

# *Fighting for Ecological Justice Through Administrative Court: A Case Study of the Verdict of Makassar Administrative Court in Indonesia*

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*Abstract- The struggle for environmental justice through this court often fails, including the struggle of the Indonesian Forum for the Environment (WALHI) through the Makassar State Administrative Court. More specifically, this paper discusses: 1) WALHI's reasons to sue Makassar State Administrative Court; and 2) WALHI's struggle to obtain ecological justice through Makassar State Administrative Court. This study is a doctrinal study, which examines legal materials covering legislation, legal theory, legal concepts, decisions of government officials, and court decisions. The approaches used were the statue approach, conceptual approach, and case study approach. The results of the study were analyzed qualitatively. The results of the study show that: 1) the reason WALHI filed a lawsuit against Makassar State Administrative Court was because of the Reclamation Location Permit in the Indonesian Integrated Business Center Area in the Province of South Sulawesi as the Provincial Strategic Area had the potential to cause ecological damage; 2) The Makassar State Administrative Court has not accommodated justice for future generations of both human and non-human species generations. The judge argued that environmental damage/pollution that had not yet occurred could not be used as an excuse to sue the State Administrative Court.*

*Keywords- Ecological Justice; Administrative Court; Court Verdict*

## I. INTRODUCTION

As time goes by, environmental damage does not diminish but instead, it shows increasing signs. Environmental damage often leads to various kinds of environmental conflicts, which then lead to demands for environmental justice that are expected to be obtained through the judiciary institutions. In

the term of practice, the people's hopes and dreams to obtain justice from the judiciary institutions, especially on the environmental issues, are increasingly went far from ideal reality.

Demands for ecological justice through judicial institutions including the Administrative Court are often not going as expected by the environmental organizations that file the claim on behalf of the environment. Environmental organizations that fight for environmental sustainability are often disappointed by the court verdicts, including the verdicts of the Administrative Court.

The concept of ecological justice can be said as a new concept in the conceptual discourse about justice. One of the triggers was the emergence of various signs on the destruction of nature, especially after the industrial revolution. Days after days, the environmental impact is not only limited to certain territorial areas. This causes limited supporting capacity of nature towards life. The more scarce natural resources that were once abundant, for example water, encouraged deeper reflection on the meaning of ecological justice. The universal signs that have increasingly been felt in the last three decades, namely global warming and climate change, have led to a more widespread conceptual reflection on ecological justice.[1]

Derek R. Bell said that "Ecological justice is a concept with many different conceptions or interpretations".[2] Another understanding was conveyed by David Schlosberg. He said that ecological justice, i.e. doing justice to nature to allow the sustainability of natural capital, the protection of irreplaceable nature, or the protection of natural 'value' or processes of nature generally, demands an extension of recognition to nature. [3]

In general, ecological justice can be interpreted as justice for humans and other creatures that exist in this universe. However, in practice, what is demanded is justice for humans in obtaining economic benefits from the natural resources in the universe, and forgetting the justice for other living creatures as well as the natural environment. This has triggered the emergence of the ecological injustice issue. Al. Andang Binawan and Tanius Sebastian said, "The issue of ecological injustice comes from the separation between economics and ecology". [1]

Ecological justice is a struggle to achieve environmental justice between generations, to save them from the threat and impact of the crisis and the destruction of the environment as well as the sources of human life. Ecological justice can be fought through court for environmental cases. Indonesian Forum for the Environment (WALHI) is a non-governmental organization engaged in the environmental sector, with a total membership of 487 organizations from elements of non-governmental and nature-loving organizations, as well as 203 individual members spread across 28 provinces in Indonesia. WALHI actively encourages efforts to save and restoring the environment in Indonesia. WALHI often sues in courts including administrative courts to fight for ecological justice.

The Makassar Administrative Court is one of the judicial institutions that adjudicates environmental cases contained in the Makassar Administrative Court's Verdict Number 11/G/LH/2016/PTUN.Mks, Appeal Verdict Number 30/G/LH/2017/PTUN.Mks, and Cassation Verdict Number 253 K/TUN/LH/2017.

## II. PROBLEMS

The problems of this research are first how are the base reasons for WALHI to sue at the Makassar Administrative Court, and second Does the Makassar Administrative Court's decision accommodate ecological justice?

## III. RESEARCH METHOD

This research is a doctrinal research, which examines legal materials including legislation, legal theories, legal concepts, decisions of government officials and court verdicts. The legal materials used in this research were analyzed qualitatively. The approach methods used in analyzing the legal materials are the statue approach, conceptual approach and case study approach.

