Application of the Principle of in Dubio Pro Natura by Judges in Realizing Sustainable Environmental Development (Study of Supreme Court Decision No. 651 K/Pdt/2015)

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Abstract. Environmental exploration is not allowed to be carried out in the Leuser Ecosystem Area which is included in the 25 ecosystem areas of the world but it is carried out by PT. KA as a corporation holding a business license. Sustainable environmental problems can essentially be overcome by judges' decisions that are philosophical and have legal findings (rechtvinding), one of which is the application of the principle in dubio pro natura in Supreme Court Decision No. 651 K/Pdt/2015 which needs to be analyzed. The research method used is normative juridical with a doctrinal approach. The results showed that the application of the concept of deep ecology with progressive judges applying the principle of in dubio pro natura in the Supreme Court Decision Number 651 K/Pdt/2015 as a form of ensuring environmental sustainability, one of which is not allowed to explore the environment in the Leuser Ecosystem Area (KEL) in Aceh so that business licenses those owned by corporations should be set aside and charged with responsibility for environmental restoration.

Keywords: principle · Sustainability · environment · judge

1 Introduction

Environmental issues are serious problems, like a rolling snowball, the longer it gets bigger and bigger. Problems that are not only local, and trans-local, but regional, national, transnational, and global. Efforts to repair and restore the environment are less rapid than the rate of damage and pollution that occurs. This condition indicates that environmental issues are not yet at the center of Indonesia's development. The main reason is that at the level of decision-making in the central and regional areas, it often ignores the interest in preserving the environment. As a result, disasters occur on land, sea, and air [1]. Its enforcement issues will relate to the enactment of legal rules in society. A rule of law applicable in society must meet juridical, sociological, and philosophical requirements [2].

Y. A. Yusran et al. (Eds.): BIC 2022, AEBMR 235, pp. 291–300, 2023.
https://doi.org/10.2991/978-94-6463-140-1_28

The enforcement of environmental laws relates to various aspects that are quite complex, to maintain and create an environment that can be enjoyed by every human being in a broad sense by not disturbing his environment. In capturing the attitude of irresponsible parties, various forms of legislation have been created with the form of laws and various implementing regulations. Actions of a repressive nature with the use of legal instruments in the enforcement of environmental law include administrative law, civil law, and criminal law which are believed to be for the time being the most effective even the three instruments at once can be applied at once. By Law No. 32/2009, it recognizes three legal instruments in environmental law enforcement, namely administrative law, civil law, and criminal law [3]. One of them needs to be reviewed by the Supreme Court Decision No. 651 K/Pdt/2015 as a form of law enforcement through the role of judges who apply the principle *of in dubio pro natura.*

The frequent occurrence of pollution carried out by companies or industries and the low level of compliance and compliance as well as awareness of community members to maintain a clean and healthy environment are indicators that law enforcement against clean and healthy environmental management has not been running. Thus, the implementation of Law Number 32 of 2009 is still low. This is because law enforcement, especially in the issue of proving difficult to carry out and supervision in the context of environmental control and management can be said to be still in place even though from the political aspect of the law substantially the content/material of the environmental law has changed a lot according to the social conditions of the community [4].

A difficult problem to solve to enforce environmental law with the principle of sustainable development is the collision of interests between economic interests and environmental conservation. On the one hand, economic interests want the exploitation of nature to make a profit and meet the needs of human life, but on the other hand, nature must also get protection from human actions that are constantly making mischief. It should be noted that man depends on his life on nature, so if nature is damaged and not noticed for its sustainability, then it will also indirectly have an impact on the safety of mankind. In this case, the law requires an environmental ethics approach [5].

Literature review of Meda Desi Kartikasari's research with the title "Examining the Roots of Basic Thinking In Dubio Pro Natura in Law Enforcement" which only reviews the forerunners of *the principle in dubio pro natura* which has a close relationship with the principle *in dubio pro reo*, progressive legal thinking, biocentrism thinking, deep ecology thinking, and at the same time being a refutation or antithesis of anthrophospherism and shallow ecology thinking and there is also a discussion discussing related ecosophy which argues that ecosophy refers to the moral principle developed *deep ecology* concerns the interests of the entire ecological community [6].

