

# THE RECOGNITION OF THE LEGAL STANDING OF ENVIRONMENTAL ORGANIZATIONS IN INDONESIA\*

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## *Abstract*

*This study aims to identify and assess the recognition of the legal standing of environmental organizations in Indonesia as well as to identify and assess the suitability of the use of legal standing environmental organizations with Article 92 of Law Number 32 of 2009 on the Protection and Environmental Management (UUPPLH). This research is normative. Data were analysed by descriptive qualitative. Research shows that environmental organizations are very effective push policy reforms and changes attitudes and behaviour of government and business. Legal standing not just filed to the court, but also to the Administrative Court and the Constitutional Court.*

**Keywords:** legal standing, environmental organization.

## *Intisari*

Penelitian ini bertujuan untuk mengetahui dan mengkaji diakuinya legal standing organisasi lingkungan hidup di Indonesia serta untuk mengetahui dan mengkaji kesesuaian penggunaan legal standing organisasi lingkungan hidup dengan Pasal 92 Undang-Undang Number 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH). Penelitian ini merupakan penelitian normatif. Data dianalisis secara deskriptif kualitatif. Penelitian menunjukkan bahwa organisasi lingkungan hidup sangat efektif mendorong pembaruan kebijakan dan mengubah sikap serta perilaku Pemerintah dan pelaku usaha. Legal standing diajukan tidak hanya ke Pengadilan Negeri, namun juga ke PTUN dan Mahkamah Konstitusi.

**Kata Kunci:** legal standing, organisasi lingkungan.

## *Pokok Muatan*

A. Background.....	505
B. Research Method .....	505
C. Results and Discussion .....	506
1. The Recognition of the Environmental Organizations Legal Standing in Indonesia .....	506
2. The Suitability of Environmental Organizations Legal Standing Usage with Article 92 of the UUPPLH .....	509
D. Conclusion .....	514

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## A. Background

In the implementation of the responsibility of environmental protection and management, environmental organizations are eligible to participate. The role of environmental organizations is stipulated in Article 65 paragraph (4) of Law No. 32 of 2009 on the Protection and Environmental Management (UUPPLH). The participation rights are also associated with the responsibility to preserve the function of the environment, which is stipulated in Article 67 of the UUPPLH. Furthermore, participation rights are also based on every person's right to a good and healthy environment as stipulated in Article 65 paragraph (1) of the UUPPLH. The more extensive elaboration of the right to a good and healthy environment is the recognition of the right of environment to be protected and preserved, but environment as a right holder cannot sustain its right without the help of people to litigate the environmental pollution and destruction through the courts. Environmental pollution or destruction means that it has violated human and environmental rights over the sustainability of its carrying capacity, so it needs the role of environmental organizations to defend those rights, one of which is a legal recognition that would allow environmental organizations to file a lawsuit. The right of environmental organizations to file a lawsuit is called as the legal standing of environmental organizations. The first time that the right of environmental organization to sue or environment organization legal standing became a legal issue was when WALHI (The Indonesian Forum for the Environment) filed a lawsuit against five government institutes and PT. Inti Indorayon Utama for the environmental pollution and destruction at the Central Jakarta District Court in 1988. In that case, the judge accepted WALHI legal standing, in which WALHI was not affected by the environment and was not the authority of the people affected by the environment. The decision of the Central Jakarta District Court became a precedent for cases of environmental disputes,

so that the attempt of the legal standing has been managed to be added explicitly in Law Number 23 of 1997 on the UUPPLH, which was then removed and replaced with Law Number 32 of 2009.

Currently, the format of this legal standing lawsuit doesn't have the adjustment in Indonesian civil law. As a new thing, this kind of lawsuit cannot be accepted by the judges at first, but ultimately there are judges who are brave enough to accept the legal standing of environmental organizations as parties in a civil suit. Based on the conventional procedural law or the old procedural law, the tort doctrine in Indonesia adheres to the principle of "point d'interest, point d'action" or no action without a legal interest, which means that a person or group can be said to have the standing if there is a legal interest. In the legal standing, environmental organization is not the party who suffers a loss. The acceptance as that party is only after a long process, after several lawsuits filed in the form of legal standing that was originally rejected by the judge on the grounds of that it is not regulated in Indonesian procedural law. However since 1988, there was a change in the paradigm of judges on the role of the environmental organization. From the background of the problems described above, then the problems can be formulated as follows: (1) Why are the environmental organizations recognized to have the legal standing? (2) Is the legal standing used by environmental organizations in accordance with what is intended by the Article 92 of the UUPPLH?

