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ROLE OF JUDICIAL ACTIVISM IN ENVIRONMENTAL DISPUTE RESOLUTION BEFORE THE STATE ADMINISTRATIVE COURT

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Abstract

This study examined the role of judicial activism role in resolving environmental disputes at PTUN. It provided understanding for the judges in order to create justice for both justice seeker and the environment. In this study, the writer used a statutory approach, case study approach, and conceptual approach. Furthermore, the basic concept of judicial activism role and the characteristic of the environmental dispute solution were used as the object of the research. The result revealed that the role of judicial activism role not only strives for just dispute resolution but also keep its environmental justice. Moreover, judges' decisions is reflected on the principle of preventive action, the precautionary principle, the polluter pays principle. The solution of environmental dispute system condimsidered by the judge panel will excavate ecological's values system.

Keywords: *Judicial activism, dispute resolution, environmental, PTUN.*

A. Introduction

Article 28 H paragraph (1) of the second amendment to the 1945 Constitution in states: "Everyone has the right to be physically and mentally prosperous, have a place of living and have a good and healthy living environment and receive health services." Constitutional mandate serves as the basis for the efforts made by the government to uphold and fight for the citizens' right to a prosperous life, i.e., balancing the development of various aspects of life with the environment. The Current conditions, however, illustrate that there are a lot of pollution and disasters due to an imbalance between large businesses and conservation of the environment.

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Administrative enforcement of environmental civil and criminal laws has not had a significant effect on environmental protection. The enforcement of environmental laws is closely related to the ability of apparatus and citizen compliance with laws and regulations. In the context of environmental law enforcement, there is a principle which says: "Officials who have the authority to give (environmental) permits are responsible for the administrative enforcement of environment laws. Administrative law enforcement is the most effective effort compared to the enforcement of criminal and civil laws because it is preventive and has more possibilities to attract community participation. For example, environmental permits. Administrative law enforcement is under the responsibility of PTUN (State Administrative Court).

PTUN, or the State Administrative Court, was established as a governmental effort to fulfill the characteristics of a country with *rechtstaat* or Civil Law system. Philipus M. Hadjon argues that the legal system in Indonesia is the Pancasila legal system in which the concept of the *Reschtstaat* (Civil Law) system and the Rule of Law (Common Law) is inseparable. In addition, Ahmad Ali has a broader opinion, i.e., the legal system in Indonesia is a mix legal system. Indonesian law is a mix of various legal systems, including Civil Law, Customary Law, Islamic Law and judges, using Common Law as a guideline. Based on the legal system applied in Indonesia, the existence of PTUN in Indonesia cannot be separated between Civil Law and Common Law either.

PTUN or the State Administrative Court has two functions, i.e., the function of judicial control and the function of legal protection.[2] PTUN in its judicial control function conducts repressive supervision of the state administrative actions by state administrative agencies or officials. PTUN provides protection for people who seek justice in the administrative sector, i.e., a person or a civil legal entity who feels that their interests are being disadvantaged due to the issuance of certain state administrative decisions. PTUN also provides legal protection to the natural environment, which suffers from damage because of the issuance of certain state administrative decisions to conduct a business and/or activity that brings adverse impacts on the environment.

The number of environmental disputes at PTUN has increased from 2016 to 2017. The Directorate General of Military and State Administrative Courts, the Supreme Court of the Republic of Indonesia, recorded 13 (thirteen) cases of environmental disputes at PTUN throughout Indonesia in 2016.[2] Meanwhile in 2017, there were twenty-one (21) cases.[3] The increase in the number of environmental disputes at PTUN can serve as an

indication of several things. For examples, there is an increasing number of state administrative agencies or officials issuing state administrative decisions related to the environmental sector that violate laws and general principles of good governance; there is increased public awareness of the importance of filing lawsuit in environmental disputes at PTUN; and so on. Nonetheless, after 2017, there was a decrease in the number of disputes before the PTUN even though there was an increase in pollution and environmental damage.

