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The Administrative Court Judges Paradigm on Justice and the Protection of the Awyu Indigenous People's Rights in Environmental Permit Dispute

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Abstract: The environmental permit dispute between the Awyu Indigenous People and PT Indo Asiana Lestari highlights challenges in protecting indigenous rights and environmental justice in the Administrative Court. The main issue lies in the legal paradigm that prioritizes procedural aspects and material losses, while neglecting local wisdom, community participation, and long-term ecological impacts. This study aims to analyze the judicial paradigm in Administrative Court rulings and its implications for the protection of indigenous rights and environmental sustainability. Using normative legal research and the critical legal studies approach, the findings indicate that administrative court decisions reinforce structural injustice by limiting the definition of harm to material losses, without considering social and ecological damages. As long as the law remains unchanged, judges will continue to adhere to a procedural and formalistic approach. Therefore, legal reform is necessary, particularly a review of Article 53(1) of the Law on Administrative Court, to enable judges to consider social and ecological impacts in their decisions.

Keywords: Awyu Tribe, Judges Paradigm, Administrative Court Authority

1. Introduction

Government policies that intersect with environmental preservation and indigenous rights often face significant obstacles in the pursuit of justice, hindered by power imbalances and inadequate legal paradigms. This is evident in the dispute between the Awyu Indigenous People and PT Indo Asiana Lestari (IAL) regarding an environmental permit that has drawn public attention. The conflict stems from the Decree of the Head of the Papua Provincial Investment and One-Stop Integrated Service Agency No. 82 of 2021, which granted PT IAL permission to clear 36,094.4 hectares of land in the Mandobo and Fofi Districts, Boven Digoel Regency, Papua, for oil palm plantations and processing facilities. This land clearing not only threatens forest conservation but also jeopardizes the rights of the Awyu Indigenous People, sparking resistance movements that culminated in petitions and a trending social media campaign under the theme "All Eyes on Papua."[1]

This project poses a potential threat to indigenous forests and violates the rights of communities that rely on these forests as part of their identity and livelihood. This kind of food investment has a negative impact on indigenous peoples because it exploits and damages the natural environment, ignores the rights of indigenous peoples, erodes traditional agricultural practices, and exacerbates food insecurity and conflict.[2] Land clearing is almost certain to result in deforestation, which has been proven to reduce biodiversity.[3] For the Awyu Indigenous People, this represents a serious threat, as they heavily depend on the natural resources provided by the forest.[4] For the people of Papua, land is not merely an asset; it is the breath of their culture, a symbol of identity, and a vital source of livelihood for indigenous communities. It is often regarded as the indigenous people's personal bank account.[5] It is an undeniable fact that indigenous law communities have existed since before Indonesia's independence. Therefore, the control of customary land by these communities should be regarded as a reflection of rights that a priori have been inherently attached to the entity of indigenous law communities long before independence.[6] In this context, it is important to examine how the paradigm adopted in the judges' decision in this dispute impacts justice and the protection of indigenous rights.

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1 Rachmatunisa. (Juni, 2024). *Apa Itu #AllEyesonPapua yang Ramai Jadi Trending Topic di Medsos*. Dikutip dari Apa Itu #AllEyesonPapua yang Ramai Jadi Trending Topic di Medsos. https://inet.detik.com/science/d-7371062/apa-itu-alleyesonpapua-yang-ramai-jadi-trending-topic-di-medsos

2 Guyalo, Amanuel Kussia., Alemu, Esubalew Abate., & Degaga, Degefa Tolossa. (2022). Impact of large-scale agricultural investments on the food security status of local community in Gambella region, Ethiopia. Agriculture & Food Security, 11 (43), 2.

3 Marpaung, David Septian Sumanto., Anika, Nova., & Bindar, Yazid. (2021). Effect of Land Clearing Activity on Environmental and Arthropods Diversity (Case Study: Jati Agung, Lampung). Jurnal Ilmu Lingkungan, 19 (2), 446.

4 Mayastuti, A., & Puwadi, H. (2023). Customary forest designation policy a realization of sustainable development goal achievements in indonesia (study of indigenous peoples in lebak regency Banten). IOP Publishing Conference Series : Earth and Environmental Science, 1180 (1), 4.

5 Makuba, Nesta. (17 Januari, 2022). Masyarakat Adat Awyu di Papua, Lambangkan Tanah Selayaknya Rekening Pribadi. Aliansi Masyarakat Adat Nusantara. Dikutip dari https://www.aman.or.id/index.php/news/read/1574.

6 Pattinasarany, Ayu Brenda., Tjoanda, M., Matuanakotta, J.K., & Laturette, A.I. (2023). Implementation of the Recognition and Protection of the Rights of Indigenous Peoples in the Management of Indigenous Forests in Maluku. International Journal of Scientific and Research Publications, 13 (5), 427.

