

## **Environmental Court And Principle Of Good Environmental Governance In Enforcing Environmental Law**

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### **ABSTRACT**

**Keywords:**  
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*Environment dispute settlement carried out by general and administrative court, depends on the object of disputes. Government has to based on principle of good environmental governance when issue the permit and policies. The issues are the urgency to build environmental court and implementation of principle of good environmental governance. Method use is juridical normative, primary data used are regulations, secondary data are expert opinions, articles. Data analysis qualitatively and describe in descriptive analysis. Environmental court will be under Administrative Court as special court, which comprises of private, penal and administrative chamber. Implementation of principle of good environmental governance through issue permit, policies and supported by strengthen law enforcement. Regulations as based of law to build environmental court has to be synchronized with relevant regulations in order to enforce the environmental law enforcement and gives environmental justice. Novelty in this research is build environmental court to strengthen environmental law enforcement.*

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### **1. INTRODUCTION**

In the 1945 Constitution of the Republic of Indonesia, Article 28 H affirms that everyone has the rights to good and healthy environment. The development carried out must continue to fulfill the rights of citizens as stated, this also means that governments should pay attention to considers development and clean healthy environment. This is accordance with green constitution which had been declared since 1970, all the regulations, policies has to refer to Constitution as supreme law.<sup>1</sup> Government has an important role because every activity to open business must obtain permit from government.

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<sup>1</sup> Sekar Anggun Gading Pinilih, "The Green Constitution Concept in the 1945 Constitution of the Republic of Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 200, <https://doi.org/10.22146/jmh.28684>.

Environment damage occurs when government granted permission. Permit is a form of administrative decision issued by the competent authority at the request of citizen or legal entity based on the law. Permissions related to environmental, has to fulfill requirements which relevant with each business. Law Number 32 of 2009 of Protection and Management of the Environment (hereinafter is Environmental Law) recognize two types of permissions, i.e. environmental permit and business license. Environmental permit is permissions granted to everyone who does business and/or activities requiring UKL –UPL in environmental protection and management framework life as a prerequisite for obtaining permission business for further action. Previously, environmental permit was regulated in Article number 36 of Law Number 32 of 2009 of Protection and Management of the Environment (hereinafter is Environmental Law). Environmental permit is annul in Law Number 11 of 2020 of Job Creation, and amended by business license as regulated in Article Number 37 in Law Number 11 of 2020 of Job Creation.

The granting of a permit must also take into account the interest of community around which the development activities will be carried out. One important tool as environmental law enforcement is permit, because it has function to prevent or to cope with environmental damage, while administrative environmental law enforcement has aim to revocer the damage environmental.<sup>2</sup> This means that government must be able to maintain balance between the interests of industrial development for the community, the interests of the people living around the development sites local, regional and national economic interests. In addition it must also consider protection for environmental sustainability, also intragenerational and intergenerational equity. Article 24 paragraph 3 of Law Number 11 Of 2020 of Job Creation stipulated, there is regulation stated that community were not included in the environmental due dilligence team, although they still involved in the assessment of AMDAL. This shows the difference of community participation, previously the community has rights in decision making, but now they only involved in assessment process and there is uncertain of how far they will influence in the decision making.<sup>3</sup> This relates to rights to have good and clean environment, and they will file to court to get their rights, while this also become enviornmental disputes.

Environmental disputes can be settled in General Court or State Administrative Court (hereinafter is Court), depends on the type of disputes, this mechanism is less effective and practical for justice seekers, because it is not solved in one-door-system. If there is environmental court with one-door-system, and supported with environmental court justice system, hopefully will fulfill the rights and as an effort to strengthened

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<sup>2</sup> Sulistyani Eka Lestari and Hardianto Djanggih, "Urgensi Hukum Perizinan Dan Penegakannya Sebagai Sarana Pencegahan Pencemaran Lingkungan Hidup," *Masalah-Masalah Hukum* 48, no. 2 (2019): 147, <https://doi.org/10.14710/mmh.48.2.2019.147-163>.

<sup>3</sup> Hario Danang Pambudhi and Ega Ramadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam UU Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis," *Jurnal Hukum Lingkungan Indonesia* 7, no. 2 (2021): 297–322, <https://doi.org/10.38011/jhli.v7i2.313>.

environmental law enforcement. The basic idea is permission granted by government is government's act in public law, so environmental court has to be built under Court, and as special court. One case file lawsuit about to Court in 1994 between Walhi as Plaintiff and President of Republic of Indonesia as Defendant in case reforestation fund. This case as starting point about administrative environmental disputes settlement in Court and as starting point to build environmental court.

Comparison study about law enforcement and deforestation between Brazil and Indonesia, showed that Indonesia should consider the development of national law enforcement strategy that needs to be supported by timely remote sensing information focused on detecting illegal deforestation and should have strategic approach.<sup>4</sup> Strategic approach in law enforcement can be understand as prepare the synchronized regulations, judiciary bodies and spread public participatory to get the right information until file lawsuit to court. The above comparison study showed that build environmental court is appropriate for this purpose.