Table: Number of Environmental Disputes in 2017-2019 at several PTUN[2]

No	PTUN	2017	2018	2019
1.	PTUN Jakarta	3	7	0
2.	PTUN Bandung	7	1	3
3.	PTUN Semarang	4	1	0
4.	PTUN Surabaya	1	1	1
5.	PTUN Aceh	0	1	1
6.	PTUN Pekanbaru	0	1	0
7.	PTUN Samarinda	1	2	0
8.	PTUN Pontianak	1	0	0

Environmental dispute resolution before the PTUN is expected to produce fair decisions. Judges are required to make fair decisions in environmental disputes, so judicial activism is needed. Judicial Activism was born from the common law system which is oriented to law which is created based on events that occur in society. The concept of judicial activism can be used by judges in resolving civil, criminal, and administrative disputes. Judicial activism has become a very important tool for administrative court judges in resolving environmental disputes. Environmental permit, which is a part of administrative law, becomes the beginning of any environment-related activities. In order to determine the balance between environmental justice and sustainable development, it is necessary to study the application of judicial activism in the decisions handed down by PTUN judges to resolve environmental disputes.

B. Problem Formulation

Based on the abovementioned description, the author formulated the research problem as follows: Why does judicial activism play an important role in environmental dispute resolution at PTUN? Have PTUN judges applied judicial activism in environmental dispute resolution?

[2] Case Tracking System (SIPP) of the Supreme Court of the Republic of Indonesia of 2017-2019.

This study aims to examine the role of judicial activism in environmental dispute resolution at PTUN to provide understanding to judges in order to create justice for those who seek justice and the environment. After understanding that the role of judicial activism is crucial, whether the PTUN judges have applied judicial activism in resolving environmental disputes through their decisions can be determined.

C. Methodology

Peter Mahmud Marzuki argues that legal research is always normative because the objective or function of legal research is to find the coherence notion of truth instead of the correspondence notion of truth. The function of a research is to find the coherence notion of truth is to obtain something that is axiologically a value or provision or rule as a reference to be studied. In such context, it will not obtain empirical facts, but conformity between something to be studied and the values, provisions, rules or principles that serve as the reference. The truth exists when there is conformity between these two things. If otherwise, there is falsity.[3]

The approach in this legal study employed a statutory approach, case approach, and conceptual approach. The primary legal materials used were the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1986 on the State Administrative Courts jo. Law Number 9 of 2004 Jo. Law Number 51 of 2009 on the Second Amendments to Law Number 5 of 1986 on the State Administrative Courts, Law Number 30 of 2014 on the Government Administration, Law Number 32 of 2009 on Environmental Protection and Management, Administrative Court Decision Number 04/G/2009/2009/PTUN.Smg Jo Decision Number 103K/TUN/2010, and Administrative Court Decision Number 193/G/LH/2015/PTUN-JKT. The secondary legal materials used were legal publications that were not official documents. These legal publications were composed of textbooks, legal dictionaries, legal journals, the internet, reports and comments on court decisions.

[3] Peter Mahmud Marzuki, Penelitian Hukum (12th Edition, PrenadaMedia Group, 2016), 33, then Soejono Soekamto divides research based on the nature, form, purpose, and application. In terms of the objectives of legal research, there are 2 (two) types of legal research, namely normative legal research and sociological or empirical legal research. For details, Soejono Soekamto, Pengantar Penelitian Hukum (Third Edition, Penerbit UI Press, 2015), 50-51. Meanwhile, Soetandyo Wignjosoebroto, divides legal research into doctrinal legal research and non-dotrinal legal research. For details, read Soetandyo Wignjosoebroto, Hukum, Paradigma, Metode dan Dinamika Masalahnya (First Edition, Huma, 2002), 147-160.

D. Discussion and Results

1. Theoretical Review

a. Judicial Activism

The term "judge activism" can be freely translated from its original term as judicial activism. Judicial Activism was born from the common law system, which creates law from events that occur in a society. In resolving disputes, common law judges should use a new rule or change the old ones. That is where the judge made law. The term 'judicial activism' is applied in various legal proceedings, including civil law, criminal law, administrative law, and the Constitutional Court with a variety of cases.

This term was first introduced by Arthur Schlesinger in January 1947 in *Fortune* magazine. Judicial activism is generally understood to describe when judges make new law in their decisions. Brian Galligan defines judicial activism as control or influence of judicial institutions on political and administrative institutions.[4]

> *Judicial activism: A philosophy of judicial decision making whereby Judges allow their personal views about public policy, among other factors, to guide their decisions, with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent. (Judicial Restraint (3) -judicial activism).*

Aharon Barak, in his book entitled *Judge in Democracy* quoted by A Latipulhayat, explains that judicial activism is use of judicial discretion arising due to the complexity of problems to be resolved by the court without adequate existing (in the formal sense) law. Quoting the opinion of Chief Justice Lord Hewart: "*It …is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done, judicial activism requires the court to ensure that justice can actually be achieved by every citizen as easily as they open the door of their own houses*".[5] In judicial activism, the active function of a court responds to various legal and social problems, so the court seems to be an aggressively active institution.