The Administrative Court (PTUN) Decision No. 6/G/LH/2023/PTUN.JPR, Decision No. 92/B/LH/2023/PT.TUN.MDO, and Cassation Decision No. 458 K/TUN/LH/2024 provide an overview of the judges' paradigm in handling cases involving indigenous rights. The court is an "arena of ideological struggle," where actors are engaged in a dynamic of competing interests. According to Manko, legal interpretation is always influenced by the ideology or thinking paradigms of the judges and other actors involved.[7] The failure of the Awyu Indigenous People in court reflects their defeat in the ideological struggle. The judges based their decision on the argument that "procedurally and substantively, the disputed object does not contradict the laws and regulations or the principles of good governance." As a result, the Awyu Indigenous People's arguments regarding local wisdom, the impact of palm oil, environmental sustainability, and the principle of justice were deemed irrelevant in this case.[8]

Based on the decision, it is important to highlight how the judges' paradigm influences the decision-making process, especially in environmental disputes. In matters related to environmental decisions, it is clear that consideration of social license and assessment of environmental impacts are crucial elements that need to be taken into account.[9] The approach used by the judges reflects how the prevailing norms and laws are applied in resolving conflicts like this. In the case of the Awyu Indigenous People, the decision that disregards the principles of local wisdom and environmental sustainability underscores the need for an evaluation of how the law functions. By examining this case through the lens of Critical Legal Theory, we can see how existing legal norms may be insufficient, potentially influencing the judges' paradigm in delivering justice for indigenous communities and the environment.

This study offers a novel contribution compared to previous research, which has primarily focused on procedural aspects. It highlights the lack of substantive justice in the protection of indigenous rights and addresses two main research questions. First, it examines how the judges' paradigm in the a quo decision influences substantive justice and the protection of indigenous rights in environmental permit disputes. This analysis aims to determine whether the legal considerations in the decision uphold the principles of substantive justice and protect indigenous interests. Second, it explores the role and authority of the The Administrative Court (PTUN) in ensuring justice and safeguarding indigenous rights in such disputes. This study not only assesses the normative aspects of court rulings but also evaluates the position and function of PTUN in adjudicating disputes involving indigenous communities. In practical terms, the findings of this research are expected to provide valuable insights for policymakers and judicial institutions in developing a more inclusive legal framework and advancing regulatory and judicial reforms to enhance legal protection for vulnerable groups in environmental disputes.

2. Methodology

7 Manko, Rafal. (2022). Judicial Decision-Making, Ideology and the Political: Towards an Agonistic Theory of Adjudication. Law and Critique, 33 (2), 180.
8 Administrative Court decision in Jayapura No. 6/G/LH/2023/PTUN.JPR., 279.
9 Amici Curiae Brief. (2023). Pendapat Hukum Para Sahabat Pengadilan Terhadap Perkara Nomor 6/G/Lh/2023/Ptun.JPR., 16.

This study employs a normative legal research method. Normative legal research involves examining norms, principles, theories, philosophies, and legal rules to find solutions or answers to legal issues, whether in the form of legal gaps, norm conflicts, or norm ambiguities.

Consequently, normative legal research is characterized as a library or literature-based study.[10] Normative legal research relies on secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials. These legal materials are then collected and analyzed to produce research findings.[11] Primary legal materials are derived from legislation, legal theories, and legal principles. Secondary legal materials refer to library sources that support legal arguments, such as books, articles, scientific journals, proceedings, research findings, and other literature that can be used to deepen the research analysis. Meanwhile, tertiary legal materials include news, information from the internet, and other relevant documents related to the research context.[12] This study specifically employs Critical Legal Studies (CLS) emerged as a critique of the legal crisis that fails to deliver true justice, CLS as the primary approach to examining how the judicial paradigm in administrative courts ensures substantive justice in environmental disputes and indigenous rights cases.[13] CLS is used to critique the formalistic application of law and to analyze how legal norms may reinforce structural injustices against marginalized communities.[14]

3. The Judges Paradigm in PTUN Decision No. 6/G/LH/2023/PTUN.JPR

The Administrative Court (PTUN) essentially has limited duties and authority in adjudicating administrative disputes, as stipulated in Article 47 of Law Number 5 of 1986 concerning Administrative Court Procedures (hereinafter referred to as the PERATUN Law). According to Article 1 point 10 of the PERATUN Law, an administrative dispute is defined as a dispute arising between administrative officials and individuals or legal entities due to the issuance of an Administrative Decision. PTUN will exercise its authority to rule on a lawsuit only if administrative remedies have been pursued beforehand. In the case *a quo*, the Plaintiff had submitted administrative remedies by filing objections and requesting information from the Defendant, which were subsequently ignored. PTUN does not have the authority to replace or issue new administrative decisions; it can only annul decisions deemed legally flawed. The emphasis on procedural formalities in PTUN decisions aligns with its limited authority, which is restricted to assessing the formal legality of administrative decisions. This means that if administrative procedures are carried out in accordance with the applicable regulations, PTUN tends to consider the decision valid, even if the decision may have significant implications, including potential violations of human rights.

10 Nurhayati, Yati., et al. (2021). Metodologi Normatif dan Empiris dalam Perspektif Ilmu Hukum. Jurnal Penegakan Hukum Indonesia, 2 (1), 8.

11 *Ibid.*

12 *Ibid.*

13 Trianto, Agus., Rosida, Nina., & Wijaya, Endra. (June 2023). Critical Legal Studies: Memahami Hubungan Antara Kepentingan Bisnis, Pemerintah dan Hukum. Mendapo Journal of Administration Law, 4 (2), 134-149.

14 Stewart, James Gilchrist. (2020). Demystifying CLS: A Critical Legal Studies Family Tree. Adelaide Law Review, 41 (1), 122.