## IV. DISCUSSION

### A. WALHI's Reasons of Suing at Makassar Administrative Court

Based on the views of the people and the observers of the environment, the court verdicts including those issued by the Administrative Court have not been able to realize the ecological justice. Administrative Court Verdicts concerning environmental cases have not been able to provide protection towards the environment from the threat of damage. Therefore, it is necessary to conduct an in-depth analysis of the Administrative Court Verdicts in environmental cases. From the analysis, the considerations taken into account by the Administrative Court Judges in their decisions will be revealed.

The first case to be analyzed is an environmental case whose verdict was issued by the Makassar Administrative Court, namely Verdict Number 11/G/LH/2016/PTUN.Mks, Appeal Verdict Number 30/G/LH/2017/PTUN.Mks, and Cassation Verdict Number 253 K/TUN/LH/2017.

The plaintiff in the case was the Indonesian Forum for the Environment (WALHI) which is engaged in the environmental field. WALHI sued the Governor of South Sulawesi Province as the Defendant and PT Yasmin Bumi Asri as the Intervention Defendant II. The objects of the claim in this case were:

- a. The Permit Letter from the Governor of South Sulawesi Province Number: 644/6272/Tarkim concerning the Reclamation Location 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.

- b. The Permit Letter from the Governor of South Sulawesi Province Number: 644/6273/Tarkim concerning the Reclamation Implementation 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 first reason WALHI sued the Governor through the Makassar Administrative Court was that coastal reclamation caused a higher potential for flood in the city of Makassar. The reclamation area of 157.23 ha will take up water space of 22,627,480 million m<sup>3</sup> (as released by the document draft of the Analysis of the Environmental Impact (AMDAL) from PT Yasmin Bumi Asri). This will have an impact on the hinterland/mainland area in the city of Makassar. Potential water mass leads to the hinterland area in the city of Makassar waters. This can be exacerbated by the influence of the global sea level rise which reaches 5 -10 mm per year.

The second reason was the beach reclamation covering 157.23 ha was carried out in coastal spaces, which were the distribution areas of mangrove, seagrass and coral reef ecosystems. This reclamation room will eliminate the three main coastal ecosystems which contribute 75% of fisheries products from the sea. Reclamation activities further reduce and even eliminate mangrove ecosystems on the coast. Until present time, natural mangroves that have grown around the reclamation site have begun to disappear. The addition of the reclamation area of 157.23 ha will eliminate the mangrove distribution area.

The third reason was the degradation of the three main coastal constituent ecosystems, namely coral reefs, mangroves and seagrasses, which affect the aquatic biota associated with this ecosystem. The functions of the ecosystems as the feeding ground, nursery ground and protection will decrease and even worse, disappear when the ecosystems are suppressed by the Losari Makassar beach reclamation activities. The life cycle of the aquatic biota will be disrupted due to disturbed conditions and quality of the water. In addition, the accumulation of sediments will inhibit the penetration of sunlight, followed by several other associated effects.

Another reason was the results of the existing current and wave prediction analysis and post-

reclamation modeling based on the wind speed data around the reclamation area. The results indicate the following points:

- a. The arrival direction of the waves and the dominant currents from the west and southwest are diverted by the reclamation land into heading north. This will bring sediment material to the north and cause seagrass and coral reefs ecosystems that are spread on the surface of the Lae-Lae island and the surrounding areas to be exposed to the sedimentary material. This has the potential to cause damage to both ecosystems;
- b. Coastal reclamation has the potential to cause the waters around the Losari Beach platform to experience a slowdown in water flow and current circulation. The accumulation of suspended solids will be even greater in this region, as well as the accumulation of inorganic waste. The pungent odor that shows the low oxygen conditions that is happening now will get worse. The function of the Losari platform as a public open space will also be disrupted.

The next reason was that the pattern of landfilling and sand filling to the reclamation area will cause sediment materials to enter the surrounding waters. In addition, the drainage method used was rainbow spraying (sprayed into the reclamation area from the ship). This causes the accumulation of suspended sediments in the waters that disrupt the aquatic biota and the coastal ecosystems. The impact of reclamation is not only felt in the reclamation area but also in the material extraction area. Bottom discharge method is a method used to dredge sand from the sea around Takalar waters by sucking and transporting it to the reclamation area. The method will damage the marine ecosystem in the sand material extraction area.

Based on those reasons, WALHI demanded that the Permit Letter of the Governor of South Sulawesi Province for coastal reclamation activities be declared invalid because it has the potential to cause damage to the ecosystems in the coastal waters area.