## B. Research Method

This research was conducted with the normative approach supported by the empirical research, which includes a research on understanding the law and the provisions of law and its compliance with the terms of the practice in the field. Research materials are obtained from the literature research supported by the field research. Data obtained from the field research is the primary data, while data obtained from

the literature research is the secondary data. The research tool used is the study of documents. The method to collect the data in this study is by using the secondary data, obtained through the literary study related to the theme of the writing, as well as searching through the internet. In addition to complement the secondary data, the researcher also conducted interviews with several major environmental organizations, well-known, and incorporated in Indonesia using the interview guidelines. Those environmental organizations are *WALHI* (The Indonesian Forum for the Environment), *Pro Fauna*, *LASA* (Institute for Animal Advocacy), *Yayasan gibbon Indonesia*, *WWF Indonesia*, *JATAM* (Mining Advocacy Network), and *ECOTON* (Ecological Observation and Wetlands Conservation). The data analysis method used is descriptive qualitative, it is by describing the secondary data obtained from the literature research and the primary data obtained from the field research to obtain a conclusion as the answers to the problems that have been formulated.

### C. Results and Discussion

#### 1. The Recognition of the Environmental Organizations Legal Standing in Indonesia

The granting and recognition of environmental organizations legal standing cannot be separated from the opinion or theory put forward by Christopher Stone in his very well known article which is "Should Trees Have Standing? Toward Legal Right for Natural Objects." He said that at first people thought that it is only the man's family who has the right, others outside his family is a suspect, an alien, rightless. In fact, in his own family, the child is also not entitled. It's only then the right of the child got the recognition. Gradually, other people also have the right, such as prisoners, foreigners, women, people with less memory, the

blacks, the fetus in the womb and others. Later on, it is not only human who has the right. The legal world is also inhabited by the rights-holders that are not human, such as corporate, municipal, association, state, and so on. Stone states that we are now accustomed to talking about **corporation having its own rights, and being a person and a citizen** for the purposes of a variety of regulatory. Something that was unthinkable previously and considered impossible then became a reality and this sort of things happens all the time in the history of law. Based on this observation, Stone suggested giving the rights to forests, oceans, rivers, and other natural resources that exist in the environment, even to the environment itself.<sup>1</sup> The recognition of the legal standing in Indonesia is a new breakthrough or progress. The existence of the right for the environment cannot be separated from the recognition of the right of everyone to a good and healthy environment, in which according to the UUPPLH, the right to a good and healthy environment is one of human rights.

The significance of a good and healthy environment is an environment that can allow humans to develop optimally, aligned, harmonious and balanced. This guarantee gives the possibility for everyone to demand the Government to consider and improve the goodness and health of the environment continuously and therefore it is also a responsibility of the state to always create a good and healthy environment for its citizens, and make the improvements and sanitation efforts for the environment continuously.<sup>2</sup>

According to Suparto Wijoyo, an environment cannot be considered as a legal subject. A legal subject has rights and responsibilities. An environment only acts as a person with rights and it cannot be bound by responsibilities. As a person with rights, environmental is decided to gain the legal protection.<sup>3</sup> This opinion is in line

<sup>1</sup> Koesnadi Hardjosoemantri, 2005, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta, p. 431.

<sup>2</sup> Soll\_Cup Collection's Blog, "Hak Atas Lingkungan Hidup yang Baik dan Sehat", <http://newberkeley.wordpress.com/2011/06/23//hak-atas-lingkungan-hidup-yang-baik-dan-sehat/>, 11 Desember 2012.

<sup>3</sup> Suparto Wijoyo, 2003, *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*, accessed on 11 December 2012, Airlangga University Press, Surabaya, p. 50.

with Koesnadi Hardjasoemantri's opinion, which states that the viewpoint that natural resources are persons with rights is right. This fulfillment of rights is the human responsibilities that act on behalf of and for the benefit of those resources. However, natural resources are not legal subjects, because a legal subject is the one with rights and responsibilities, while natural resources cannot be burdened with the responsibility.<sup>4</sup> The writer agrees with these two points of view. Although it has the right, environment has no responsibility. Thus, the environment is not a legal subject, but rather a quasi-legal subject (as if regarded as legal subjects or subjects of a fake law), because a legal subject is something that can legally have rights and responsibilities, which further has the authority to act, that is the man (individuals) and legal entities.

In Indonesia, the acceptance of the environmental organizations legal standing is based on:<sup>5</sup>

1. Public Interest Factors

Along with the times, there are many emerging cases involving the public interest, including environmental cases. This resulted in the emergence of advocacy organizations, such as environmental organizations. They turn a finger to fight for the interests of society and to encourage the policy renewal and to change the attitudes and behavior of the bureaucracy and employers without any legal interest, whether proprietary or economic interest through the pressures. One of the pressures exerted is through a lawsuit in court, so it is needed their access to be able to appear in court as a plaintiff, through the acceptance and recognition of his right to sue (legal standing).