b. Environmental Disputes Before the State Administrative Court

Environmental disputes, in a broad sense, are not limited to disputes arising from pollution or environmental events. David Nicholson defines an environmental dispute as 'a dispute on some way to incidence, or suspected incidence of

[4] Ibid.

environmental pollutions or damages of same kind.[5] Moore defines environmental disputes as tensions, disagreements, altercations, debates, competitions, contests, conflicts, or fights over some element of the natural environment. Casare Romano mentions that environmental disputes are those disputes with environmental element.[6] Blackburn and Bruce define "environmental conflict" as arising "...when one or more parties involved in a decision-making process disagree about an action which has potential to have an impact upon the environment.[7]

Administrative environmental disputes occur between individuals or business entities or environmental organizations who feel that their interests are disadvantaged due to the issuance of a decision made by state administrative agency or officials, as well as the government. Administrative environmental disputes are resolved through the state administrative court. The objects of environmental disputes of which lawsuits could be filed at PTUN are usually related to environmental permits. In fact, development of absolute authority has made it possible to file lawsuits of the factual acts or administrative acts of state administrative officials in the environmental sector at the State Administrative Court.

2. Discussion

a. Role of Judicial Activism in Environmental Dispute Resolution at PTUN

PTUN plays a role in administrative environmental dispute resolution. The administrative enforcement of environmental law has several strategic benefits compared with both civil and criminal enforcement. These strategic benefits are as follows:[8]

1) Administrative enforcement in the environmental sector can be optimized as a preventive measure.
2) Administrative (preventive) enforcement can be more efficient in terms of financing compared to criminal and civil enforcement.
3) Administrative enforcement in the environmental sector has more potential to attract community participation. Community participation begins with

[5] Aan Efendi, Hukum Penyelesaian Sengketa Lingkungan di Peradilan Tata Usaha Negara (First Edition, Sinar Grafika, 2016), 36 menutip pendapat David Nicholson, Environmental Dispute Resolution in Indonesia (ed.1, Brill, 2009), 1.

[6] Cesare P.R.Romano, 'The Peaceful Settlement of International Environmental Dispute: A Pragmatic Approach, '(2000) 11 (1), Kluwer Law International, 1.

[7] Ibid.

[8] Aditia Syaprillah, 'Penegakan Hukum Administrasi Lingkungan Melalui Instrumen Pengawasan,' (2016), 1 (1), Bina Hukum Lingkungan, quoting the opinion of Mas Achmad Santosa, Good Governance & Sanksi Lingkungan, (First Edition, ICEL, 2003), 248. Dodik Setiawan Nur Heriyanto, 'Resolving Indonesia's Responsibility for Transboundary Haze Pollution in Light of the Toothless ATHP', [2017] Hungarian Yearbook of International Law and European Law, 194.

licensing, monitoring of compliance/surveillance, and participation in filing objection and requesting the state administration officials to impose administrative sanctions.

Consistent efforts to enforce environmental administration by the government, in accordance with the authority that it has, will bring impacts on law enforcement in order to maintain sustainable environment. This way, environmental administration enforcement is at the forefront of environmental law enforcement (*primum remedium*). In fact, careless environment-related permits that are not in accordance with the statutory regulations granted by the state administration officials could cause pollution. Pollution can harm society either directly or indirectly. Any permits in the environmental sector should philosophically apply environmental principles such as state responsibility, sustainability, integrity, benefits, prudence, justice, and polluters pay. [9]

Judges have an important, strategic, and noble position as the ones that "connect" Allah's order and His Messenger on earth. Judges are obliged to explore the values that exist in a society, continuously carrying out "theoretical reflection" and "empirical abstraction" to produce innovative '*ijtihad'* in legal development.[10] As an effort to create justice, judges need judicial activism when deciding cases.

Because Indonesia was colonized by the Dutch, the paradigm of PTUN judges in Indonesia is still dominated by legal positivism, due to the influence of the Continental European legal system. Legal positivism has developed because of the influence of the positivism paradigm, in which it believes that the only law is law. Judges serve as the mouthpiece of law. Nevertheless, over time, there are more disputes that are increasingly complicated that arise especially related to the administrative aspect of the environment sector, making judicial activism a necessity for judges.

Judicial activism is important in the process of administrative law enforcement because law is a means to reinforce values or concepts of justice, truth, social benefit and so on. What is contained in law is abstract. In fact, to make abstract values or concepts concrete, it is necessary to conduct so-called law enforcement. In fact, administrative law enforcement is an important thing to control the actions of state administrative officials.

