as required by CLS to the Administrative Court (vide Article Number 11 para (4)).

Third, Plaintiff in CLS are not permitted to seek compensation, with the exception of for real expenses such as laboratory and case expenses. As stated in Article Number 16 of Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases, the lawsuit demands in CLS or NGO's lawsuit in the form of government actions, could be: revocation and/or publication of government decree, the implementation or non-implementation of government's action, the enforcement of certain laws, the formulation of specific policies.

Fourth, the implementation of judge verdict in environmental cases is comparable to the implementation of judge verdict of administrative dispute as governed in Law Number 5 of 1986 of Administrative Procedural Law and its amendments. The implementation of judge verdict in environmental cases should be not be identical to or the same as Law Number 5 of 1986 of Administrative Procedural Law and its amendments. The defendant, as the losing party, will face compelled money and/or administrative consequences, announced in the local media. Aside from that, the Head of Administrative Court should report to President to required defendant to implement the judge verdict and to representative body to carry out supervisory functions. The environmental cases are unique and require a different approach than general administrative disputes. The late handling of environmental damaged produced by the implementation of judge verdict according to Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases, could be the worst harm or destruction of environmental. According to environmental law enforcement, judges should issue and order to defendant to instructing the industry to carry out environmental restoration while emphasizing the good environmental and sustainability principles, as well as empowering the local society.

The CLS was established in the United States of America in the Clean Air Acts Amendments in 1970 with the implementation of a unique mechanism that allows citizens to fill lawsuits not only against the Government or Environmental Protection Agency but against anyone who has violated the established emission standards and limits set by CAA as well as CLS mechanism in Clean Water Act section 505. CLS in the USA may seek civil penalties in the form of compelled money for any delay in putting violations an end to infractions of quality standards, as well as requiring the Defendant to pay all costs. There is also notification, which should be delivered within 60 days, before submitting the lawsuit and sent to the Government or anybody or entity that violates the regulations[13]. According to Supreme Court Regulation Number 1 of 2023 on Guidance to Adjudicate Environmental Cases, in Indonesia notification is required (article 11 and 12) and the compensation claims is prohibited (article 16).

2.2 Role of The Administrative Court in Environmental Justice

In Indonesia, until today, law enforcement in environmental matters are stands in the General and Administrative Court. For settlement in private and penal of environmental matters can directly goes to the General Court. According on the research findings of Muhar Junef et.al, the formation of a special court will ensure the fulfilment and enforcement of environmental rights. Environmental court could be a place to seek ecological justice, environmental issues have unique characteristics, thus judges must apply precautionary principles and judicial activism. The form of environmental court depend on government's political will[14]. Administrative Court has the authority to enforce law against administrative environmental violence. Environmental dispute resolution through Administrative Court aims to preserve or avoid the environmental damage using administrative procedural law. Cancellation of environmental permission by Administrative Court is crucial, because if there is no permit or approval, the company will not carry out the activity that harms the environmental. Approval or permission is a component of administrative law, hence it is the Administrative Court's responsibility to exercise aposteriori control against government decrees or actions.

As comparative study, New South Wales, has The Land and Environment Court established on 1 September 1980 by The Land and Environment Court Act 1979. The Court was given a wide jurisdiction in relation to environmental, planning, and land matter. This jurisdiction is exclusive, because no other court or tribunal may exercise the jurisdiction given to the Land and Environment Court [15]. India has also established The National Green Tribunal, which is specialized environmental court and give further impetus to green

jurisprudence in India. There should be an understanding, that the Court should not be seen as the ultimate forum for environmental governance in India but rather, it should be seen as one of many spaces where normative values about governance priorities must be debated and where the courts are just one actor, albeit one with vast powers [16]. In Canada, Environmental Protection Tribunal of Canada. The Environmental Protection Tribunal of Canada (EPTC) is a group of expert adjudicators (called Review Officers) who carry out review hearings of Administrative Monetary Penalties (AMPs) and Compliance Orders issued by Environment and Climate Change Canada (ECCC) enforcement officers. The EPTC is independent from ECCC and was formerly known as Environmental Review Canada [17]. Canada does not have an environmental court, but instead has a tribunals system. In Sweden, The Land and Environment Cour has tasks to adjudicate cases and cases in the area of environment, property, water, sewage as well as planning and construction. The judicial staff consists of legally trained judges and technical advisor. Special members also participate in some cases must have experience in substantive matters, the other must have experience of industrial, municipal or land-use activities or such matters which fall within the scope. Common cases in the Land and Environment Court in Sweden are land right case, permit for water activities and environmentally hazardous activities, cases on health protection, nature conservation, contaminated area and hazardous waste, damages and compensation issues related to the environment [18]. Analysis about the type of environmental court in several nations revealed that there are many forms of environmental courts, which respond to each nation's purpose and goals.