2. The Factor of The Control of Natural Resources by The State

Constitutionally, the objects of natural resources are controlled by the state, which is consequently the sustainability

of natural resources depends on government activism and courage as the state apparatus. However, in practice the government often ignores its responsibilities, for example, government does not apply the licensing, does not perform the oversight function which is already specified in the legislation. Such circumstances require environmental organizations to take corrective actions through legal actions. To realize this, it is required the acceptance or recognition of their access to court through the legal standing.

In addition to these two factors, according to the writer there are some things that become the reason for the recognition of environmental organizations to have the legal standing, namely:

1. Referring to the theory put forward by Christopher Stone, it is right when the legal standing is given to environmental organizations, as they control and have the extensive knowledge or insight about what the focus of their activities is, in this case environment, and their human resources are relatively well prepared because it consists of those who are determined to fight for environmental rights.
2. Environmental organizations as a manifestation of the definition of "person" according to the UUPPLH have the responsibility to preserve the function of the environment and control the pollution and environmental destruction. This responsibility arises because environmental organizations also have the rights in environmental management, the right to participate, the right to a good and healthy environment, and so on.
3. By granting the access for environmental organizations to sue in court, it can provide a deterrent for perpetrators of environmental pollution or destruction, even for entrepreneurs whose businesses have the potential cause of environmental pollution or destruction. Besides the entrepreneurs, it is also expected to

<sup>4</sup> Koesnadi Hardjasoemantri, *Loc.cit.*

<sup>5</sup> Mas Achmad Santosa dan Sulaiman N. Sembiring, 1997, *Hak gugat Organisasi Lingkungan (Environmental Legal Standing)*, ICEL, Jakarta, pp. 13-14.

provide a deterrent effect to government or the authorized institute that issues permits relating to the environment, because licensing is very influential for the sustainability and the carrying capacity of the environment. Thus, entrepreneurs will be more careful to conduct their businesses, and the government or licensing agencies will be cautious in issuing policies and permits relating to the environment.

4. The enhancement of public trusts toward the environmental organizations which is also a Non Governmental Organization (NGO) as a non-governmental organization committed to improving the welfare of the people, upholding democracy, protecting and fighting for the preservation of the environment, human rights, gender equality, and so on.
5. The enhancement of public or citizen's trusts that environmental organizations have high morals that should be valued and respected as a professional and accountable organization to fight for people's right to a good and healthy environment, in particular the right of the environment to be conserved through the recognition of their rights to sue in court.
6. Law Number 8 of 1985 on Community Organization, also has given recognition to the existence of NGOs (including environmental organizations) as a participation place for people who have the rights and responsibilities as the citizens in society, nation, and state in Indonesia. The implementing regulations are Government Regulation Number 18 of 1986 on the Implementation of the Law Number 8 of 1985, the Instruction of Interior Minister Number 8 of 1990 on the development of NGOs. In the appendix of the Instruction of Interior Minister Number 8 of 1990 dated March 19, 1990 on the Guidelines for the Development of Non Governmental Organization Roman II Common Understanding, given the meaning of NGOs, which is an organization or institution established by the members of the Indonesian citizens voluntarily on their own will and interested, and is engaged

in certain activities established by the organization or institution as a form of public participation in efforts to improve the lives and welfare of the community, with an emphasis on self-service basis.

It is clear that the government did not doubt the role of environmental organizations as one of the NGOs. The involvement of environmental organizations through the recognition of their legal standing is very important to maintain the balance of the Government in carrying out its policies in order not to violate the rules that have been defined. In terms of control, it can be said it is not ready. It can be seen that there has been no implementing regulations. In other words, there are no special rules on legal standing. Also in the UUPPLH, it is also not mentioned clearly on the procedures for filing a civil action in environmental matters by people, communities, and environmental organizations, so it is analogous that the procedures for filing legal standing refers to the applicable civil procedural law, so environmental laws do not have their own procedural law, whereas a legal standing lawsuit has its own peculiarities characteristics that has not been accommodated in the applicable civil procedural law.

**Legal standing**, which is called as the right of environmental organization to sue by the UUPPLH *is stipulated in* Article 92 of the UUPPLH, which states that:

- (1) In the implementation of the responsibilities and management of environmental, environmental organizations have the right to bring a lawsuit for the sake of environment conservation.
- (2) The right to bring a lawsuit is limited to the demands to perform certain actions without any claim for compensation, except the costs or real expenses.
- (3) Environmental organizations may file a lawsuit if these requirements are met:
  - a. Incorporated;
  - b. Asserted in its statute that the organization was founded for the sake of environment conservation; and
  - c. Has undertaken concrete activities in accordance with its statute of at least 2 (two) years.



With the regulation of the legal standing for the first time in the Law Number 23 of 1997 as it has been replaced by the UUPPLH it means that originally legal standing is only recognized for the environmental field. However in its development later, legal standing is also regulated in a variety of legislation, namely:

1. Article 46 Paragraph (1) Letter c Law Number 8 of 1999 on Consumer Protection.
2. Article 73 Law Article 73 41 of 1999 on Forestry.
3. Article 37 Law Number 18 of 2008 on Waste Management.
4. Law Number 24 of 2003 on the Constitutional Court, as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 on the Constitutional Court.
5. Government Regulation Number 59 of 2001 on Non-Governmental Consumer Protection Agencies.