Walhi also demanded that the defendant issued a Decree on the Revocation of the South Sulawesi Governor's Permit Number: 644/6272 / TARKIM regarding the Reclamation Location Permit in the Indonesian Integrated Central Business Area in

South Sulawesi Province as a Provincial Strategic Area, on behalf of PT. Yasmin Bumi Asri dated 1 November 2013 and the Governor of South Sulawesi's permit Number: 644/6273 / TARKIM regarding the Reclamation Implementation 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 1 November 2013.

#### B. Ecological Justice in the Makassar Administrative Court Verdict

Judges need to make decisions when examining and adjudicating a dispute. Judges must be able to process and process data obtained during the trial process, so that the decisions to be passed can be based on a sense of responsibility, justice, wisdom, professionalism and are objective in nature.

Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's consideration must be addressed carefully, both, and careful. If the judge's consideration is not thorough, good, and careful, the judge's decision which comes from the judge's consideration will be canceled by the High Court of the Supreme Court. [4]

The Verdict of the Makassar State Court Number 11/G/LH/2016/PTUN.Mks described the considerations of the judges that became the basis for deciding on the verdict. The three judges who examined and decided on the dispute had different considerations.

The first judge stated that in the event that the suing interest in the Administrative Court is the material and immaterial value from a person / community / Civil Legal Entity that is disadvantaged or at least can arise due to the issuance of a decision by a government official that is the object of the dispute. Thus, the potential element of loss in terms of the environment can be seen from the impact of the object. Regarding the disadvantaged interests in relation to the environmental claims, it does not need to wait until the pollution and / or environmental damage occurs, but just the potential to cause pollution and / or damage is sufficient. Thus, the claim must be seen as a preventive effort in order to

prevent potential damage from becoming real and massive as well as difficult to recover from.

The main point of the dispute that needs to get legal consideration is whether the procedure and or the substance of the issuance of the government decisions are in accordance with the applicable laws and regulations or the general principles of good governance. This is juridically related to the procedure and / or substance of the issuance of the government decisions. In relation with the authority to issue a decree in the form of reclamation permit, Article 7 letter (a) of the Minister of Maritime Affairs and Fisheries Regulation Number: 17/PERMENKP/2013 concerning the Licensing of Reclamation in Coastal and Small Islands Areas states that "Regents/Mayors have the authority to issue Reclamation Location Permits and Reclamation Implementation Permit" in 1/3 (one third) of the marine waters in the provincial authority territory. The judge also considered the expert presented at the hearing who stated that the authority to issue permits for the Reclamation Location and Reclamation Implementation was divided into three, namely the authority for 0 - 4 nautical miles is under the Regency / City; the authority for 4 - 12 nautical miles is under the Province; and the authority for 12 nautical miles and beyond is under the Central Government. The judge concluded that the authority to issue 2 (two) Decisions of the government officials was under the district / city government. In this case, the authority was under the Makassar City Government.

The first judge concluded that the reclamation activities at Losari Beach in Makassar, Indonesia had the potential to cause environmental damage in the Losari Beach area. Therefore, the first judge argued that the plaintiff's claim was granted, and the Governor of South Sulawesi Province had to revoke the two Permit Letters which had been issued. The consideration of the first judge has accommodated the interests of environmental preservation. The considerations made by the first judge were also futuristic, which was reaching out for environmental protection efforts in the future. The first judge's consideration was an effort to prevent environmental damage from occurring. Creating a clean and healthy environment needs to start from the prevention before the damage / pollution occurs. If the environmental damage / pollution has

occurred, the efforts to restore the damaged environment will become more difficult and will also require substantial costs.

The Chief Judge stated that WALHI in the framework of carrying out its activities towards environmental protection and management, has the right to file a claim for the preservation of environmental functions. The Plaintiff's right in a lawsuit is limited to the demand to take certain actions without a claim for compensation except for real costs or expenses. The Chief Judge of the Assembly concluded that he did not find any facts that the Losari Beach reclamation activity had an impact on the existence of environmental losses in the form of pollution and damage or its potential towards the ecosystem of the reclamation area and surrounding waters (including around the Lae-Lae Island), towards seawater at Losari Beach and Lae-Lae Island, changes in ocean currents at Losari Beach and Lae-Lae Island, loss of coastal and marine ecosystems, mangrove damage, potential flood and inundation, as well as socio-economic and resources problems as stated by the Plaintiff. The consideration of the Chief Judge was in line with the opinion of the Second Judge, who stated that at present, there is no fact that there is damage / pollution impact exists, so that there is no interest of the plaintiff in this dispute.