Criticizing the opinion, Ecosophy also refers to the field of practice introduced by psychoanalyst, poststructuralist philosopher, and political activist Félix Guattari whose struggle in the 20th century was dominated by the paradigm of social revolution, to instill arguments in an ecological framework that understands the interconnection of the social environment. The traditional environment obscures the complexity of the relationship between man and the natural environment through the maintenance of the dualistic separation of human (cultural) and non-human (natural) systems; ecosophy uses monistic and pluralistic approaches. Ecosophy that will connect environmental

ecology with social ecology and mental ecology. Previous researchers have also not deeply explored the judge's thoughts regarding the application of *the principle of in dubio pro natura* and there is no concrete recommendation that subsequent judges who handle environmental cases can boldly use the principle *of in dubio pro natura* to decide environmental cases to prioritize the interests of environmental sustainability over the interests of corporations holding business licenses.

2 Result and Discussion

2.1 The Principle of in Dubio Pro Natura as Ius cogen and Its Existence on Environmental Law Protection in Indonesia

The principle *of In Dubio Pro Natura* means that if in handling a case there is doubt, then the judge prioritizes environmental protection. The *In Dubio Pro Natura* principle is a derivative of the *precautionary principle* formulated in the Rio Declaration in 1992. In principle, prudence plays an important role in every aspect of human life. This principle will show the judge's perspective on Deep Ecology. It is about how a man can be responsible for the damage caused by his greed of man himself. By using this principle, the judge can impose commensurate and certainly favorable sanctions on nature. The principle of *In Dubio Pro Natura* is considered to be ius cogen (recognized civilized nations) [7].

Article 2 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management. The "precautionary principle" means that decision-making officials including judges and state officials who make decisions in law enforcement or dispute resolution if faced with "scientific uncertainty" do not necessarily conclude that there is no consequence or damage to the environment that occurs but instead must make decisions in the interests of environmental protection or restoration (in dubio pro natura) because environmental damage is latent (not immediately apparent) and often irreversible. Indonesia has ratified the United Nations Framework Convention on Climate Change (UNFCC) with Law Number6 of 1994 (Statute Book of 1994 Number 42). The release of the glass house as a result of the fire was not considered at all by Judex Facti and Judex Juris. As a Participating Country in the Convention, Indonesia is obliged to prevent the release of greenhouse gases and to protect and strengthen forest areas [8].

The existence of *the In Dubio Pro Natura* Principle is contained in the Supreme Court Decision Number 651 K/Pdt/2015 which can be used as jurisprudence in handling environmental cases so that the existence of the decision is a form of environmental law protection in Indonesia through the role of judges who are *on the rule* to apply the principle by referring to the *precautionary principle* that applies the concept of *deep ecology* through his verdict. Based on the principle of *ius cogen* (recognized by civilized nations) then the Principle *in Dubio Pro Natura* can be one of the sources of law to solve problems philosophically against legal events that contain elements of the doubt for judges that can be clarified by using that principle to decide a case so that its legality becomes present after being present through a judgment of permanent legal force (*inkracht van gewijde*).

2.2 Implementation of the Principle of in Dubio Pro Natura in Supreme Court Decision Number 651 K/Pdt/2015 as a Form of Sustainable Development

A.B. Blomberg, A.A. J. de Gier and J. Robbe give the following definition of environmental law as follows environmental law are generally understood as a law that protects the quality of the environment and the law of conservation of nature. Siti Sundari Rangkuti stated that from the substance of the law which is the material of environmental law, the environmental law course is classified into a functional law course (Functionele Rechtsvakken), which contains breakthroughs between various classical legal disciplines [9].

The environment can also be used to achieve sustainable development, this is because recognizing and protecting human rights is a potential way to protect the environment. This is in line with David Hunter's opinion which states that *human rights are not only as a model for the progressive development of international environmental law but as a potential independent tool for protecting the environment* [10].

Settlement of environmental disputes through civil law instruments, according to Mas Achmad Santosa, that to determine whether a person or legal entity is responsible for losses caused by pollution or destruction of the environment, the plaintiff is required to prove the existence of pollution, as well as the relationship between pollution and losses suffered. Proving means giving the judge certainty of the correctness of the disputed concrete events [11]. One of them in the civil case in supreme court decision No. 651 K/Pdt/2015 contains *the Principle of In Dubio Pro Natura* as a form of legal discovery by judges to protect the environment as a form of *deep ecology* concept.

Sustainable development is one of the principles of environmental law that has the meaning of sustainable development. The definition of the principle of sustainable development is a development that meets the needs of the current generation without having to sacrifice the interests of future generations. WCOD (World Commission on Environment and Development) defines it as "if it meets the needs of the present without compromising the ability of future generations to meet their own needs" [12].