## 2. The Suitability of Environmental Organizations Legal Standing Usage with Article 92 of the UUPPLH

Various environmental cases have been submitted to the court by using the mechanisms of legal standing, although in reality there are not many environmental organizations that use their right to sue. From the research done by the writer to some well-known environmental organizations in Indonesia, namely *WALHI*, *Yayasan gibbon Indonesia*, *JATAM*, *Pro Fauna*, *LASA*, *WWF Indonesia*, and *ECOTON*, in general, they stated that although the legal standing has been legally recognized since 1997, there are not many that use it, with the reasons:

1. The UUPPLH requires that to go to court environmental organizations should be incorporated, in their statutes expressly mention the establishment of goals for the sake of environmental conservation, and has been carrying out activities in accordance with its statute of at least one or two years. These requirements

are considered burdensome because of many environmental organizations that have not been incorporated even though they have been doing activities in accordance with its commitments. In addition, many environmental organizations that do not clearly state the purpose of the establishment for the benefit of the environment.

2. There are many lawsuits filed that were defeated so it made the environmental organizations are reluctant to take legal action. In practice, they are much more encouraging mapping management area, reviving the customary legal systems to protect important ecological areas, mass action, and media campaigns.
3. In a trial, it requires a long time, effort, and cost which are not little so it diminishes the interest within the organization to use the legal standing or their right to sue.
4. The controls regarding legal standing are still required implementing regulations to be clearer as in class action.

However, environmental organizations also recognize that the recognition of their legal standing is needed to actualize their right to participate in the field of environmental protection and management, especially in the enforcement of environment laws, in addition to making government more cautious in granting licenses, while entrepreneurs will also seek to minimize the extent of environmental damage and pollution raised from their business or activities.<sup>6</sup>

Here are some examples of environmental organizations legal standing tort cases: **Firstly**, *WALHI* Foundation lawsuit against the Head Office of Integrated Licensing Services of Pati Regency, as the first defendant, and PT. Semen Gresik Tbk. As the second defendant Intervention by the Administrative Secretary General of Semarang with the Verdict Number 04/G/2009/PTUN.SMG dated August 6, 2009. In this case, the object of the dispute is the Verdict of the Head Office of Integrated Licensing Services of Pati Regency Number 540/052/2008 dated November

<sup>6</sup> The results of interview via email with Yayasan WALHI, Yayasan Gibbon Indonesia, JATAM, ProFauna, LASA, WWF Indonesia, and ECOTON on November 25<sup>th</sup>- December 14<sup>th</sup>, 2012.

5, 2008 on Amendment to the Verdict of the Head Office of Integrated Licensing Services of Pati Regency Number 540/040/2008 on Mining Permits zone Mineral Exploitation Group C Limestone on behalf of Ir. Muhammad Helmi Yusron. The decision was considered to be contrary to the applicable legislation and the general principles of good governance. The substance of the decision is permission to mine limestone covering an area of 700 hectares located in the Gadudero Village, Kedumulyo Village, Sukolilo Village, Tompegunung Village, and Summersoko Village residing in the Sukolilo subdistrict Pati, Central Java. Here WALHI won, with the dictum rejected the defendant's exception entirely, granted the plaintiff's lawsuit entirely, declared to be void the Decree Number 540/052/2008, requiring the defendant to revoke the decree, and sentenced the defendant to pay the court costs.<sup>7</sup>

Toward the judge's decision, the defendant filed an appeal to Surabaya Administrative Court. On the appeal, the decision of the Semarang Administrative Court has been canceled by the Administrative Court through the Decree Number. 138/B/2009/PTUN.SBY dated November 30, 2009. Toward the decision of the Administrative Court, the plaintiff (WALHI) appealed. On appeal, Supreme Court judges overturned Surabaya Administrative Court and judge themselves with the dictum rejected the defendant's exception entirely, granted the plaintiff's lawsuit entirely, declared void the Decree Number 540/052/2008, requiring the defendant to revoke the decree, and sentenced the defendant to pay the court costs.<sup>8</sup>

Associated with legal standing, both the Semarang Administrative Court judge in Semarang and the judge of Surabaya Administrative Court, have received WALHI legal standing with the legal basis:

- a. Law Number 23 of 1997 on Environmental Management (Article 38).