3.1. The Problems of the Decision

This limitation can be observed in the *a quo* decision, where the lawsuit against the Decree granting an environmental permit for the palm oil plantation development by PT IAL reveals several violations of the rights of the Awyu Indigenous People and applicable legal procedures. The judges failed to consider the fact that the lack of socialization and community participation regarding PT IAL Environmental Impact Assessment. process was a significant oversight. The involvement of Indigenous communities in the permitting process is a fundamental principle in environmental law and human rights, as outlined in various international instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This can be seen through Article 10 of UNDRIP which affirms that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return".[15] The process, which disregarded the community's voice, including the objections raised, reflects a lack of commitment to the principles of good governance. Furthermore, based on the time frame between October 5, 2022, and March 13, 2023, which exceeds the 90 working days limit, the Plaintiff's lawsuit was filed beyond the deadline set in Article 5 paragraph (1) of the Supreme Court Regulation Number 6 of 2018. This article regulates the time limit for submitting an administrative dispute after administrative efforts, which is 90 working days from the receipt or announcement of the result of such efforts.

Table 1. Timeline of the Awyu Tribe Lawsuit at PTUN Jayapura

Date	Event	Description
Nov, 2 2021	Issuance of Disputed Permit	Papua DPMPTSP issued SK No. 82/2021 for PT Indo Asiana Lestari.
Aug 25, 2022	Plaintiff Obtains Document	Document obtained from the Papua Forestry & Environmental Agency.
Sep 21, 2022	Administrative Objection Filed	Plaintiff submitted an objection to the Head of Papua DPMPTSP (10 working days response deadline).
Oct 11, 2022	Objection Response Deadline	No response from the Head of Papua DPMPTSP.
Oct 18, 2022	Administrative Appeal Filed	Plaintiff submitted an appeal to the Governor of Papua (10 working days response deadline).
Nov 7, 2022	Appeal Response Deadline	No response from the Governor of Papua.
Mar 13, 2023	Lawsuit Filed at PTUN Jayapura	Lawsuit filed beyond the 90-working-day limit (should have been filed by Mar 7, 2023).

Source: Decision No. 6/G/LH/2023/PTUN.JPR

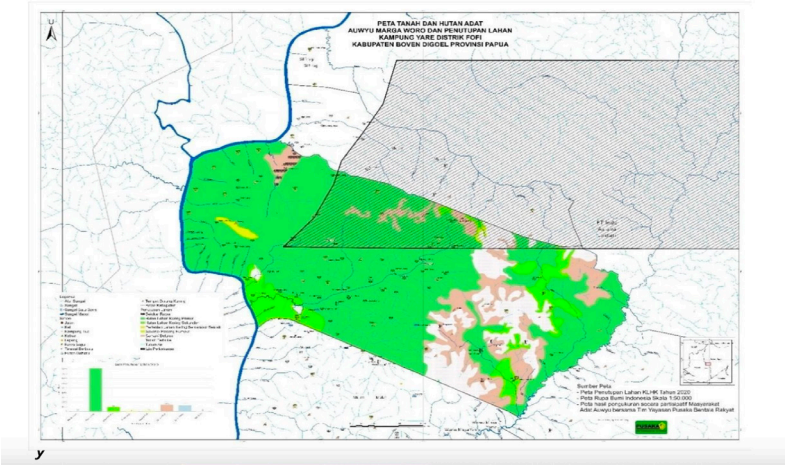
Therefore, the Plaintiff's lawsuit is considered expired. The judges' approach, which can be appreciated, is how the court set aside formal justice to achieve substantive justice by accepting the lawsuit despite its procedural

15 United Nations Declaration on the Rights of Indigenous Peoples

shortcomings.[16]

The struggle of the Awyu tribe to defend their rights becomes even more intriguing, considering that the tribe has gone through a lengthy legal process in the Administrative Court, from the first instance, appeal, to cassation. On September 18, 2024, the Cassation Court issued Decision No. 458 K/TUN/LH/2024, led by the Chief Justice Dr. Irfan Fachruddin, S.H., C.N., along with two other judges, Dr. Cerah Bangun, S.H., M.H., and Dr. H. Yodi Martono Wahyunadi, S.H., M.H. In this decision, there was a dissenting opinion included in the legal considerations, where Dr. H. Yodi Martono Wahyunadi, S.H., M.H. expressed a differing opinion from the other judges. There were four dissenting opinions articulated in the *a quo* decision.[17]

Image 1. The customary land and forest map of the Awyu Tribe, Moro clan, shows that a 2,014 hectare area of Woro clan's customary territory overlaps with PT Indo Asiana Lestari's permit.



Source: Decision No. 6/G/LH/2023/PTUN.JPR

First, regarding the time frame for filing a lawsuit as stipulated in Article 5 paragraph (1) of Supreme Court Regulation (PERMA) No. 6 of 2018 on Guidelines for the Settlement of Administrative Disputes After Exhausting Administrative Efforts, which states that a lawsuit must be filed within 90 working days after the result of the administrative effort is received or announced. However, in its consideration, the panel of judges did not solely focus on formal justice but also took into account substantial justice. Therefore, the court decided to set aside this provision and apply practical invalidation. As a result, the objection raised by the Defendant II intervention, which stated that the lawsuit had exceeded the time limit or had expired, was rejected.