[9] Mahrus Ali and Ayu Izza Elvany, Hukum Pidana Lingkungan (First Edition, UII Press, 2014), 2-5.

It is very crucial for state administrative court judges to understand and implement the definition and characteristics of judicial activism because there are specificities or characteristics of the law in the investigation process, namely:

1) Active role of judge (*dominus litis*) in presiding court proceedings.
2) Offers of proof in the court proceeding, the judge seeks material truth, instead of only formal truth;
3) A judge's decision is valid and *erga omnes,* and not only applies to the parties involved in the case;[10]

The reasons why judicial activism is needed:

1) The development of law must always keep up with continuously moving and developing society.
2) Laws are not always comprehensive and able to resolve concrete cases because it is only a stage in the formation of law. Therefore empirically, a judge should complete it in the process of resolving a dispute to arrive to his decision.
3) Judges are not mere mouthpieces of the law.
4) In making decisions, judges are obliged to explore, follow, and understand the legal values and the sense of justice that exist in society.
5) In making decisions, judges are guided by scientific views independently, freely, and accountably.
6) Judges, through their decisions, are expected to be able to inspire and make innovations so as to lead to legal development, particularly in association with the relationship between the State/Government and the citizens.[11]

The legal basis for a judge to apply judicial activism is found in Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power that states "Judge and court judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in a society" and Article 10 paragraph (1) of Law Number 48 of 2009 on Judicial Power, which states "The court is prohibited from refusing to examine, hear and decide a case that is filed due to a reason that there is no law or the law is not quite clear, instead they are obliged to examine and make decisions." The two articles juridically serve as the basis for judge independence in relation to law enforcement to promote justice and judges are literally not bound by prevailing laws and regulations. In this case, judges are encouraged to make law.

[10] Paulus E Lotulung, Hukum Tata Usaha Negara dan Kekuasaan (First Edition, Penerbit Salemba Humanika, 2013), 100.

[11] Indonesian Center for Environmental Law (ICEL), Bahan Ajar Pendidikan dan Pelatihan Sertifikasi Hakim Lingkungan Hidup (First Edition, ICEL in collaboration with PUSDIKLAT Tehnis MARI, 2014), 35-36.

Law-making is a process of making law by judges or other judicial officers who have the task of implementing the law on concrete legal events. Lawmaking is done by judges when examining, deciding and resolving a case or dispute.[12]

Law-making or law interpretation is inseparable from legal issues. Law-making will always be attached to legal formulation made by those who made the formulation in the past and there is a question whether it is appropriate to apply the abstract formulation to a concrete and real action. This way, law-making and law interpretation are means of conducting judicial activism.

Judges are faced with issues between a sustainable development paradigm and ecological or pro-environmental justice. In environmental law, there is a doctrine *in dubio pro natura.* In the context of environmental law, judges hesitate in relation to the quality of evidence and the judges' own convictions, so judges should prioritize environmental protection in their decisions. Judicial decisions resolving environmental disputes are expected to reflect the principles of environmental law such as the principle of preventive action, the precautionary principle, and the polluter pays principle.

Environmental dispute resolution also requires the understanding of other scientific evidence in the examination process. This philosophical perspective that environmental dispute resolution cannot realize ecological justice or intragenerational justice results from a strong effect of the mechanistic-reductionistic scientific paradigm in viewing the universe. This paradigm also brings implications on legal positivism, which is not about being fair or unfair, good, or bad, instead it is about the law, what is prohibited, the sanctions, and the enforcement procedures.

Legal studies paradigm currently used is the positivism paradigm. The positivism paradigm has never experienced what is called "Anomaly" by Thomas Samuel Kuhn. The paradigm persists as "Normal Science" over generations. The positivism paradigm is considered relevant and able to deal with any problems that may arise.[13] Tug of war between the judges' paradigms in resolving environmental disputes to promote justice or legal certainty has also become a problem. In the

[12] Sudikno Mertokusumo and A.Pitlo, Bab-Bab tentang Penemuan Hukum (Second Edition, PT Citra Aditya Bakti, 2013), 4-5.

[13] Ulfa Kesuma and Ahmad Wahyu Hidayat, 'Pemikiran Thomas S. Kuhn Teori Revolusi Paradigma', (2020), 21 (2), Islamadina Jurnal Pemikiran Islam. 1

Indonesian context, the justice to be achieved is one that originates from the Indonesian State Philosophy (Pancasila).