- b. The Verdict of the Constitutional Court Number 058-059-060/PUU-II/2005 on Testing the Law Number 7 of 2004 on Water Resources of the 1945 Constitution.
- c. The Verdict of the State Administrative Court Number 088/G/1994/Piutang/PTUN Jakarta on Reforestation Funds Transfer for Loans Without Interest to Nusantara Aircraft Industry.
- d. The Verdict of Central Jakarta District Court Number 820/PDT.G/1988/PN. JKT.PST. on Legal Actions against Lawsuit between WALHI against PT. Inti Indo-rayon Utama.

When viewed in the Article 92, of UUPPLH the controls of environmental organizations legal standing (the right to sue) are in the civil realm, so the lawsuit filed limited to:

- 1) To request to the court that a person ordered to perform certain legal actions relating to environment conservation goals
- 2) To declare that a person has committed an illegal act as polluting or damaging the environment
- 3) Ordered someone who does business and/or activities to create or improve the waste treatment unit.

In such cases if we see the lawsuit, it means that the State Administrative Court was authorized to examine, decide, and resolve the dispute. While Law Number 5 of 1986 on State Administrative Court as amended by Law Number 9 of 2004 on Amendment of Law Number 5 of 1986 on State Administrative Court, that was amended again with Law Number 51 of 2009 on Second Amendment of Law Number 5 of 1986 on State Administrative Court, did not admit the environmental organization legal standing suit so that the legal basis used by judges is Law Number 23 of 1997 and judges' jurisprudence. The elucidation of Article 38 paragraph (3) of Law Number 23, 1997 states that not every environmental organization can act in the environment, but they must meet certain requirements. With the requirements

<sup>7</sup> Semarang Administrative Court Decision Number 04/G/2009/PTUN.SMG concerning WALHI case against the Head Office of Integrated Licensing Services of Pati Regency and PT. Semen Gresik Tbk., August 6<sup>th</sup>, 2009.

<sup>8</sup> Supreme Court Decision Number 103 K/TUN/2010 concerning Requesting Appeal WALHI case against the Head Office of Integrated Licensing Services of Pati Regency and PT. Semen Gresik Tbk., May 27<sup>th</sup>, 2010.

referred to above, then selectively **the existence of environmental organizations is recognized to have ius standi to file a lawsuit on behalf of the environment to the court, either to the general court or state administrative courts, depending on the competence of the relevant courts** in checking and trying the case. In the UUPPLH this is not strictly regulated, including the procedure for filing a legal standing suit. However, in practice, procedures for filing a lawsuit refers to the civil law if the disputed issues are in the realm of civil, and a lawsuit filed to state administrative courts if the disputed issues are licensing issues.

**Secondly**, WALHI case against the Governor of Aceh and PT. Kalista Alam. WALHI filed suit to Banda Aceh Administrative Court with the Verdict Number 19/G/2011//PTUN-BNA, terminated on April 3, 2012. WALHI used its legal standing to demand the cancellation of administrative decisions which was the Permit of Governor of Aceh Number 525/BP2T/5322/2011 on Cultivation of Plantation Business Permit to PT. Kalista Alam in Pulo Kruet Village Darul Makmur subdistrict Nagan Raya Province of Aceh on August 25, 2011, as opposed to the legislation and the general principles of good governance. Toward that claim, Banda Aceh Administrative Court judges decided that:

- a. To declare that Banda Aceh Administrative Court is not authorized to examine, decide, and resolve disputes in case Number 19/G/2011/PTUN-BNA;
- b. To state a plaintiff's lawsuit is not accepted;
- c. To punish the plaintiff to pay the court costs.

The consideration of the judge was although the object of the dispute is an administrative dispute, the judges judged series of administrative processes in the form of a dispute resolution outside the court that has not been done by the plaintiff, the first defendant, the second defendant intervention.

On the basis of these reasons, the judges stated that the dispute between the plaintiff, the first defendant, the second defendant intervention, cannot be sued to court, because there are administrative processes referred to in Article 84 of Law Number 32 of 2009 on the Protection and Management of the Environment, but the judges did not ignore the goodwill of the defendant by issuing Termination Letter to PT. Kalista Alam for a subpoena and a petition filed by the *Tim Koalisi Penyelamatan Rawa Tripa* (TKPRT) dan *Forum Tata Ruang Sumatera* (FORTRUST). Toward the decision of the Banda Aceh administrative court, the plaintiff (WALHI) appealed to Medan Administrative Court with the Decision No. 89/B/2012/PT.TUN-MDN.<sup>9</sup> The judges of Medan Administrative Court argued that the dispute was a dispute over the state administration, not dispute over the environment, so that the access of WALHI is regulated by Article 93 of the UUPPLH in conjunction with Article 53 paragraph (1) of Law Number 9 of 2004 on the Amendment of Law Number 5 of 1986 on the State Administrative Court, namely:

Article 93 of the UUPPLH states that (1) Any person can file a lawsuit against the state administrative decision if: (a) An institution or administrative officer issuing environmental permits to businesses and / or activities that must Environment Impact Analysis but not equipped with Environment Impact Analysis documents; (b) An institution or administrative officer issuing environmental permits for activities that are required Environmental Management and Environmental Monitoring, but not fitted with Environmental Management and Environmental Monitoring Documents, and/or (c) An institution or administrative officials issuing a business and/or activities license that is not equipped with an environmental permit. (2) Procedures for the submission of the administrative decision refers to the State Administrative Court Procedure Code. The

<sup>9</sup> The Verdict of the Medan Administrative Court Decision Number 89/B/2012/PT. TUN-MDN concerning The Cancellation Decision of the Administrative Court of Banda Aceh Number 19/G/2011/PTUN-BNA concerning WALHI case against the Governor of Aceh and PT. Kalista Alam, August 30<sup>th</sup>, 2012.