Second, the Petitioners and the Cassation Petitioners in formulating the objects of dispute did not comply with the provisions set out in Article 42

16 Administrative Court decision in Jayapura No. 6/G/LH/2023/PTUN.JPR., 273.

17 Supreme Court decision kasasi No. 458 K/TUN/LH/2024

paragraph (2) and Article 43 paragraph (4) of Law No. 2 of 2021 on Amendments to Law No. 21 of 2001 concerning Special Autonomy for the Papua Province. Article 43 paragraph (4) emphasizes that "The provision of customary land and individual land for the needs of any purpose must be carried out through deliberation with the customary law community and the concerned citizens to reach an agreement on the transfer of the land required and its compensation."

Third, the Cassation Petitioners violated the provisions that state "Everyone has the right to communicate and obtain the information necessary to develop themselves and their social environment," as stipulated in Article 14 paragraph (1) of Law No. 39 of 1999 on Human Rights. Furthermore, the Cassation Petitioners also violated the provision that "Everyone has the right to obtain a copy of public information upon request in accordance with this Law," as stipulated in Article 4 paragraph (2) letter c of Law No. 14 of 2008 on Public Information Disclosure.

Fourth, the Defendant in issuing the object of dispute should have considered the Environmental Impact Analysis, which not only includes environmental aspects but also social aspects. This is evident as the losses arising in areas managed and utilized in a generational manner have not been fully accommodated. Therefore, the object of the dispute in question is in conflict with various principles outlined in Article 2 of Law No. 32 of 2009 on Environmental Protection and Management. As a result, the object of the dispute must be declared invalid.

The difference of opinion in the *a quo* decision among the panel of judges, which could not reach a consensus, led to the decision-making process as stipulated in Article 30 of Law No. 14 of 1985, as amended by Law No. 3 of 2009. According to this provision, the panel of judges must deliberate and make a decision based on the majority vote. The decision was to reject the cassation petitions filed by the Cassation Petitioners I, Hendrikus Woro; Cassation Petitioner II, the Indonesian Forum for the Environment (WALHI); and Cassation Petitioner III, the Pusaka Bentala Raya Foundation.

3.2. Analysis of the Decision

The shift of authority from the District Court to the Administrative Court occurs because the decisions being challenged often contradict existing regulations and may be considered an abuse of power or inconsistent with the principles of good governance.[18] In fact, with the enactment of Law Number 30 of 2014 on Government Administration Law (hereinafter referred to as the GAL), the Administrative Court (PTUN) has undergone significant expansion. It is no longer limited to reviewing state administrative decisions alone; PTUN is also authorized to examine requests related to the abuse of power, including fictitious positive decisions, unlawful administrative actions, and other forms of administrative violations.[19] Meanwhile, in administrative law, the principle

18 Edyanti, Yusrin. (2022). Perbuatan Melawan Hukum Oleh Penguasa (Onrechtmatige Overheidsdaad) (Suatu Tinjauan Analisis Administrasi Pemerintahan). Dharmasisya Jurnal Program Magister Hukum FHUI, 2 (1), 733.

19 Adiwinata, I Gede Ngurah Prahmandita., & Putra, I Putu Rasmadi Arsha. (2021). Perubahan Paradigma Objek Sengketa Tata Usaha Negara yang Diperluas Berdasarkan UU Peratun dan UUAP. Jurnal Kertha

of *presumptio iustae causa* or the presumption of validity is recognized. This principle states that a challenged decision or action remains valid until evidence is presented to the contrary. Therefore, the filing of a lawsuit does not suspend the implementation of the decision.[20] Thus, this law has become one of the factors leading to the neglect of the rights of the Awyu indigenous community by the government, as the court decision entirely rejected the Plaintiff's lawsuit, which requested a suspension of the implementation of the contested decision. The court argued that according to Article 65 of the UUAP, the decision cannot be suspended unless there is a potential for state loss, social conflict, and/or environmental damage.[21]

When reviewing this regulation, the suspension of a decision has been previously regulated in Article 67 of the UU PERATUN, which implicitly states that a request for suspension can be granted if there are "urgent circumstances" and for "public interest" reasons. The explanation of Article 67 further clarifies: "... that is, if the loss suffered by the plaintiff will be significantly disproportionate compared to the benefits for the interests that will be protected by the implementation of the Administrative Decision." Therefore, it can be understood that Article 67 of the UU PERATUN focuses more on the situation faced by the Plaintiff when the decision is in effect, while Article 65 of the UUAP emphasizes more on the material loss to the state. The principle of *lex specialis derogat legi generali* underscores that specific legal norms (UU PERATUN) can override general legal norms (UUAP) in the context of the judicial process in the PTUN.[22]

In the *a quo* decision, the request for the suspension of the implementation of the disputed object by the Plaintiff is based on what is regulated in Article 65 of the UUAP, which states that the implementation of the disputed object is expected to cause environmental damage, such as a decrease in river water quality, soil degradation, flooding, and the loss of biodiversity. This refers to Article 65, paragraph (1), letter b, which allows for the suspension of implementation if there is potential environmental harm. Additionally, the implementation of the disputed object also poses a risk of triggering social conflicts between the Awyu Indigenous Community, particularly between the Woro clan and PT IAL. To prevent such conflicts, the suspension of implementation is also proposed based on Article 65, paragraph (1), letter c of the same law. However, the Defendant emphasized that the Plaintiff only provided an assessment based on potential, yet unrealized impacts, specifically regarding environmental damage. Furthermore, there is no concrete evidence of harm suffered by the Plaintiff, considering that the Defendant has not yet carried out any activities at the intended location. The request for suspension was deemed unreasonable because the Plaintiff has not been able to demonstrate direct and tangible harm, in accordance with the

Wicara, 10 (12), 994.