Judicial activism by judges is an effort to achieve justice, especially in environmental dispute resolution. The justice to be achieved is not only justice for the parties being involved in disputes, but also environmental justice, even justice for the future so there is a balance between the environment and development. Therefore, it is very crucial for judges to apply judicial activism.

Based on this description, it becomes clear that judicial activism plays an important role in the environmental dispute resolution at PTUN, i.e., by law-making, so as to make fair decisions for the environment and sustainable development because administrative law enforcement is preventive.

b. Exercise of judicial activism in environmental dispute resolution before the PTUN

To study whether PTUN judges have applied judicial activism in resolving environmental disputes, the author examined several court decisions.

Environmental dispute resolution at PTUN that implements the concept of judicial activism is the dispute between Sedulur Sikep community in Sukolilo, Pati Regency, over the factory construction policy of PT SG as contained in Decision Number 04/G/2009/PTUN.Smg jo Decision Number 103K/TUN/2010. The decision was considered a fair decision which took into account the values and sense of justice that existed in the community, thus reflecting the values of environmental justice, oriented to the welfare and legal protection of the community living in Sedulur Sikep. Environmental justice was reflected in the legal considerations of the Panel of Judges in making the decision, i.e.: "although it is possible to carry out mining operations on karst areas II and III, it must pay attention to one of the environmental ethics concepts, namely deep ecology which requires a new ethic to not only be human-centered, but rather nature-centered as an effort “to deal with environmental problems for the long-term and to not conflict with the objectives of sustainable development..." Therefore, the decision of the Supreme Court held "the *Judex Factie* of the State Administrative Court in Semarang that the granting of an exploration permit must be completed by an Environmental Impact Assessment

(AMDAL) because it is carried out in catchment areas and karst springs" is appropriate.[14]

The consideration of the Panel of Judges in that case took into account the values of ecological justice. This regards the fact that Regulation of the Minister of Environment Number 11 of 2006 states that AMDAL is not obliged for mining exploration of non-metallic minerals because business and/or exploration activities are still limited to studies/investigations to obtain information before carrying out (exploitation) activities and these activities are neither harmful nor detrimental to the environment. However, the Panel of Judges argued that, although it is still exploration activities which did not require AMDAL according to the regulations. Therefore, the Panel of Judges exercised judicial activism by exploring environmental justice, considering future environmental conditions, so the Panel of Judges deviated the statutory regulations. Justice is more prominent than legal certainty.

Justice is a major value in social institutions, like truth in systems of thought. A theory should be rejected or revised if it is not true. Laws should be reformed if unfair.[15]

Another case was Decision Number 193/G/LH/2015/PTUN-JKT in which the lawsuit was filed by 5 (five) fishermen (Mr Gobang et al) together with 2 (two) environmental organizations namely the Indonesian Forum for Environment (Walhi) and the People's Coalition for Fisheries Justice (KIARA) against the Governor of the Special Capital Region of Jakarta with a dispute object of Decree of the Governor of the Special Capital Region of Jakarta Number 2238 of 2014 on the Granting of G Island Reclamation Implementation Permit to PT Muara Wisesa Samudra dated 23 December 2014 at PTUN Jakarta. In rendering their decision, the judges considered many aspects of environmental law which can serve as a good precedent for other judges in resolving environmental disputes. The panel of judges considered that the dispute object issued by the Defendant did not meet the provisions of the prevailing laws and regulations. These considerations include: the environmental permit owned by PT. Muara Wisesa had a formal defect because the AMDAL process was considered to be neither transparent nor participatory, thus violating Article 30 paragraph (1) of the UUPPLH. In issuing the

[14] Subarkah, 'Implementasi Hukum Progresif dalam Pembangunan Berkelanjutan Ekologis' (2015) 3, 8 Jurnal Yudisial 1.

[15] John Rawls, Teori Keadilan, Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara (Second Edition, Pustaka Pelajar, 2011), 3-4.

dispute object, the Defendant did not consider Article 105 of Government Regulation Number 26 of 2008 related to the permits issued by the central government for activities that bring major impacts on the environment.

Judges can declare a dispute object, in the form of a state administrative decision, null and void if, in terms of authority, procedural or substance, it is against the laws and regulations, or the general principles of good governance as stipulated in Article 53 paragraph (2) of Law Number 9 of 2004. In the two dispute decisions, the Panel of Judges examined the dispute objects by digging the core of the disputes. The PTUN judges explored the values that existed in the community to resolve the environmental disputes as an effort to achieve justice for justice seekers. Laws are abstract, unclear, not comprehensive, and possibly outdated with the interests and development of human life. The law functions as a legal protection for human interests, so it is necessary to be updated and to keep up with the developments and interests of human life. Judges shall conduct law-making (*rechtsvinding*) on concrete events.