Article 53 paragraph (1) of Law No. 9 of 2004 on the Amendment of Law No. 5 of 1986 on the Administrative Court states that a person or private legal entities that feel their interests are aggrieved by the Decision of a State Administrative may file a written claim to the competent court which demanded that the disputed decision of the State Administrative is declared void or invalid, with or without a claim for damages and/or rehabilitated.

Here WALHI plaintiff is a private legal entity which can be evidenced by a notarial deed, so based on those two Laws, WALHI has the right to file a lawsuit. Earlier in the trial level I, the defendant questioned WALHI legal standing by saying that the plaintiff did not have the right to sue because based on the facts in the trial the plaintiff cannot prove that he has done a real activity for environment conservation to the object case in accordance with the mandate of the legislation. The judges of the Administrative Court also provided the extension of the meaning of Article 93 paragraph (1) letter c of the UUPPLH associated with the Article 53 paragraph (2) letter a and b of Law Number 9 of 2004 on the Amendment of Law Number 5 of 1986 on the Administrative Court. The expansion of the meaning stated in the judge's consideration is that the testing of the dispute object is not only limited to the presence or absence of an environmental permit but also must be based on whether the administrative decisions are being contravenes with the applicable laws and regulations or the administrative decisions are being contravenes with the principles of good governance, in which in that case is the regulations regarding the Cultivation Plantation Business Permit stipulated in the Regulation of the Minister of Agriculture Number 26/Permentan/OT.140/2/2007 dated February 28, 2007 on Plantation Business Licensing Guidelines. The Decision of the judges of Medan Administrative Court is to grant WALHI lawsuit and to cancel the disputed administrative decisions.

If it is observed, that case is not a legal standing lawsuit as stipulated in Article 92 of

the UUPPLH. Judges used Article 93 of the UUPPLH to accept WALHI lawsuit. Thus WALHI as a body of civil law is a manifestation of the people understanding. Article 93 paragraph (2) of the UUPPLH states that the procedures for filing a lawsuit against the administrative decision refer to the procedural law of the State Administrative Court. Here, it can be concluded that the procedural law of the State Administrative Court has recognized community organizations (including environmental organizations) to sue, explicitly stipulated in Article 53 paragraph (1) of Law No. 9 of 2004 as mentioned earlier.

**Thirdly**, ECOTON Tort Case. The first lawsuit filed on November 22, 2007 to the Governor of East Java and East Java Environment Agency with Case Number 677/Pdt.6/2007 /PN.Sby. At that time, ECOTON judged that the Governor broke the law in the classification of the water, capacity, and forceful measures against companies that had polluted *Kali Surabaya*. However the lawsuit was not to get into the merits of the case because ECOTON immediately revoked the lawsuit after the deed of peace on April 10, 2008. The reconciliation was proposed by the Governor of East Java, then decided by the Surabaya District Court judge. In that deed of peace, the Governor is willing to issue the Governor Regulation regarding the determination of the allocation of *Kali Surabaya*, maximum of six months after stipulating the Regulation of East Java Number 2 of 2008 on Management of Water and Water Pollution Control in East Java. In that deed, the Governor is also willing to shut down and stop the discharge of effluent from the entire company in East Java to the river, in attempt to restore the quality conditions of the water of *Kali Surabaya* to meet drinking water quality standards. However until 21 months after the deed of peace was signed, there was no effort from the Governor and the Environment Institute to fulfill their responsibilities. Assessing the default governor, ECOTON represented by LBH Surabaya sued for the second time to Surabaya District Court.