20 Bimasakti, Muhammad Adiguna. (05 February, 2024). Isu-Isu Hukum Acara Untuk Perubahan Undang-Undang Tentang Peradilan Tata Usaha Negara. (ptun-mataram.go.id).

21 Administrative Court decision in Jayapura No. 6/G/LH/2023/PTUN.JPR., 280

22 Sukri, Indah Fitriani. (2022). Menguji Asas *Presumption Iustae Causa* dalam Sengketa Tata Usaha Negara. DIKTUM: Jurnal Syariah dan Hukum, 20 (1), 45.

provisions of Article 67 of the UU PERATUN.[23]

Based on this, the author believes that the difference in paradigms between Article 67, paragraph (4) of the UU PERATUN and Article 65 of the UUAP creates a conflict (antinomy).[24] The normative conflict creates uncertainty, injustice, and a lack of protection in legal practice, where the court may struggle to determine whether a decision should be postponed. Furthermore, Article 65, paragraph (3) mentions that a delay can be requested by government officials or court decisions, whereas it would be more appropriate for the delay to be based on requests from the affected community. This clearly requires improvement to provide legal certainty and ensure that the voices of the community are heard. Government actions that violate the law often involve flawed paradigms and require strong evidence. Problematic norms can complicate judges' decisions, and if the norm is deemed incorrect, the resulting judgment could have a domino effect on future decisions. This creates a challenge in legal theory and necessitates a reevaluation of the existing legal framework.

In the following, as stated in the *a quo* decision, since the administrative decision has not caused harm to the plaintiff, all the claims presented were based solely on assumptions about potential future events, specifically regarding environmental damage. Consequently, the request for a delay was rejected. In reality, the Awyu indigenous community has been marginalized by the law because the court ignored their claims in the conflict with the corporation. As a result, they are struggling to achieve intergenerational justice and are at risk of losing the ability to pass down their forests to future generations.[25] An important reflection in this case is that an administrative decision (KTUN) can be considered to have the potential to cause environmental damage and may be delayed by the PTUN. In determining the request for a delay, the judges need to consider the urgency of the government's decision, refer to the results of an audit conducted by a certified environmental auditor, and ensure that the decision regarding the delay does not contradict the public interest or the sustainability of the environment in the future.[26]

4. The Function and Authority of the Administrative Court (PTUN) in Providing Justice and Protection for the Community

The Administrative Court (PTUN) is an important component in realizing a good governance system, which includes the guarantee of protection for the rights of the community. There is a connection between PTUN and state apparatus in understanding the fundamental principles of good governance and the primary

23 Administrative Court decision in Jayapura No. 6/G/LH/2023/PTUN.JPR. jo. Decision No. 92/B/LH/2023/PT.TUN.MDO.

24 Adikancana, Santi Hapsari Dewi., *et.al*. (2022). Penundaan Pelaksanaan (*Schorsing*) Keputusan Tata Usaha Negara Pada Putusan Nomor 74/G/2014/Ptun-Bdg Suspension Of Administrative Decision In Administrative Court Decision Number 74/G/2014/Ptun-Bdg. Jurnal Hukum Peratun, 5, 145-148.

25 Syahwal. (2024). Kelindan Identitas dan Lingkungan: Perjuangan Masyarakat Awyu Menggapai Keadilan. Jurnal Pro Natura, 1 (1), 58-75.

26 Sukri, Indah Fitriani., & Erliyana, Anna. (2022). Konsep Pelaksanaan Keputusan Tata Usaha Negara: Menguji Asas *Presumptio Iustae* Causa Dalam Sengketa Tata Usaha Negara. Jurnal Hukum & Pembangunan, 52 (1), 49-50.

functions of PTUN. As a judicial institution, PTUN plays a role in exercising judicial control over state apparatus that implements the principles of good governance based on the AAUPB (General Principles of Good Administration), which then becomes the fundamental norm in carrying out legal actions and governance.[27]

The functions and authority of the Administrative Court (PTUN) are regulated under Law No. 5 of 1986 concerning Administrative Court, which has been amended several times, most recently through Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 concerning Administrative Court. Philosophically, the purpose of establishing the Administrative Court is to protect individual and community rights, ensuring balance, harmony, and alignment between private and public interests.[28]

The competence of the Administrative Court (PTUN) has undergone changes following the enactment of Law No. 30 of 2014 on Government Administration (hereinafter referred to as UUAP), which includes the examination of all Government Decisions, Government Actions, fictitious positive decisions, and requests for the assessment of abuse of authority.[29] The significant changes following the enactment of the UUAP in administrative disputes have not been accompanied by changes to the Administrative Court Law (UU PERATUN), resulting in an antinomy between the two regulations. This includes the procedural law paradigm in administrative disputes, which still adopts Civil Procedure Law, thus emphasizing material losses that must be proven.