The urgency to build environmental court is a way to get ecology justice for society and those affected by environmental damage. It is very important to build environmental court which should be based on Pancasila and in accordance with nation and international goals. Obstacles and challenges are come from government, in make concept and implementation to support ecology justice.<sup>5</sup> File an environmental lawsuit to Court is an effective way to stop the environment pollution and it is important to strengthening the function of Court to cancellation of issuance of environmental permit.<sup>6</sup>

Kanie and Haas said that environmental governance prioritize participation in effective environmental monitoring actions, this also strenghten elements such as legal certainty, participation, accountability, transparency, responsiveness, effectiveness, efficiency, consensus orientation, and become the principles of good environmental governance.<sup>7</sup> Quoted from United Nations Environment Programme, environmental governance includes policy, norms, rules that govern human behaviour, also address who make decisions, how decisions made and carried out, how the public and major stakeholder can participate in decision-making process. Implementation of environmental governance based on the principle of good environmental governance,

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<sup>4</sup> Luca Tacconi, Rafael J. Rodrigues, and Ahmad Maryudi, "Law Enforcement and Deforestation: Lessons for Indonesia from Brazil," *Forest Policy and Economics* 108, no. September 2018 (2019): 101943, <https://doi.org/10.1016/j.forpol.2019.05.029>.

<sup>5</sup> Muhar Junef and Moh Husain, "Pembentukan Pengadilan Khusus Lingkuagan Sebagai Wujud Tanggung Jawab Negara Pada Upaya Keadilan Ekologis ( Establishment of Environmental Specific Jurisdiction as a State Responsibility for Ecological Justice Efforts )," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 59–74.

<sup>6</sup> A'an Efendi, "Penyelesaian Sengketa Lingkungan Melalui Peradilan Tata Usaha Negara," *Perspektif* 18, no. 1 (2013): 14–22.

<sup>7</sup> Irvan Renaldi and Aldri Frinaldi, "Implementation of Batang Arau Watershed Management with Good Environmental Governance Perspective," *Jurnal Bina Praja* 14, no. 2 (2022): 225–37, <https://doi.org/10.21787/jbp.14.2022.225-237>.

which is one of the principle is legal certainty, this is accordance with the judiciary bodies which aims to enforce the law. Specialized judiciary body in environmental is needed, due to implement of the environmental governance.

Based on the above explanation, the research questions are how to build environmental court and how the implementation principle of good environmental governance in enforcing environmental law? The focus of this research is on the urgency of environmental court as a basis for strengthening environmental law enforcement. Environmental law enforcement from administrative scope has important point, because it will tested against government decision as primary step to start the environment development.

There are several previous studies related to this research include the first research that discusses the urgency of a special court related to the environment because it requires special expertise to handling environmental cases.<sup>8</sup> ; the second research explain that there are environmental disputes that can be resolved through extrajudicial or judicial procedure<sup>9</sup>; the third research that discusses on the role of the courts in relation to policy planning so the judges have an important role to play in promoting a consistent policy approach, so that the policy guidance function is enhanced.<sup>10</sup> ; the fourth research explain that evaluates the real effects of environmental justice reforms on corporate-level environmental governance using the example of the establishment of an environmental court in China as a quasi-natural experiment.<sup>11</sup>

## 2. RESEARCH METHOD

The research is juridical normative, which comprises of comparative approach, statute approach and conceptual approach. These approaches are to study the principles, norms and concept of law. The primary data used are regulations and secondary data are expert opinions, articles, and related references. Regulations used are Law Number 11 of 2020 of Job Creation, Law Number 32 of 2009 of Protection and Environment Management, Law Number 48 of 209 of Judicial Power, Law Number 5 of 1986 of Administrative Court, Law Number 9 of 2004 of Amendment of Law Number 5 of 1986 of Administrative Court, Law Number 51 of 2009 of Second Amendment of Law Number

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<sup>8</sup> Rochmani, "Urgensi Pengadilan Lingkungan Hidup Dalam Penyelesaian Perkara Lingkungan Hidup Di Indonesia," *Bina Lingkungan Hidup*, no 4 (2) (2020): 292-312, <https://doi.org/10.24970/bhl.v4i2.105>.

<sup>9</sup> Handri Wirastuti, Rahadi Wasi Bintoro, "Sengketa Lingkungan Dan Penyelesaiannya," *Jurnal Dinamika Hukum* 10, no 2 (2010): 163-174, <https://doi.org/84/1.jdh.2010.10.2.149>.

<sup>10</sup> Alistair Mills, "The Interpretation of Planning Policy: The Role of The Court," *Journal of Environmental Law* 34, (3) November (2022): 419-440, <https://doi.org/10.1093/jel/eqac014>.

<sup>11</sup> Qi Zhang, Zhi Yu, Dongmin Kong, "The Real Effect of Legal Institutions: Environmental Courts And Firm Environmental Protection Expenditure," *Journal of Environmental Economics and Management* 98, November (2019), <https://doi.org/10.1016/j.jeem.2019.102254>.

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5 of 1986 of Administrative Court. Data will be analysis in qualitatively, and described by descriptive analysis.