In his lawsuit, ECOTON demanded a public apology from the Governor through three national newspapers, three local newspapers, thirteen radio, and five television. Furthermore, ECOTON demanded the Governor to pay the delay of Governor rulemaking of 20 million dollars per day. However, this lawsuit also came to an end peacefully, after negotiations held between the two parties. The peace agreement reached in the trial in the District Court of Surabaya, led by the Chief Judge, Ali Makki. The decision required the Government of East Java (Environment Institute and the Governor of East Java) made the determination of water quality of *Kali Surabaya* and pollution load capacity through the Governor Regulation. The given time limit is 2 years since the verdict peace was taken.<sup>10</sup>

Looking at the case, the achieved peace efforts indeed have the rule. The mediation procedures in the first trial is guaranteed for its existence in 2003 namely through the Supreme Court Rules Number 2 of 2003 as revised by the Supreme Court Rules Number 1 of 2008 on Mediation Procedures in Court, stipulates that civil environmental disputes including disputes in which if submitted to the court shall be through the mediation procedure. If the agreement is not reached in the process, the dispute can proceed to the litigation. Thus all civil disputes submitted to the trial court unless the laws state otherwise, for example, cases that were resolved through commercial court procedures, labor court, the objection to the decision of the Consumer Dispute Settlement Institute, and the objection to the decision of the Business Competition Supervisory Commission, must first be attempted to get its settlement through mediation.<sup>11</sup>

During its development, although legal standing recently recognized in the environmental

field, consumer protection, forestry, waste management, and the constitutional court, there is a court decision that also recognizes and receive non-governmental organization (NGO) legal standing though not engaged in the areas mentioned above. The court decision is that the acceptance of the Alliance of Independent Journalists (AJI) lawsuit, thus this means that there is expansion of the judges' view in the standing law. In this lawsuit, AJI is against the Republic of Indonesia c.q Interior Minister c.q Head of the Provincial Governor of DKI Jakarta et al in 2002, the legal consideration of the Panel of Judges in Central Jakarta in its decision Number 212/Pdt.G/2002/PN.JKT.PST is "although our legislation recently recognizes the legal basis for filing the organizations right to sue or legal standing in certain fields, according to the panel it cannot be interpreted that it is the organizations right to sue in other certain fields of law". It means, in cases involving other fields of law, there are opportunities for organizations or groups to apply through legal standing, provided that the submission meets the requirements and appropriate legal criteria according to the court. Based on the evidence filed by the plaintiff, it was found out that AJI did not have the status of a legal entity or foundation. Thus, the lawsuit with the procedural of the organization right to sue is the filing of a lawsuit by an organization with a special interest and the specific requirements for any tort, on behalf of the public interest, based on the applicable legislation.<sup>12</sup>

With the judge's jurisprudence, it does not guarantee that the claims of legal standing in other areas will be accepted by the judge. For example, a lawsuit filed by a non-governmental organization which is Indonesian Human Rights Committee for Social Justice (IHCS) against PT. Freeport Indonesia Company related to

<sup>10</sup> Prigi Arisandi, "Ecoton Gugat Gubernur", <http://www.ecoton.or.id/tulisanlengkap.php?id=2114>, accessed on 10 December 2012.

<sup>11</sup> Diani Sadiawati, "Efektivitas Penyelesaian Sengketa Lingkungan Hidup di Indonesia", in BAPPENAS, 2011, *Akses terhadap Keadilan, Penelitian dan Rekomendasi Kebijakan*, A cooperation between Van Vollenhoven Institute, Leiden University and National Development Planning Institute, Jakarta, pp. 7-8.

<sup>12</sup> Agustinus Edy Kristianto and Patra M. Zen (Editor Produksi), 2008, *Panduan Bantuan Hukum di Indonesia: Pedoman Anda Memahami dan Menyelesaikan Masalah Hukum*, published in cooperation YLBHI and PSHK, Jakarta, pp. 497-498.

the Contract of Work made by Freeport with the Government of Indonesia. The judges of South Jakarta District Court through its decision Number 331/Pdt.G/2012/PN.Jkt.Sel stated the IHCS lawsuit is unacceptable. IHCS was considered to have no legal standing. The assembly rejected the plaintiff's legal standing because IHCS is not an environmental organization or a consumer who has the right to sue in accordance with environmental laws and consumer protection laws.

According to the writer, the judges have a very narrow view by connecting the legal standing only in the field of environment and consumer protection, whereas currently the legal standing is also stipulated in the field of forestry, waste, even the constitutional court has also admitted it. There was also the jurisprudence judge in the case of AJI that could be used as a consideration for the judges.

Legal standing is also recognized in the Constitutional Court. Legal standing in the Constitutional Court is the legal subject's ability to meet the requirements by law to apply for judicial review of the constitution to the Constitutional Court. The conditions according to Law Number 8 of 2011 concerning Amendment of Law Number 24 of 2003 on the Constitutional Court are as follows: (1) Formal requirements: Qualifying applicants are as individual citizens, the unity of indigenous communities, public or private legal entities, state agencies; dan (2) Terms of material: There are rights and/or constitutional authority of the applicant aggrieved by the enactment of the legislation.

The constitutional loss parameters are: (a) the existence of the applicant's rights/constitutional authority provided by the 1945 Constitution; (b) the applicant's rights/constitutional authority are considered by the applicant has been harmed by a law that is tested; (c) the losses of the applicant's rights/constitutional authority is

specific (special) and actual or at least potential which are based on logical reasoning will surely occur; (d) there is causality (*causal verband*) between loss and enactment petitioned; (e) the possibility that the granting of a petition will make the loss of rights/constitutional authority argued will not or no longer occur.