A decision criticized by the public for not reflecting justice and not exercising judicial activism was an environmental dispute ruling where the lawsuit was rejected due to formal defects. For example, the lawsuit has been overdue, the plaintiff has interests, or the dispute objects are not state administrative decisions of which the lawsuits can be filed at the State Administrative Court. The proceedings conducted by PTUN judges are limited to formal lawsuits and not included in the main dispute.

Decision of the State Administrative Court Number: 11/G/LH/2016/PTUN.Mks arose from the Lawsuit filed by WALHI in South Sulawesi against the Permit granted by the Governor of South Sulawesi for the Center Point of Indonesia (CPI) Reclamation. The dispute object was the South Sulawesi Governor's Permit Number: 644/6272/Tarkim on the Location and Reclamation Permit in the Indonesian Integrated Business Center Area in South Sulawesi Province as a Provincial Strategic Area, on behalf of: PT. Yasmin Bumi Asri dated November 1, 2013. The main reason for the Plaintiff's lawsuit was that the decision on the disputed subject was issued by an unauthorized state administration official, ignored the Regional Regulation on RTRW and procedures as stipulated in Government Regulation Number 27 of 2012 on Environmental Permit, and violated the general principles of good governance. The Panel of Judges decided to reject the lawsuit based on legal considerations that the formal lawsuit was overdue, and the Plaintiff was proven to have an interest.

The Judges' examinations of the disputes did not consider the subject of the dispute, while this matter greatly affects the sustainability of the environment. Judges did not consider the substance of CPI reclamation dispute. In that case, the social impacts of the reclamation were: fishermen were displaced on Gusung Island, there was potential corruption, and there was potential for permanent damage to the environment and ecosystem of the coastal areas. In order to protect the environment and create ecological justice, the judges should ignore the formal aspects of the lawsuit. Moreover, there were many decisions that recognized WALHI's Standing as the Plaintiff. At the State Administrative Court, WALHI was not required to prove environmental damage because state administrative proceeding is a preventive effort, so it does not have to wait for environmental damage.[16]

Criticism of the environmental dispute resolution before the State Administrative Court is considered ineffective, inefficient, and long-winded. The decisions are criticized for not being pro-environmental. Judges, in resolving disputes, are considered to neither reflect the spirit of environmental protection nor create ecological, intergenerational, and intragenerational justice.

Based on these examples, in resolving environmental disputes, it can be said that some PTUN judges have exercised judicial activism, while some others have not. One example of PTUN judge decision that did not exercise judicial activism is Decision Number 11/G/LH/2016/PTUN.Mks. In the opinion of the author, the judges did not conduct law-making maximally. Legal consideration in relation to formal lawsuit, i.e., lawsuit that is overdue and of which the Plaintiff is proven to have interests should be interpreted broadly. In other words, the understanding and courage of judges to conduct law-making and law interpretations greatly influence the exercise of judicial activism.

E. Conclusions

Based on the abovementioned problems and discussion, it can be concluded that judicial activism plays an important role in environmental dispute resolution at the State Administrative Court (PTUN), namely by conducting law-making, in order to produce fair decisions for the natural environment and sustainable development because administrative law

[16] Hamzah Baharuddin, 'Launching Hasil Eksaminasi Putusan PTUN Makassar Kasus Reklamasi CPI', (lbhmakassar.org, 17 May 2017) <https://lbhmakassar.org/liputan-kegiatan/launching-hasil-eksaminasi-putusan-ptun-makassar-kasus-reklamasi-cpi/> accessed on 20 April 2019.

enforcement is preventive. The judges at the State Administrative Court, in resolving environmental disputes, have applied the concept of judicial activism as in Decision No. 04/G/2009/PTUN.Smg jo. Decision No. 103K/TUN/2010 and 193/G/LH/2015/PTUN-JKT, some decisions do not reflect judicial activism as in Decision Number: 11/G/LH/2016/PTUN.Mks. In addition, there are criticisms that the environmental dispute resolution at the State Administrative Court is \ineffective, inefficient, long-winded, and non-pro-environmental. The understanding and courage of judges to conduct law-making and statutory interpretations greatly influence the exercise of judicial activism.

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