The argument is further supported by several decisions from the Administrative Court (PERATUN) that illustrate how administrative judges have focused on material losses, such as: First, Decision Number 74/G/2014/PTUN-BDG regarding a Suspension Lawsuit (Schorsing). In this ruling, the Administrative Court judge granted the plaintiff's request for suspension and ordered the defendant to delay the implementation of the administrative decision, with the letter number PL.105/V/6/KA – 2014.[30] The approval of the request was based on Article 67 of the PERATUN Law, which stipulates that the plaintiff's interest must be significantly harmed. The harm referred to here is material loss, where the plaintiff, PT. Bajatra, suffered damage caused by the Executive Vice President of Logistics at PT. KAI (Persero), who imposed a blacklist sanction through letter PL.105/V/6/KA – 2014. As a result of this administrative decision, the company could no longer participate in procurement processes within PT. Kereta Api Indonesia (Persero) permanently. Based on Article 67 paragraph (4) of the PERATUN Law and Article 65 of the GAL (UUAP), both require an assessment of the administrative decision if material losses are proven, and an urgent situation is present. The term "urgent" is understood as the situation where the execution of the administrative decision would cause irreversible factual

27 Akbar, Muhammad Kamil. (2021). Peran Peradilan Tata Usaha Negara dalam Mewujudkan Pemerintahan yang Baik. Dharmasisya Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia, 1 (1), 361.

28 Ridwan. (2019). Urgensi Upaya Administratif Di Indonesia. Yogyakarta: UII Press, 30.

29 Nasution, Agus Nardi. (2023). Perkembangan Kompetensi Absolut PTUN Beserta Problematikanya (Analisis Menurut UU PTUN dan UU No. 30 Tahun 2014 tentang Administrasi Pemerintah). Journal Lex Laguens, 1 (1), 85.

30 Adikancana, Santi Hapsari Dewi., et al. (2022). Op.Cit., 145.

or economic changes.[31]

Second, the Semarang Administrative Court Decision Number 064/G/2014/PTUN.Smg involved a lawsuit against the Governor of Central Java's Decree Number 660.1/17 of 2012 regarding the Environmental Permit for PT. Semen Gresik (now PT. Semen Indonesia) in Rembang Regency. The lawsuit was filed by local residents and WALHI (Indonesian Forum for the Environment) because the mining activities in the Watuputih karst area were believed to damage the strategic ecosystem, threaten water sources, and affect the quality and quantity of water for the community. The plaintiffs requested a suspension and cancellation of the Decree, but the court accepted the defendant's exception, stating that the lawsuit had exceeded the 90-day deadline as per Law Number 5 of 1986. As a result, the panel of judges did not consider the substance of the lawsuit regarding environmental impacts. This decision received criticism for overlooking the potential significant harm to the community due to damage to the karst area, despite the lawsuit being rejected on procedural grounds.

Additionally, there was a lawsuit filed by the community affected by flash floods in South Kalimantan Province against the Governor of South Kalimantan in the Banjarmasin Administrative Court. In their lawsuit, the community argued that the government had been negligent in flood prevention efforts. As a result of this negligence, 342,987 people were affected by the flood, and 63,608 individuals had to evacuate. According to an assessment by the South Kalimantan audit body, the estimated losses due to the flood amounted to IDR 1.39 trillion. The lawsuit was partially granted, with the court ordering the establishment of a flood early warning system (EWS) in South Kalimantan. As a result, the government allocated IDR 771.5 million for the Early Warning System (EWS) in the 2022 budget and created an EWS post worth IDR 2.2 billion, followed by rehabilitation of uninhabitable houses in 5 districts/cities, amounting to IDR 376 million.[32]

In several of the discussed rulings, it is evident that the judges focus their attention on the actual losses resulting from an administrative decision or action. An academia[33], in his critical analysis, states that this judicial perspective may be influenced by the provisions of the norms in the Administrative Court Law (UU PERATUN). Based on this interpretation, a lawsuit is considered logical to be filed and accepted by the court if it meets two requirements: (1) There is an administrative decision or action being challenged; and (2) There is tangible loss that can be proven, where the petitioner or plaintiff must present concrete evidence of the harm caused by the administrative decision or action. Thus, this paradigm tends to emphasize proving actual harm as the basis for accepting and processing a lawsuit within the context of administrative court proceedings.

The existence of Article 53 paragraph (1) of Law Number 9 of 2004 on the First Amendment to the Administrative Court Law (UU PERATUN), along with its explanation, provides room for judges to interpret it by rejecting lawsuits if the harm is not yet visibly apparent. However, potential harm should also be accepted as a basis

31 Ibid. 150

32 Wibowo, R. A., & Gunawan, S. H. (2024). Pelindungan Hukum terhadap Keputusan dan Perbuatan Pemerintah: Perkembangan, Kasus dan Kritik. In R. A. Wibowo (Ed.), Hukum Administrasi Negara: Konsep Fundamental, Perkembangan Kontemporer dan Kasus (1st ed., pp. 297–336). Rajawali Press..