A case in point is the request from WALHI et al for testing the Law No. 4 of 2009 on Mineral and Coal Mining through the decision Number 32/PUU-VIII/2010 dated June 4, 2012. In such case, the applicant has concentrated on human rights, environment, agrarian. They filed a petition for Law Number 4 of 2009 toward the 1945 Constitution, namely Article 6 paragraph (1) letter e *jo*. Article 9, paragraph (2), Article 10 letter b, Article 162 *jo*. Article 136 paragraph (2). Those articles are considered to be detrimental to the efforts being made continuously in order to perform the tasks and roles for environmental education and awareness in various sectors, legal education and human rights, advocacy for the marginalized citizens that became the victims of Indonesia's development that has been done by WALHI. The dictum of the Constitutional Court is to grant the requests of the applicants for the majority.<sup>13</sup>

#### D. Conclusion

Based on the description in the previous chapter, it can be concluded: **Firstly**, environmental organizations in Indonesia are recognized to have legal standing because because it refers to Christopher Stone's theory that entitles the environment or natural objects, environmental organizations as the manifestation of people understanding, the increase of public trust toward environmental organizations, the presence of Law Number 8 of 1985, which has recognized the existence of NGOs, environmental organizations as a controller of the government action. **Secondly**, various environmental cases have been brought to

<sup>13</sup> The Verdict of the Constitutional Court Number 32/PUU-VIII/2010 concerning the testing of Act No. 4 of 2009 on Mineral and Coal Mining to the 1945 Constitution of the Republic of Indonesia, June 4<sup>th</sup>, 2012.

court with legal standing mechanism. In practice, the legal standing of environmental organizations submitted to the district court, the Administrative

Court, Constitutional Court, there is even a judge who accepts the environmental organization's legal standing not the environment.

## REFERENCES

### A. Book

Hardjasoemantri, Koesnadi, 2005, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta.

Kristianto, Agustinus Edy, and Patra M. Zen (Editor Produksi), 2008, *Panduan Bantuan Hukum di Indonesia: Pedoman Anda Memahami dan Menyelesaikan Masalah Hukum*, published in corporation YLBHI dan PSHK, Jakarta.

Mahmud, Syahrul, 2012, *Penegakan Hukum Lingkungan Indonesia*, Graha Ilmu, Yogyakarta.

Sadiawati, Diani, "Efektivitas Penyelesaian Sengketa Lingkungan Hidup di Indonesia", dalam BAPPENAS, 2011, *Akses terhadap Keadilan, Penelitian dan Rekomendasi Kebijakan*, published in corporation Van Vollenhoven Institute, Universitas Leiden and BAPPENAS, Jakarta.

Santosa, Mas Achmad, and Sulaiman N. Sembiring, 1997, *Hak gugat Organisasi Lingkungan (Environmental Legal Standing)*, Cetakan I, ICEL, Jakarta.

Wijoyo, Suparto, 2003, *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*, Airlangga University Press, Surabaya.

### B. Internet Articles

Arisandi, Prigi, "Ecoton Gugat Gubernur", <http://www.ecoton.or.id/tulisanlengkap.php?id=2114>, accessed on 10 December 2012.

Soll\_Cup Collection's Blog, "Hak Atas Lingkungan Hidup yang Baik dan Sehat", [newberkeley.wordpress.com/2011/06/23//hak-atas-lingkungan-hidup-yang-baik-dan-sehat/](http://newberkeley.wordpress.com/2011/06/23//hak-atas-lingkungan-hidup-yang-baik-dan-sehat/), accessed on 11 December 2012.

### C. Court Judgments

Supreme Court Decision Number 103 K/TUN/2010 concerning Requesting Appeal WALHI case against the Head Office of Integrated Licensing Services of Pati Regency and PT. Semen Gresik Tbk, May 27<sup>th</sup>, 2010.

Constitutional Court Decision Number 32/PUU-VIII/2010 concerning the testing of Act No. 4 of 2009 on Mineral and Coal Mining to the 1945 Constitution of the Republic of Indonesia, June 4<sup>th</sup>, 2012.

Semarang Administrative Court Decision Number 04/G/2009/PTUN.SMG concerning WALHI case against the Head Office of Integrated Licensing Services of Pati Regency and PT. Semen Gresik Tbk, August 6<sup>th</sup>, 2009.

Medan Administrative Court Decision Number 89/B/2012/PT. TUN-MDN concerning The Cancellation Decision of the Administrative Court of Banda Aceh Number 19/G/2011/PTUN-BNA concerning WALHI case against the Governor of Aceh and PT. Kalista Alam, August 30<sup>th</sup>, 2012.