The Principle Link *in Dubio Pro Natura* has a relationship in ensuring a *sustainable* environment as The Stockholm Declaration on the Human Environment which recognizes that:

> *"... the natural growth of world population continuously poses problems for the preservation of the environment"*

The dash overview of environmental justice is about the injustice contained in the Mineral and Coal Law against the bailout policy set in it, which leads to unfulfilled ecological justice for the sustainability of natural resources, its impact on the communities around mining, who have to fight extra to get ecological justice in the new normal society. This principle of sustainability and the provision and utilization of energy is part of the concept of sustainable development in the management of more specialized natural resources. Sustainable development was introduced in 1972 through the United Nations Conference on Human Environment in Stockholm, Sweden, between 5–16 June 1972. The conference was held due to various environmental issues that arose before and during that time. This environmental problem became part of the problem at that time,

such as hunger, poverty, economic stagnation, many diseases due to poor sanitation, slums, and unemployment [13].

Environmental sustainability by avoiding potential environmental damage through the role of judges can be described in case Number 651 K/Pdt/2015 between PT. KA as the Cassation Applicant against the State Minister of Environment of the Republic of Indonesia as the Cassation Respondent.

Environmental (civil) disputes may be pursued through the courts or out of court based on the voluntary choice of the parties concerned. If the chosen out-of-court effort is unsuccessful then by either of the parties a court route may be pursued. A lawsuit through the court can only be pursued if the attempted settlement of the dispute outside the chosen court is declared unsuccessful by one of the parties to the dispute. M Daud Silalahi in Prim Haryani stated that a company as a producer in carrying out its business activities may regard the environment as a free object that can be used entirely to obtain the greatest profit. However, society as a whole will see the environment as part of a real wealth that can no longer be treated as a free object (*rex nullius*) [14].

The provision on absolute responsibility is new and deviates from the provisions of Article 1365 of the Civil Code or Burgerlijk Wetboek (BW) on unlawful acts (*onrechtmatige daad*). It has been explained that activities or businesses that apply strict liability that uses hazardous and toxic materials, if there is an act of damaging or polluting the environment outside of it, the path that must be chosen is to turn to Article 1365 of the Civil Code regarding requirements, such as errors (*schuld*) [15].

In the Court of First Instance, it was the Minister of State for the Environment of the Republic of Indonesia who sued PT. KA with Case Register Number: 12/PDT. G/2012/PN. MBO based on a lawsuit that pt. The 1,605-hectare railway is located within the leuser ecosystem area which is protected by law.

The authority of the Ministry of Environment to sue (*legal standing*) of a corporation with the consideration that the Government as a responsible agency in the environmental sector is given the authority by law to make legal remedies to demand compensation and certain actions against businesses and/or activities that have caused destruction and/or pollution of the environment through lawsuits civil. The government's rights are as stipulated in Article 90 of Law Number 32 of 2009 concerning Environmental Protection and Management. The responsibility and authority of the Ministry of Environment of the Republic of Indonesia, thus the Ministry of Environment is a party who has a legal interest to file a civil lawsuit on behalf of the Government as intended by Article 90 of the Environmental Law.

Problems with the environment carried out by PT. Ka is based on hotspot data sourced from MODIS issued by NASA for the period January 1, 2011 to December 30, 2011 and the period from February to June 2012 which records the distribution of hot spots in Aceh Province showing that hot spots (indications of an increase in temperature on the surface) are indeed seen appearing in the coordinates of the plantation area owned by PT KA.

Although PT. Ka has a cultivation plantation business license covering an area of 1,605 ha from the governor located in Pulo Kruet Village, Darul Makmur District, Nagan Raya Regency, Aceh Province, the recognition is by evidence P-3 and T 15.1. (Aceh Governor's License on Cultivation Plantation Business) granted by the Governor of Aceh

to the Defendant on August 25, 2011 for Cultivation plantations), but it turns out that the plantation area is included in the Leuser Ecosystem Area.

The judge's consideration of the district court of the first instance with Judgment No. 12/ PDT. G/ 2012/ PN. MBO which considers that SPK is "burning" of course the sentence of processing plantation businesses without burning (burning zero) by applicable regulations to prevent damage, pollution and/or environmental impacts is not stated in the SPK because if the sentence is listed then the meaning will be the opposite meaning which means that there may be a fire that can prevent damage, pollution and/or environmental impacts. The Leuser Ecosystem Area must be protected and prohibited from being burned and PT. Ka knew this as stated in the plantation business license granted by the governor, but Defendant did not heed the letter and continued to clear the land by burning and even the burning was not only done once but many times. As good and faithful citizens we must be able to imagine and think about what will happen to posterity and even our great-grandchildren if the earth we left behind is already in a state of disrepair and destruction, due to the deeds of previous generations even though they are the next generation who also have the same right to get what previous generations have earned, therefore it is appropriate and it should be that we not only think about what we will get today but also think and strive for what we will leave for generations to come.