### 3. RESULTS AND DISCUSSION

#### 3.1. The Urgency of Environmental Court

Role of judiciary bodies are important especially to protect human rights and to supervise government action, then it will not violate the applicable law. As stated by Friedrich Julius Stahl, there are four elements as state law, i.e. protection of human rights, state administration must be based on division of power, government by law, state administrative court as a way to resolve administrative dispute, but in Indonesia the existence of Court it has not been able to support with executorial body so legal protection to society can not be maximum.<sup>12</sup> As state law, Indonesia has special characteristic, Pancasila as an nation ideology, thus in implementation of welfare state concept adjust to Pancasila because have an ability to choose the best for the society.<sup>13</sup>

Judiciary system in Indonesia held by Supreme Court and Constitutional Court, while under Supreme Court there are 4 (four) judiciaries bodies, i.e. General Court, Religion Court, Military Court and State Administrative Court and each judicial body has competence absolute. Each special judicial body can only be formed under one of the existing judicial bodies. The exercise of judicial power carried out based on Law Number 48 Of 2009 of Judicial Power, this accordance with the division of power and to prevent absolutism. Absolute competence of Court as stated in Article number 47 of Law Number 5 of 1986 of State Administrative Court is to examine, decide and settle administrative dispute which arise between individu, legal entity against government.<sup>14</sup> Environment administrative dispute refer to environmental permit, business permit which not completed with environmental permit can be filed to Court. Procedure to file lawsuit refer to Law Number 5 Of 1986 of State Administrative Court and amendments. Law Number 11 of 2020 of Job Creation has been abolished Article Number 93 of Environmental Law, about administrative lawsuit. Development and social changes give enlightenment to society that they have rights to environmental justice, but on the other side, the existing judiciary body not yet fulfilled this right by give special environmental court.

Comparative study between environmental court in Sweden and China, shows some important points. Environmental Court in Swedish integrated into judicial system of Swedish Environmental Court 1999, and acts as administrative court for environmental

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<sup>12</sup> Dani Habibi, "Perbandingan Hukum Peradilan Tata Usaha Negara Dan Verwaltungsgerecht Sebagai Perlindungan Hukum Rakyat," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (2019): 1–22, <https://doi.org/10.24815/kanun.v21i1.12185>.

<sup>13</sup> Otong Syuhada, "Karakteristik Negara Hukum Pancasila Yang Membahagiakan Rakyatnya," *Presumption of Law* 3, no. April (2021): 1–18.

<sup>14</sup> "Law Number 5 of 1986 of State Administrative Court Had Been Amendment Twice by Law Number 9 of 2004 of Amendment of Law Number 5 of 1986 of State Administrative Court and Law Number 51 of 2009 of Second Amendment of Law Number 5 of 1986 of State Administr" (n.d.).

cases, although divisions of general court. For examination, sometimes took place in the courtroom or in the site, where the judges can able to communicate with society, and they allow to represent themselves without solicitor, also there are no court fees. For legal standing, NGO and Group have standing beside individual as parties in the court. Environmental Court in China are under general court, and they did not assume like administrative decision-making. Environmental Court in Sweden and China are have similarity, but still have difference. Both courts are under general court, but Environmental Court in Sweden act like administrative court because they examine administrative procedure.<sup>15</sup>

Environmental Court in China has developed three-trials in one model comprises of environmental civil case, administrative and criminal case. They take this way to make it easier for environmental law enforcement. First, there are standard of law enforcement, so it will be easy for environmental cases to file lawsuit. Second, it can elevate the environment awareness of government, public participatory. As comparison in New South Wales 2005, they put scattered into environment jurisdiction and handling environment dispute during the rapid economy development. In Vermont 1990, environmental court was built and have special contribution to environmental protection and ecological civilization.<sup>16</sup>

India has National Green Tribunal (NGT) established in 2010 and its competence is to examine civil cases related to environmental protection, forest conservation, law enforcement of any legal rights related to environment. NGT is quasi-judicial body, has limited power and authority similar to law enforcement agencies, but it is not like normal court. NGT can only issue recommendation, depending on the nature of gravity and offence, in case of crime and other offences. According to Shrotria, NGT has an important role in providing access to justice of environment, and it is needed to make review of NGT's Act toward removing obstacles to make NGT become more effect.<sup>17</sup>

Landmark decision by Dutch Supreme Court upheld the previous decision of Urgenda Climate Case, stated that Dutch government has obligations to urgently reduce emissions according to human rights obligations. Previously, in 2015 the District Court of the Hague stated that Government must reduce green house gas emissions and required to take immediate action on climate change. The District Court decision was appealed by the State and upheld by the Court of Appeal in 2018, then appealed to Supreme Court

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<sup>15</sup> Cuimin Wang, "A Comparative Analysis of Environmental Courts in Sweden and China," *Fudan Journal of the Humanities and Social Sciences* 9, no. 4 (2016): 607–26, <https://doi.org/10.1007/s40647-016-0136-9>.

<sup>16</sup> Ling Yun He and Xiao Feng Qi, "Environmental Courts, Environment and Employment: Evidence from China," *Sustainability (Switzerland)* 13, no. 11 (2021), <https://doi.org/10.3390/su13116248>.