33 Ibid, 320.

for filing a lawsuit, as long as it can be substantiated with reasonable reasoning. Such legal norms have the potential to limit the role of the Administrative Court (PTUN) in carrying out preventive functions to avoid future issues. A narrow interpretation of the concept of harm could hinder efforts to address administrative problems before their negative effects fully manifest, thereby reducing the effectiveness of the Administrative Court Law in proactively protecting the interests of the public.

In line with the aforementioned opinion, the Decision of the Chief Justice of the Supreme Court No. 36/KMA/SK/II/2012 regarding the Implementation of Environmental Case Handling Guidelines clearly shows that all structural and functional officials, along with the judicial apparatus, are instructed to implement the Environmental Case Handling Guidelines uniformly, disciplined, orderly, and responsibly. The guidelines state that in handling environmental cases, judges must be bold in applying principles of environmental protection and management, including the precautionary principle and judicial activism. The Prevention of Environmental Harm principle is one of these principles. Pollution and/or environmental damage in a certain area or environmental component will affect other areas or components of the environment. Therefore, environmental permits should not be viewed merely as administrative formalities but as crucial instruments for prevention and control in environmental management. Thus, the significance of permits lies not only in their formal existence but also in their substance and implementation.[34]

Ideally, the PTUN judges in deciding cases related to environmental issues should apply judicial activism, as seen in the *a quo* decision, which granted part of the plaintiff's claim to suspend the implementation of the Environmental Permit Decision from DPMPTSP regarding the palm oil plantation development by PT IAL. This aims to allow for a reassessment of the Environmental Impact Assessment, which is central to the issue at hand, and to facilitate negotiations between the parties involved to achieve mutual justice, particularly for the Awyu indigenous community, as the rightful landowners affected by the decision.

The *a quo* case provides an interesting example for analysis using the perspective of Critical Legal Studies (CLS). The court's decision to reject the plaintiff's request for a suspension of the disputed decision reflects several fundamental critiques raised by CLS theorists regarding the legal system and its operation in society, which often fails to protect the interests of marginalized groups and the environment. CLS scholars argue that law is not neutral but is shaped by power structures that tend to favor dominant groups, often disregarding the needs of vulnerable communities, such as indigenous peoples or the environment. In this case, the court's dismissal of the request for a delay may be seen as an example of how legal reasoning can perpetuate the status quo, neglecting the urgent need for environmental protection and justice for marginalized communities like the Awyu indigenous group.

The court's emphasis on the need for actual and measurable material harm as a condition for granting the suspension request aligns with the CLS critique of the claims of objectivity and neutrality in the law.[35] By prioritizing concrete economic harm over potential long-term environmental and social impacts, the

34 The decision of The chief Justice of the Supreme Court No. 36/KMA/SK/II/2012

35 Mochtar, Zainal Arifin., & Hiariej, Eddy O.S. (2023). Dasar-Dasar Ilmu Hukum. Depok: Raja Grafindo Persada, 326.

court demonstrates an inherent bias in the legal system that tends to favor the more powerful party, thereby oppressing the weaker party.[36]

Stemming from CLS point of view, the facts that Administrative Court Act requires the petitioners to firstly suffer material losses and neglect potential future consequence as the basis to accept the case are indicating the formalist and bias of the Law. This paradigm overlooks the complex realities of indigenous communities, which are often difficult to quantify in purely economic terms. CLS opposes this approach and asserts that the law should be based on a broader social reality, not just confined to textual realms or material evidence. The court's reliance on a narrow and formalistic interpretation of "emergency situations" and "actual damage" disregards the potential impact on the environment and indigenous communities, arguing that damage has not yet occurred in a tangible way.

This approach overlooks the precautionary principle that should be applied in environmental cases. CLS illustrates its criticism of legal formalism, which tends to separate the law from the complex social realities, resulting in decisions that may be technically "correct" according to the law but fail to fulfill the sense of justice for society or protect the long-term interests of the environment and local communities.[37]

The function and authority of the Administrative Court (PTUN) in providing justice and protection for society need to be critically examined. Although philosophically PTUN aims to protect the rights of individuals and society, in practice, it often becomes trapped in legal formalism. This case demonstrates how PTUN fails to perform its preventive function against the potential environmental damage and violations of indigenous peoples' rights.[38]

CLS views that the judge's interpretation is the primary determinant in case resolution,[39] rather than the mere mechanical application of the law. In the case of the Awyu Tribe, the judge's paradigm, which places more emphasis on procedural and administrative aspects, demonstrates how the law can be used to legitimize structural injustices.[40] The judge's paradigm, which focuses on material losses that can be directly proven, highlights the limitations of the legal system in addressing complex issues such as environmental damage and indigenous rights. However, in this case, the judge seems to overlook the social and cultural realities of the Awyu community, who have a deep connection with their land and forests. Furthermore, CLS criticizes the tendency of the law to separate facts from values.[41] In the case of the Awyu Tribe, this separation is evident in how the judge disregarded the cultural and ecological values attached to customary land, reducing it to a mere administrative issue. In essence, for indigenous communities, land is not just an economic asset, but an integral part of their identity and livelihood.