Prohibition of burning forests and/or land as a form of preserving the environment as contained in Article 11 of Government Regulation Number 4 of 2001 dated February 5, 2001 concerning Damage Control and/or Environmental Pollution which stipulates that "Everyone is prohibited from carrying out forest and/or land burning activities".

Amar ruling *judex factie* which is pro against nature by declaring PT. Ka has committed an Unlawful Act of having to pay material compensation in cash to the Plaintiff through the State Treasury account in the amount of Rp. 114,303,419,000.00 (one hundred fourteen billion three hundred three million four hundred and nineteen thousand rupiah), not planting on peatlands that have been burned covering an area of approximately 1000 hectares within the Business Permit area based on the Aceh Governor's License dated August 25, 2011/25 Raramadhan 1432 H no. 525/BP2T/5322/2011 an area of 1,605 hectares located in Pulo Kruet Village, Darul Makmur District, Nagan Ray a Regency, Aceh Province for oil palm plantation cultivation business and must take environmental recovery measures against burned land covering an area of approximately 1000 hectares for Rp. 251,765,250,000.00 (two hundred and fifty-one billion seven hundred sixty-five million two hundred and fifty thousand rupiah) so that the land can be reused as should be by applicable laws and regulations.

Polluters are responsible, both in efforts to countermeasures and restore the environment. In enforcing the Civil Environmental Law, adequate legal rules are needed to be able to anticipate development in the industrial sector and losses caused by polluters [16].

Uniquely, legal remedies at the level of appeals of corporate cases as exploiters were also rejected. When PT. KA again made appeals legal remedies in the Supreme Court, the supreme court judges thus carried out legal findings (*rechtvinding*) with judges who were pro-environmental protection which gave birth to positive jurisprudence and good for environmental sustainability. The birth of *the principle of in dubio pro natura* became

the basis for the re-rejection of pt legal remedies. KA through Supreme Court Decision Number 651 K/Pdt/2015.

Objections to the calculation of environmental compensation and land recovery costs cannot be justified because the amount of compensation has referred to the Regulation of the Minister of Environment Number 13 of 2011 which has been made by authorized government agencies in the field of policy formulation and coordination of environmental implementation and by involving environmental experts. Determining environmental damages is not the same as determining material compensation in other cases whose amount or amount of loss can be measured by the market price of a product or object, for example, the price of land and the price of a house or medical expense incurred by a doctor or a hospital. The environment and the natural resources contained in it as a creation of God Almighty have very complex ecological functions whose many benefits are for humans and not all of which benefits are also known by humans.

The complexity and benefits of the environment and the natural resources contained therein can be understood and explained, among others, by environmental experts as well as by local wisdom. Therefore, determining the value of money or the price of damage to natural resources can be assisted by expert testimony and the knowledge of judges obtained from local examinations. Once the environment is damaged or decreased in quality and quantity, then the recovery efforts carried out by humans cannot fully restore the environment to its original state. Man is incapable of creating natural resources because that creation is the dominion of God Almighty. Therefore, determining the cause and effect between Defendant's activities and the occurrence of land fires, between land fires and environmental losses arising today and their consequences in the future must indeed be based on the doctrine in dubio pro natura which implies that if faced with causal uncertainty and the amount of compensation, then the decision maker, both in the field of executive power and judges in civil cases and environmental administration must give consideration or judgment that prioritizes the interests of environmental protection and restoration.

The use of the doctrine of "*in dubio pro natura*" in the settlement of civil and administrative environmental cases is not a far-fetched consideration because it turns out that the Indonesian legal system has recognized this doctrine which is based on the principles contained in Article 2 of Law Number 32 of 2009, namely *precautionary*, environmental justice, biodiversity and polluter pays principle. Therefore, the objection of the Petitioner of Cassation on the matter of causation between the activities of the Petitioner of Cassation and the environmental losses arising and the environmental damages to be borne by the Petitioner of cassation shall be rejected;