<sup>17</sup> He and Qi.

in 20 November 2019. Judiciary system in Dutch does not recognized environmental court as special court, so it goes to District Court.<sup>18</sup>

The above examples shows various type of environmental court, it is depend on the judiciary system in each country. In Sweden and Chine share the same characteristic of judiciary system, but still have differences concerning the structure of environmental court has implement environmental court under general court, while in India as quasi-judicial with limited power and Ducth did not have environmental court. Form of environmental court as special court might be based on absolute competence. Absolute competence relates with object of dispute, while in Court, the object of dispute is government decree with characteristic i.e. final, concrete, individual and cause legal consequences to individual or legal entity. Permit is government decree issued based on application by applicant for certain purposes. Environmental permission is an object in environmental administrative dispute with spesific characteristic as stated in Article number 93 para 1 of Environmental Law, thus to solve it use regulations, principle as regulate in Environmental Law as well as Administrative Court Law.<sup>19</sup>

The aim to file environmental administrative dispute is cancellation of government decree, so if they do not have permit then it will not damage the environment. Environmental permission is key to build, but also to damage or destroy the environment. Examination in court process has to consider the regulations, judges which has concern and understanding in principle of good environmental governance, and they should have certified as environment judge.

The idea to make environmental court as a system of law, it has to consider theory of System of Law from Lawrence Friedman, there are 3 (three) important points, structure, substance and culture of law. First, about the structure of environmental court. Based on Article number 27 para 1 of Law Number 48 of 2009 of Judicial Power, the special court can only be formed under the judiciary bodies, i.e General Court, Religion Court, Military Court and State Administrative Court. Court is combination system, first from the function and organization structure, follows the unity of jurisdiction because Court implement the pure judicial function under Supreme Court, second from the disputes resolution principle tends to duality of jurisdiction, because strictly separated between general court and Court, also put government as Defendant.<sup>20</sup> Some scholars says that judiciary system in Indonesia follows the duality of jurisdiction, but actually it

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<sup>18</sup>“<https://E360.Yale.Edu/Features/Can-Citizen-Lawsuits-Force-Governments-to-Act-on-Climate-Change>,” n.d.

<sup>19</sup> Priyatmanto Abdoellah, *Revitalisasi Kewenangan PTUN Gagasan Perluasan Kompetensi Peradilan Tata Usaha Negara* (Yogyakarta: Cahaya Atma Pustaka, 2016).

<sup>20</sup> Umar Dani, “Memahami Kedudukan Pengadilan Tata Usaha Negara Di Indonesia : Sistem Unity Of Jurisdiction Atau Duality Of Jurisdiction? Sebuah Studi Tentang Struktur Dan Karakteristiknya,” *Jurnal Hukum Dan Peradilan* 7, no. 3 (2018): 405–24.

is appropriate Indonesia use hybrid or mix system, not truly separate administrative court from ordinary court, because all the judiciary bodies are culminate to Supreme Court .<sup>21</sup>

The main idea to put environmental court under Court, first; based on Article Number 27 Law Number 48 of Judiciary Authority, stated that special court can only built under the judiciary bodies as regulated in Article Number 25. Article Number 9A Law Number 9 of 2004 of Amendment of Law Number 5 of 1986 of State Administrative Court, the specialization in Court is Tax Court, while Tax Court formed under Law Number 14 of 2002 and domiciled in Jakarta. This is shows that it is possible to build special court under Court, based on regulations and considering the condition. Besides there are special courts were built under General Court.

Second; the idea to put environmental court under Court starting from cancellation of permit will give a huge impact to society and environment. It is better to prevent the damage than to recovery or restoration of environmental. Structure of environmental court is under Court with 3 (three) chambers, i.e private, administrative and penal, because each has different goals. Chamber private to ask for compensation, chamber administrative to cancel the permit and government action and chamber penal to give penal sanction. As in environmental court, all environmental cases including land use will be settled in one judiciary body.

Substance of law, there are some important points to discuss. First; about the competence of enviromental court has to made in new regulation, as legal basis to operate and run the function. This new regulation must be synchronized with relevant regulations, especially in the field of environmental law, including law enforcement system. Unzynchronized of regulations will give effect to society either to environmental, because there will be no legal certainty and legal protection for both. Position of environmental court in-future must be in the capital city of each province, as the same as position of Court. It also has to synchronize with Environmental Law as sectoral law in environmental field.

Second, about the human resources, which consist of Judge, law enforcement officers in other government bodies. Supreme Court already issued regulations Decree of the Chief of Justice Number 134/KMA/SK/IX/2011 of Envriomental Judge Certification stated that to examine environmental disputes, Judges shall have environmental certification judge from Supreme Court, after followed the courses. Law enforcement officer must have awareness to protect environment. Besides law enforcement officers, government office should be prioritize principle of good environment before issue the permit.

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<sup>21</sup> Enrico Simanjuntak, "Dua Kelompok Besar Sistem Peradilan Administrasi," in *Pengantar Studi Perbandingan Peradilan Administrasi Di Berbagai Negara* (Depok: PT Rajagrafindo Persada, 2020), 1–12.