The analysis of the PTUN Decision No. 6/G/LH/2023/PTUN.JPR in conjunction

36 Gracella, Aswara Lady. (2023). Analisis Putusan Mahkamah Konstitusi No. 96/PUU-XVIII/2020 dalam Perspektif Teori Studi Hukum Kritis. Lembuswana Law Review, 1, 46.
37 Hayat, Rizky Saeful. (2021). Konsep Dasar Critical Legal Studies: Kritik Atas Formalisme Hukum. Jurnal Hermeneutika, 5, 239.
38 Ibid.
39 Zainal Arifin Mochtar, Op.Cit, 326
40 Ibid. 326-327
41 Ibid. 325

with Decision No. 92/B/LH/2023/PT.TUN.MDO and Cassation Decision No. 458 K/TUN/LH/2024 through the perspective of Critical Legal Studies not only reveals the limitations and contradictions in the application of environmental law and indigenous rights in Indonesia, but also serves as a challenge for us to reconsider the role of law in society and its ability to achieve substantive social and ecological justice.

Based on the historical aspect, the establishment of the Administrative Court (PERATUN) occurred during the New Order era, when President Soeharto was in power. According to Ginsburg and Mustofa, the primary mission of PERATUN was not to protect individuals or society, but rather to project a positive image of the regime while minimizing direct confrontation between the public and the regime. Thus, the existence of PERATUN was intended to facilitate the regime's sustainable development programs. This historical perspective is crucial to understanding the paradigm behind the establishment of PERATUN. Article 53 paragraph (1) of the PERATUN Law states, "Any individual or legal entity who feels their interests are harmed by a State Administrative Decision may file a written lawsuit to the competent court...," with material losses being an important criterion. According to the regime at that time, if no material loss had occurred, any government policy was considered a correct decision, meaning the public could not file a lawsuit against such decisions.

However, despite undergoing two amendments, this article has not experienced any changes in its material substance. As a result, this forces the public as plaintiffs to first experience material losses before the court will grant their lawsuit request. If not, the judge will not approve the petition. This is in contrast to Article 65 paragraph (1) of the Administrative Procedure Law (UUAP), which states that decisions that have been established cannot be postponed unless they have the potential to cause state losses, environmental damage, and/or social conflicts. The material loss clause in the PERATUN Law becomes an antinomy with the potential outlined in the clause of the UUAP.

If the purpose of the norm in Article 53 paragraph (1) of the PERATUN Law is not revised in each amendment, this legal orientation will not be able to optimally protect the public interest. This has the potential to result in a judicial paradigm that remains confined to an interpretation that fails to address the need for substantive justice, particularly in terms of preventive justice to avert environmental damage affecting indigenous communities, as seen in this case. The formalistic judicial approach, as reflected in current PTUN decisions, places strict emphasis on procedural compliance and the requirement to prove material harm before granting legal remedies. This approach operates under the assumption that government decisions are deemed valid unless clear legal violations are demonstrated. As a result, it often neglects broader societal interests and environmental concerns that do not neatly fit within the rigid framework of administrative legality. Conversely, the principle of substantive justice emphasizes the necessity of judicial discretion that goes beyond procedural correctness and considers the broader implications of a decision on marginalized communities and environmental sustainability. This approach enables judges to take into account factors such as the intergenerational rights of indigenous peoples, the ecological consequences of large-scale land exploitation, and the urgency of public participation in decision-making processes.

A substantive justice perspective would require courts to proactively assess potential harm and apply the precautionary principle to prevent irreversible damage before it occurs. Therefore, if similar issues arise in the future and this regulation remains unchanged, the judicial paradigm will likely remain entrenched in the existing norm, preventing the evolution of decision-making patterns. Consequently, decisions based on this rigid formalistic approach are likely to fail in delivering balanced justice and will inadequately protect the rights of indigenous communities. However, emphasizing substantive justice will ensure that the legal process serves not only to resolve disputes based on procedural legality but also to uphold the principles of justice, environmental protection, and the rights of vulnerable groups.

5. Conclusion

The decisions of the Administrative Court (PTUN) in the environmental permit dispute between the Awyu Indigenous People and PT Indo Asiana Lestari (IAL), as reflected in Decision No. 6/G/LH/2023/PTUN.JPR, No. 92/B/LH/2023/PT.TUN. MDO, and No. 458 K/TUN/LH/2024, demonstrate the application of a formalistic approach that prioritizes procedural compliance and proof of material harm, while overlooking substantive justice, indigenous rights protection, and environmental sustainability. Article 53(1) of the PERATUN Law restricts the scope of judicial review to administrative legality, leading PTUN decisions to disregard social and ecological impacts in environmental disputes. As long as this regulation remains unchanged, the judiciary's procedural approach will persist, limiting legal protection for indigenous communities and weakening oversight of administrative decisions affecting the environment.

The current regulatory framework reflects the limitations of administrative law in incorporating environmental justice principles, which should not only assess procedural compliance but also consider long-term impacts on ecosystems and local communities. Therefore, policy reform is urgently needed, particularly through a review of Article 53(1) of the PERATUN Law, to ensure that courts can adopt a more inclusive approach by considering non-material harm, the precautionary principle, and indigenous rights protection in environmental dispute resolution. Further research is necessary to analyze and develop regulatory reforms that align with substantive justice principles. Additionally, comparative studies on administrative courts in other jurisdictions that have implemented substantive justice could provide insights for strengthening Indonesia's legal system, making it more adaptive in resolving environmental disputes fairly and sustainably.

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