The settlement of environmental disputes through the legal means of the courts is carried out by filing an "environmental lawsuit" under Article 34 of the Law on The Law. Article 1365 BW on "indemnity for unlawful acts" (*onrechtmatigedaad*). Based on this provision, it is still difficult for the victim to succeed in an environmental lawsuit, so the possibility of losing a case is very large. The main difficulties faced by the victim of defamation as a plaintiff are among others: first, the proof of the elements contained in Article 1365 BW, especially the element of error (*schuld*) and the element of causal relationship. Kees van Durn, as quoted by Andri Wibisana, said that errors in PMH objectively have two characteristics that must be proved. The first is the possibility of

knowledge about risks, namely the knowledge that an action can have certain consequences. This knowledge is general, in the sense of general knowledge which does not have to be knowledge that the perpetrator (defendant) possessed at the time he performed his deeds. Second is the ability to avoid these risks. A person cannot be held accountable for an effect that he cannot avoid [17].

According to Hugo Grotius, that man has a strong yearning for society in a peaceful and orderly social life according to the measure of understanding reason, all creations are related in mutual harmony, as if according to an eternal promise. The rule of justice is based on two tendencies: 1) Everyone must defend his life and oppose adverse tendencies; and 2) Everyone is allowed to gain for himself, the mastery that is useful for his life. Hugo Grotius as a proponent of humanism, who views man as a person, recognizes that the person has certain rights, this is true for every individual in society [18].

Preventive efforts in the context of controlling environmental impacts need to be carried out by utilizing optimally the instruments of supervision and licensing. If pollution and environmental damage have occurred, it is necessary to make repressive efforts in the form of effective, consequential, and consistent law enforcement against pollution and environmental damage that has occurred. The above article is expected to be carried out in a good and appropriate way. One of them is the role of judges who are independent professionals in reasoning. This independence must still be guaranteed, even if he sits as a member of the assembly. The judge, who insists on keeping other alternatives beyond the verdicts of his peers, must still be respected. For this reason, the arguments he submitted should be contained in the judgment as well, both in the form of *dissenting opinions* (*contrariety of opinion*) and *concurring opinions.* Legal certainty in the protection and management of the environment is the responsibility of the state in the use of natural resources to provide the greatest benefit for the welfare and life of the people, both the present and future generations who can guarantee the right of citizens to obtain a good and healthy living environment and to prevent environmental destruction from natural resource utilization activities. The religious decision of judges who handle environmental cases, the Supreme Court considers it necessary to establish Guidelines for Handling Environmental Cases through the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases (SK KMA 36 of 2013). The Guidelines for Handling Environmental Cases came into effect on February 22, 2013 [18].

However, the Guidelines have not accommodated the principle *of in dubio pro natura* so that judges are bold for pro-environment rather than corporations holding permits to explore the environment. Thus, it is necessary to review the legal findings in the Supreme Court Decision No. 651 K/Pdt/2015 which refers to the principle *of in dubio pro natura* in deciding environmental cases by prioritizing the concept of *deep ecology.*

Sustainability is of little priority thus translating to poor communication of global sustainability agenda to the stakeholders [19]. Ensuring environmental sustainability is inseparable from moral laws to ensure its sustainability as a right for future generations, as Immanuel Kant stated that:

> *"Two things filled my mind with astonishment and awe that grew bigger and bigger, the more often and stronger I pondered it: the starry sky above me and the moral law within me"*

The futuristic consideration of the judge as a form of *ius constituendum* towards things that have not yet happened is very much illustrated in Supreme Court Decision No. 651 K/Pdt/2015. Judges are very progressive, not only assessing what has happened but in environmental cases considering aspects of *sustainability* for the next generation ranging from grandchildren, great-grandchildren, to so on as future generations who also have the right to enjoy a good living environment.

Exploitation without limitation and not considering environmental *sustainability (environment sustainability*) can potentially damage the environment and kill its sustainability. Thus, the progressiveness of judges is urgently needed to stop exploitative steps that have the potential to damage the environment in the future.

3 Conclusion

The application of *the principle in dubio pro natura* contained in legal findings made by judges as a form of sustainable development has existed since the existence of supreme court decision No. 651 K/Pdt/2015. Concretization of the sustainability of the application of *the principle in dubio pro natura* needs to be emphasized through the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases so that judges who decide environmental cases can be guided by this principle by prioritizing environmental sustainability and overriding the interests of entrepreneurs.

Acknowledgments. The author would like to thank the committee for being willing to accept this manuscript, and also providing an opportunity for this paper to be published. The author also expresses his gratitude to Lentera Constitution and Justice as a forum that continues to be productive to support its members to continue to actively carry out useful activities in the fields of law, education, and training, encourage publication, and others.

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