Third, about the procedure to file lawsuit. Environmental Law have arranged 3 (three) types of file lawsuit, i.e. government lawsuit (Article Number 90), community lawsuit ( Article Number 91), environmental organization lawsuit ( Article Number 92), which has different regulations. Standing to sue is important, individu, legal entity, NGOs, Group or government may file lawsuit, with clear regulations. This is relates with human rights and law enforcement to protect the environmental. intragenerational and intergenerational equity concept. In1994, Walhi was the first non government organization which file lawsuit to Court about transfer of reforestation funds, then Supreme Court issued Supreme Court Regulation Number 1 of 2002 of Class Action Lawsuit. Article 93 of Environmental Law stated "...everyone is able to file lawsuit to Court...", refer to Administrative Court Law, everyone are individual or legal entity which can file lawsuit. The vacant of procedural law, especially in Court for citizen lawsuit make difference of interpretation of law and interfere legal certainty and protection of law, especially for notification in citizen lawsuit. Supreme Court expected to make regulation about citizen lawsuit because it possible to file lawsuit after Law Number 30 of 2014 of Governance Administration had been stipulated.<sup>22</sup> In common law system, Plaintiff has to send notification to Defendant at least 2( two) months before file lawsuit. The aims of notification is to give opportunity to Defendant to notice or revise the object and to inform that Plaintiff file lawsuit.<sup>23</sup> Standing to sue in Environmental Law should be changed from closed standing become open standing, so there will be open participatory sytem for all parties.<sup>24</sup> Furthermore, hexplained first, there should be no restriction of system standing because it aims to have more public participation in environmental management, and second the meaning "everyone" in open participatory means that everyone is able to file lawsuit for public participatory and environmental protection and management. Procedural law for each chamber have to follow the existing regulation. When file lawsuit for private matter, it will be process based on civil procedural law. It is the same mechanism, when criminal case arise, it will be process based on criminal procedural law. In the beginning, Plaintiff or Prosecutor will choose and decide that dispute is private, administrative or criminal environmental dispute.

According to Edith Brown Weiss, theory of intergenerational equity, states that as human, we hold the natural environment with other species, other people, from past, present and future generations. As member of present generations, we have two functions,

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<sup>22</sup> Enrico Simanjuntak, "Perkara Advokasi Publik Pasca Berlakunya Undang-Undang Administrasi Pemerintahan ( UU AP) Public Litigation Advocacy After Enactment of Government Administration Law," *Jurnal Ius Kajian Hukum Dan Keadilan* 6, no. 1 (2018): 14–33.

<sup>23</sup> Yustina Niken Sharaningtyas, "Gugatan Warga Negara ( Citizen Law Suit) Dan Justiciability Pemenuhan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat," *Kertha Patrika* 38, no. 1 (2016): 33–50.

<sup>24</sup> Nommy H T Siahaan, "PERKEMBANGAN LEGAL STANDING DALAM HUKUM LINGKUNGAN ( Suatu Analisis Yuridis Dalam Public Participatory Untuk Perlindungan Lingkungan )," *Syar Hukum* III, no. 3 (2011): 232–44.

as trustees and beneficiaries. There are three important principles relates to intergenerational, first, each generation must conserve option, second, each generation should be required to maintain the quality of the planet, and third, each generation should provide its members with equitable right of access to the legacy of past generations and conserve this access for future generation.<sup>25</sup> There is an obligation between generations that are carried out by current generations to maintain and protect the environment, considering Indonesia have admittted rights of healthy and good environment, intergenerational and intragenerational equity, and right to file lawsuit, hopefully judiciary bodies in Indonesia can follow the Supreme Court of Phillipines in case *Minors Oposa v Factoran* ( 1994), rights of healthy environment is actionable rights and right to sue is not only owned by current generation but also future generation.<sup>26</sup> It is important to confirm in regulation about right to sue, type of sue which is possible to file due to environmental justice and intergenerational equity. Environmental justice is a concept relates with sustainable development, also have meaning as non-discrimination protection to exposure to environmental hazard.<sup>27</sup> Qouted from United States Enviromental Protection Agency, environmental justice is a fair treatment for all people, regardless colour, race, origin nation, income with respect to the development, implementation and enforcement of environmental law, regulations and policies.<sup>28</sup> Restriction and obscurity in regulations, shows there is lack of protection and damage for environment. Considering development and changes of society, it is necessary to study and develop further that open public participation can be provided in the form of right to sue, citizen lawsuit mechanism in new regulations. It is important to initiate citizen lawsuit mechanism as a part to give access to justice for everyone, since the healthy environmental is a protected right in the Constituion. Right to sue has to clarified in advance, since this is important refer to rights to have good and healthy environment and obligations for everyone.

Third part of system of law is culture of law, is behaviour to respect to law or legal obedience of individu. Legal obedience can be seen from government, individu, society and legal entity with different perspectives. Legal awareness of society influenced by economy, social culture, so it is important to make strategic approach from policy and

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<sup>25</sup> Weiss Edith Brown, "In Fairness to Future Generations and Sustainable Development," *American University International Law Review* 8, no. 1 (1992): 19–26.