According to the above comparison analysis, is necessary to established an environmental court. The position of environmental court could be under the Administrative Court as special court. Judges are career judges with competence in environmental law, and a strong awareness of the principles of good environmental government. In addition to the professional judge, a special judge or member, who is an expert in the substantive matter can be added in the courtroom. The Administrative Court must also develop a new approach to resolving environmental disputes and law enforcement.

Judges play an important role in examine and law enforcement. The Chief of The Supreme Court of Republic of Indonesia has issued Decree Number 134/KMA/SK/XI/2011 concerning Certification of Environmental Judges, this become the norms that judges who handled the environmental cases are judges who have passed environmental judges certification. The Decree Number 134/KMA/SK/XI/2011 concerning Certification of Environmental Judges regulates as follows : authority of environmental certified judges, selection stages, appointment and placement, incentives and disincentives, and funding. The understanding and concern of environmental is an important for judge to examine and settle environment disputes.

Judge should implement the precautionary principle, as stated in Article Number 27 of Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases, if there is no certainty of scientific evidence. Judge verdict Number 42/G/LH/2021.PTUN.PBR, in the consideration based on the sustainable development principle, which is eliminate the rights of indigenous people of Batin Sengeri to have a healthy and good environmental. Judge verdict Number 36/G/TF/2022/PTUN.PBR, based on the principle of state responsibility, that it was responsibility of the State to protect natural resources against the Conservation Forest of Tesso Nilo. The Defendants had asked for appealed to High Court of Administrative Court in Medan, with case number 26/B/TF/2023/PTTUN. MDN and strengthened the Judge verdict Number 36 /G/TF/2022/PTUN.PBR.

Judge has to be careful before issuing ruling and their consideration must be accurate, in order to implement the principle of good environmental governance. A thorough grasp of the environmental and its impact to human being is crucial. Judges who apply the dominus

litis principle, are encouraged to use it wisely and broadly in order to safeguard and secure the environment. The dominus litis concept is a specific principle in the Administrative Court system, that allows judges to actively to seek material truth. This idea is used in the Administrative Court system for examination preparation (article 63 of the Administrative Court Procedural Law), to strike a balance between Plaintiff and Defendant. In the developing, this dominus litis principle has undergone a reconceptualization its evolution and functions.

In Dubio pro Natura is one of the principle in environmental law enforcement, that should be carried out. According to Endri, in dubio pro natura principle can be utilized as guideline for judge to evaluate and settle the environmental dispute. If a judge's doubt arises during the examination, whether in the form of legal uncertainty or scientific uncertainty, the court is directed to side with environmental interests in accordance with Article 107 of Administrative Procedural Law [19]. Implementing the in dubio pro natura principle requires caution and adherence to strong environmental governance standard. To protect the environment, the judge must have a thorough understanding and respect for it. In case Number 59 /G/LH/2023/PTUN.JKT, judge consideration stated that object of dispute violence the precautionary principle, on the other side, since there were some uncertain information should be a reason for defendant to take preventive action such as precautionary principle, so that the defendant should use the in dubio pro natura principle to prioritize environmental protection and restoration.

An interesting research's result by Elly A.M. Pandiangan et.al, stated that the government and law officers should be more optimal to fulfill the healthy environmental rights of citizens who affected by environmental damaged or pollution [20]. The government must supervise the restoration of damaged restoration environments, because if not, it is feared that this could result in more serious losses. The active role of society also important in order to keep their environmental healthy. It needs cooperation and mutual assistance to restore the damaged environment.

According to an interview in 9 July 2024, with Judge Budiamin Rodding, S.H.,MH from Administrative Court in Makassar, there was no case based on CLS model following Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases stipulated. In examining the environmental dispute, he underlined the importance of the proof stage, especially in the term of community socialization. Socialization must be carried out to communities directly affected by industrial development. He further indicated that the Government as Defendant, did not always follow the new regulations, despites the fact that the regulations are a significant factor issuing the decree. According to an interview in 29 July 2024, as explained by Rahmi Afriza, S.H.,M.H, as judge in the Administrative Court in Semarang, that there was no case based on CLS model following Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases. Based on the presumption iures de iure, when a regulation enacted, everyone is considered to be aware of it and legally binding. It is possible, that maybe people not knowing.

The enforcement of environmental law is critical. The Administrative Court must take environmental issues seriously. This should be supported by the professional judges who have had extensive training and are concerned about environmental issues.

3 Conclusion

The settlement of environmental issue using the CLS model in Administrative Court, as stated by Supreme Court Regulation Number 1 of 2023 concerning Guidance to Adjudicate Environmental Cases stipulated, has never been submitted. The above regulation needs time to implement by Judges and society. Society should adequate legal tools protect the

environment. CLS, as a form of public litigation, must be developed and accepted in the Administrative Court, in order to safeguard the environment.

The role of Administrative Court to give environmental justice is important. These can be done by judges when examined and settled the environmental dispute. Judge should be accurate while examine the case. The understanding and concern of environmental become a basic knowledge to protect the environment.

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