<sup>26</sup> Andri G. Wibisana, "Perlindungan Lingkungan Dalam Perspektif Keadilan Antar Generasi : Sebuah Penelusuran Teoritis Singkat," *Masalah-Masalah Hukum* 46, no. 1 (2018): 9, <https://doi.org/10.14710/mmh.46.1.2017.9-19>.

<sup>27</sup> Sri Maryati, "Penyediaan Infrastruktur Dan Environmental Justice: Dampak Keberadaan Tempat Pembuangan Akhir Sampah Bagi Masyarakat Sekitar," *Planners Insight : Urban and Regional Planning Journal* 2, no. 1 (2019): 035–042, <https://doi.org/10.36870/insight.v2i1.28>.

<sup>28</sup> United States Environmental Protection Agency, "Environmental Justice," n.d.

individual mentality.<sup>29</sup> Individu, society and legal entity has to obey the regulations, also respect to environment indicated by maintain the nature resources, environment carefully, based on intergenerational equity. Environmental Court in Sweden is a good example, since the Court allow society to give their opinion directly in field without lawyer, when the Judges come to see the exact condition. It shows that society awareness meaning as public participatory valued in the judiciary process.

### **3.2. Implementation of Principle of Good Environmental Governance to Enforce Environmental Law**

Started in United Nations Conference on the Human Environment held in Stockholm 1972,<sup>30</sup> there were 26 principles, put the environmental issues as priority and followed with Rio de Janeiro in 1992,<sup>31</sup> as new blueprint for international action on the environment and also initiated concept of sustainable development as a new paradigm with participatory from states, societies, public to carried out environment to preserving natural resources and adopted Agenda 21.<sup>32</sup> The World Commission on Environment and Development in 1987 published a report called Our Common Report, and this document came to be known as Brundtland Report, and defined sustainable development is development that needs the meets of the present without compromising the ability of future generations to meet their own futures.<sup>33</sup> Relation between sustainable development and Sustainable Development Goal's (SDG's) is the development that is currently taking place has to reach the 17 goals of SDG's. Sustainable Development Goals (SDG's) were adopted in 2015 by all UN Member States, is an action to call the universe to end the poverty, protect the planet and people will life peacefully in 2030.

According to United Nations Environment Programme, environmental governance includes policy, rules, norms that govern human behaviour and also addresses to make decision, also to major and public stakeholder to contribute or participate in the decision-making. The relation between environmental governance and SDG's that it is important for governance to prepare, make decision-making with regard to SDG's.

There are 17 goals in SDG's which has to be implemented by government, starts from no poverty, zero hunger, good health and well-being, quality education, gender quality, clean water sanitation, affordable and clean energy, industry, innovation and

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<sup>29</sup> Putra Pratama Saputra Dwi Haryadi, Darwance, "Antroposentrisme Dan Budaya Hukum Lingkungan (Studi Eksploitasi Timah Di Belitung Timur)," *PROGRESIF: Jurnal Hukum XIV*, no. 1 (2020): 64–75, <https://doi.org/https://doi.org/10.33019/progresif.v14i1.1777>.

<sup>30</sup> United Nations, "STOCKHOLM DECLARATION 1972" Nations Environment Programme," Report of the United Nations Conference on the Human Environment, 1972.

<sup>31</sup> United Nations Sustainable Development Goals, "The United Nations Conference on Environment and Development," 1993, <https://doi.org/10.1080/10464883.1993.10734558>.

<sup>32</sup> Department of Economic And Social Affairs Sustainable Development United Nations, "Make The SDG'S Reality," n.d.

<sup>33</sup> Goals, "The United Nations Conference on Environment and Development."

infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace justice and strong institutions, partnership for the global. Indonesia government has to support the implementation to achieve goals also for next Agenda 2030, some policies had been made adjust to 17 goals, also have an umbrella act in President Regulation Number 59 of 2017 of Implementation of Achieving Sustainable Development Goals.

In preparing, making various policies, regulations and decrees, with focus to protect and manage the environment, government has to consider and based on principle of good environmental governance. Aspects of substance and permitting process are entirely the authority of the Government. In this case, what needs to be studied is the government's political will to maintain a harmonious relationship between environmental sustainability and economic development, which is realized through user-eco friendly regulations, it means the regulations made by governance require that products made by company is less harmful for the environment, reuse, recycleable , not just for economic gain purposes.

Principles of good governance will impact and determine the good quality of environment management, and the good environment management will shows the good government, on the other way, without principles of good governance it is difficult to get good environment management.<sup>34</sup> Principles of good environmental governance are actually the application of the principles of good governance in the environmental field, so that in general they have similarities with the principles of good governance. As stipulated in Article 10 of Law Number 30 of 2014 of Government Administration, the general principles of good governance include the principles of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest and good service. This principle of good environmental government should be the basis for the Government in formulating policies and making decree . Administrative decisions taken must be oriented towards environmental protection and management based on principle of good environment government. From the results of the search for articles and scientific studies below conducted in various regions, it can be seen that the application of principle of good environmental governance for environmental protection and management has not been carried out optimally.

Refer to research lead by Indonesian Institute for Independent Judiciary in 2020, especially in Court and found several legal consideration and legal problems, i.e application of principles of good governance in environmental cases.<sup>35</sup> Research found that principle of legal certainty and accuracy are the most used besides principles of

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<sup>34</sup> Redin, "Penerapan Prinsip Good Environmental Governance Oleh Pemerintah Daerah Kabupaten Sintang Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *PERAHU Jurnal Ilmu Hukum* 7, no. 2 (2019): 19–42.

<sup>35</sup> Nur Syarifah et al., *Assessment Report on Court Decisions on Environmental Cases*, 2020.

professionalism, accountability, impartiality also frequently used. They also found that more court decisions in environmental cases that were rendered without due consideration of principle of good environmental governance.

Implementation of principle of good environmental governance also in the level district or city governance has an authority to make regulations of environmental protection and management. Environmental Office in Way Kanan District already implemented principle of good environmental governance especially in giving permit related in environmental, also implementation control of preventif and represif, but there were problems because community were less active to give information and report of environmental damage.<sup>36</sup> Bone District not yet fulfilled principle of good environmental governance, because of the unprofessional government officer resulting less of effective and efficiency, also the weakness of leadership, consensus between local government and society.<sup>37</sup> Implementation of principle of good environmental showed by Government of Sintang District, eventhough the result was not yet optimized, but through Local Regulation of Sintang District Number 20 of 2015 of Spatial Plans Region of Sintang District for 2016 -2036, Local Regulation of Sintang District Number 1 of 2016 of Protection and Management of Environmental in Sintang District, Regent Regulation Number 66 of 2019 of Action Plan of Sustainability of Sintang.<sup>38</sup>

Research by Mashuril Anwar and Maya Shafira shows that disharmony of regulations regarding coastal management has a negative impact on the management of coastal areas of Lampung. The overlapping of regulations creates legal uncertainty for the community to play an active role in the management of coastal areas, creates gaps in the allocation and utilization of coastal resources, limited public access to participate in coastal area management, causing regional management to be not optimal and not integrated with community needs. and it is difficult to realize sustainable development for coastal areas.<sup>39</sup> Various researches above showed the various problem for government to implement principle of good environmental governance in the decree or policy, which all lead to structure, substance and culture of law. Making of regulation has to support with good implementation consist of government and public.

In case number 31 /G/2021/ PTUN.JPR, Judge decided not accepted Plaintiff's lawsuit object of dispute number 2 i.e Sorong Regent's Decree Number 525/KEP.61/IV/

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<sup>36</sup> Agung Budi Prastyo et al., "Model Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Mewujudan Good Governance," *Sasi* 27, no. 1 (2021): 84, <https://doi.org/10.47268/sasi.v27i1.419>.

<sup>37</sup> Andi Tenri Sapada and Ω Farah Syah Rezah, "Actualization of General Principles of Good Governance in the Government Administration System," *AL-ISHLAH: JURNAL ILMIAH HUKUM* 24, no. 2 (2021): 237–55.

<sup>38</sup> Redin, "Penerapan Prinsip Good Environmental Governance Oleh Pemerintah Daerah Kabupaten Sintang Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup."

<sup>39</sup> Mashuril Anwar and Maya Shafira, "Harmonisasi Kebijakan Pengelolaan Lingkungan Pesisir Lampung Dalam Rezim Pengelolaan Berbasis Masyarakat," *Jurnal Hukum Lingkungan Indonesia* 6, no. 2 (2020): 266–87, <https://doi.org/10.38011/jhli.v6i2.156>.

of 2021 of Cancellation Sorong Regent's Decree Number 42/185 of 2013 of Extension of Granting of Location Permits for Plantation Palm Oil PT Sorong Agro Sawitindo in District Segun, Klawak and Klamono, Regent of Sorong dated 27 April 2021 and rejected object of dispute number 1 i.e Sorong Regent's Decree Number 525/KEP.56/IV/ of 2021 of Cancellation Sorong Regent's Decree Number 267 of 2009 Activity Environment Feasibility Plantation and Palm Oil Factory of PT Sorong Agro Sawitindo in District Sorong West Papua Province dated 27 April 2021 and dispute 3 i.e Sorong Regent's Decree Number 525/KEP.64/IV/ of 2021 of Cancellation Sorong Regent's Decree Number 503/730 of Plantation License of PT Sorong Agro Sawitindo dated 27 April 2021. Judges did not find violated of principle of good governance in object of disputes.

Also for case number 32/G/2021/PTUN.JPR, Judge decided not accepted object of dispute number 1 i.e Sorong Regent's Decree Number 525/KEP.58/IV/ of 2021 of Cancellation Sorong Regent's Decree Number 163 of 2011 of Plantation License for Palm Oil Factory of PT Papua Lestari Abadi in Waimun Village District Segun Regent of Sorong dated 27 April 2021, and rejected object of dispute number 2 i.e Sorong Regent's Decree Number 525/KEP.57/IV/ of 2021 of Cancellation Sorong Regent's Decree Number 268 of 2009 Activity Environment Feasibility Plantation and Palm Oil Factory of PT Papua Lestari Abadi in Regent of Sorong, West Papua Province and object of dispute number 3 i.e, Sorong Regent's Decree Number 525/KEP.65/IV/ of 2021 of Cancellation Sorong Regent's Decree Number 503/529 of Plantation License for Palm Oil Factory of PT Papua Lestari dated 27 April 2021. According to Judges that object of dispute number 2 and 3 already reflects environmental protection aspects of customary law community Moi stayed in District Segun and ecosystem. District Regulation of Sorong Number 10 of 2017 of Recognition and Protection of Customary Law Community Moi gives part of participation to decides rights of development, this showed that Regent of Sorong support the implementation of protection and participation of customary law community Moi in all aspect for their lives included environmental management and protection. Recognition of customary law community is important because showed the good intention of government about participation from society to environmental management and protection since related with their lives.

Principle of good environmental governance will not be separated from environmental justice. Regent of Sorong shows strong commitment to protect, reduce the risk of environmental damage and to brings environmental justice. The act of Regent of Sorong shows that as Head of Government in Sorong, responsible to give protection for future generation, by implement the intergenerational equity, option of resources, require to maintain the quality of the planet and provide equitable access, as stated by Edith Brown Weiss in above. It is an embodiment implementation for intergenerational equity as distributive justice by annul the Regent of Sorong decision. Distributive justice asked for more equitable allocation for access to and benefit from resources for

environmental protection and costs.<sup>40</sup> Related with principle of good environmental governance, Government of Langsa has an obligation to make government decision eco-friendly in order to protect and to reduce the damage of mangrove forest become worst, and it is possible to file lawsuit by government against whomsoever make the damage.<sup>41</sup>

Implementation of principle of good environmental governance had been made by Regent of Polewali Mandar, West Sulawesi, in the local regulation involve community or public in environment development starts from planning, implementation, evaluation and supervision.<sup>42</sup> In the frame of environment protection, public participatory is important and also as implementation of principle of public interest as one principle of good environment governance. By involving public participatory in environment protection and management hopefully it will increase environment and legal awareness . Public participatory based on rights, obligations and principle of transparency, principle of equality and participatory principle.<sup>43</sup> As stated in Article 27 of Government Regulation Number 22 of 2021 of Implementation of Environmental Protection and Managemet. Public participatory take place from AMDAL arrangement which consits of some steps. This regulaton in accordance with participatory principle, principle of transparency which put public as stakeholder. Every permission has to be based on principle of good environmental governance, considering public participatory and implement the intragenerational and intergenerational equity.

Environmental permit dispute between WALHI against Kepala Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu Provinsi Jawa Barat, in case number 52/G/LH/2022/ PTUN.Bdg, Judges stated that granted Plaintiff's lawsuit and cancel the object of dispute. In the examination and consideration, it was found that Defendant did not fulfilled and did not implemented the principles of good environmental governance, especially principle of state liability, precautionary principle, benefit principle, also not oriented to principle in dubio pro natura. Examination conducting by Judges have implemented the principle of good environmental governance correctly.

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<sup>40</sup> Andri Gunawan Wibisana, "Keadilan Dalam Satu (Intra) Generasi:Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan," *Mimbar Hukum* 29, no. 2 (2017): 292, <https://doi.org/10.22146/jmh.19143>.

<sup>41</sup> Nurnaningsih Amriani, "Hak Gugat Pemerintah Kota Langsa : Upaya Perlindungan Hutan Mangrove Dalam Rangka Menegakkan Prinsip Keadilan Intra Dan Antar Generasi," *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021): 112–22, <https://doi.org/10.33059/jhsk.v15i2.2169>.

<sup>42</sup> Dwi Haryadi, Darwance, "Antroposentrisme Dan Budaya Hukum Lingkungan (Studi Eksploitasi Timah Di Belitung Timur)."

<sup>43</sup> Nopyandri, "Hak Atas Lingkungan Hidup Dan Kaitannya Dengan Peran Serta Dalam Pengelolaan Lingkungan Hidup Dalam Perspektif Otonomi Daerah," *Inovatif* 7, no. 3 (2014): 33–44.

#### 4. CONCLUSION

There should be regulation to build environmental court may be form as special court under State Administrative Court and to strengthen the absolute competence as judiciary body, as well as rights to sue for citizen and expand become citizen lawsuit which appropriate with relevant and existing circumstances. It is necessary to initiate Citizen Law Suit in future regulation as a model to file the suit, because it is protected rights by Constitution, give access to justice for citizen. Form of environmental court has to adjust with relevant regulations, in order to avoid lack of uncertainty of law enforcement. To build environmental court has to be based on structure, substance and culture of law which are interrelated with judiciary system. To implement principle of good environmental governance it should be integrated in the regulations. Regulations become the legal basis for government decision-making and government act to manage the environmental protection and management. Principle of good environmental government is an important key to make government decision to give permission, also government act, to individu or legal entity to manage environment. Judge will also put principle of good environmental governance as tool to test the government decision. Development will give damage to environment, then it is important to control from government side by strengthen principle of good environment to reduce and avoid the damage. Government should has courage to annul the decision when it makes worst damage for environmental.

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