Based on those considerations, the Court Verdict decided that according to the considerations of the Chief Judge and the Second Judge, namely the fact that the environmental damage / pollution has not occurred, the plaintiff therefore has no interest in the dispute. In addition, it is also based on the consideration that the making of the Permit Letter from the Governor of South Sulawesi Province was in accordance with the procedures and substances stipulated in the legislation. Based on those considerations, the WALHI's claim was declared as not accepted.

Such a judge's decision shows that in an environmental dispute, the judge has not accommodated ecological justice. This statement is based on the consideration that the judge decided that the Governor's Permit Letter was not wrong because it has not caused a real impact (that has occurred), namely in the form of environmental damage / pollution. This is contrary to the concept

of ecological justice. The principles of ecological justice according to Rawls are as follow:

- a. In present and future, each person has the same infeasible claim to a fully adequate set of essential and non-substitutable ecosystem services, which is compatible with the same set for all.
- b. The Inequalities in the distribution of all other ecosystem services are to be the greatest benefit of the least-advantaged members for present and all future generations. [5]

Another opinion said that "The principles of ecological justice integrate the intra-generational and the inter-generational dimensions of ecological justice, and constitute philosophically founded criteria for assessing the distributional structure of ecosystem services and its substitutes". [6] Those two opinions show that ecological justice does not only concern the justice for the present generation but also for the future generation. In order to be able to realize the ecological justice, there have to be some preventive considerations in solving the environmental cases, so that environmental damage/pollution does not occur. However, the settlement of cases in the Administrative Court requires evidence in the form of facts that environmental damage/pollution has occurred. In the event that damage/pollution has not occurred, it will not be considered an environmental problem. This is different from the principle of ecological justice which aims to prevent environmental damage / pollution from occurring so that justice can be realized for the present and the future generations.

Anne Stephens, et al., said that "Inter-generational eco-logical justice should be understood in terms of environment and non-human species and goes beyond the immediate and extended family of humans". [7] This is in line with what was said by Chukwumerije Okereke and Mark Charlesworth, "Other dimensions include inter-generational justice, which concerns justice between present and future generations, and inter-species justice, which deals with justice between human and non-human beings". [8] Hugo Fjelsted Alrøe also said, "Ecological justice promotes fairness in relation to the common environment for both present and future generations and for both human and other living beings". [9] Ecological justice does not only concern the justice for human species generations,

but also the justice between generations including the generations that are not human species. Future generations need to be given protection; not only for the future human species, but also for the non-human species such as plants and animals including the ecosystems within them. This was also confirmed by Nicholas Low and Brendan Gleeson who stated, "Ecological justice is about fair distribution of environments among all the inhabitants of the planet".[10] Ecological justice means recognizing the value that an environment has for all beings, not just for humans.

That opinion implies that in resolving environmental disputes, consideration on prevention efforts should be taken into account so that the environment does not sustain any damage / pollution, therefore the future generations, both human and non-human species, will be able to obtain a good environment and ecosystem. However, the verdict of the Makassar Administrative Court shows that the judge only considers the fact on whether or not there has been damage / pollution. When the environmental damage has not occurred, then the environmental issues are considered as never existent and so the plaintiff's claim is not granted.

Such a judge's view causes protection towards environmental sustainability not be considered by the judge in the environmental case he was handling. It can be said that ecological justice is not accommodated in the Makassar Administrative Court Verdict.

## V. CONCLUSION

Based on the Verdict Number 11/G/LH/2016/PTUN.Mks, Appeal Verdict Number 30/G/LH/2017/PTUN.Mks, and Cassation Verdict Number 253 K/TUN/LH/2017 showed that, the reason of WALHI sued the Governor through the Makassar Administrative Court : 1) the coastal reclamation caused a higher potential for flood in the city of Makassar; 2) the reclamation area of 157.23 ha will eliminate the mangrove distribution area; 3) the degradation of the three main coastal constituent ecosystems, namely coral reefs, mangroves and seagrasses, which affect the aquatic biota associated with this ecosystem.

Ecological justice has not and can not be realized in resolving the environmental disputes through the Makassar Administrative Court. The verdict of the Makassar Administrative Court has not accommodated the considerations to provide justice for future generations of both human and non-human species. The judge only considered the current conditions, namely that environmental damage / pollution has not occurred. An action or decision of a government official that has the potential to bring about activities that damage the environment is not taken into consideration by the judge. This is because the judge only adheres to basic general principles in the State Administrative Law, such as the procedural and formal considerations. For this reason, the legal system in Indonesia needs a specific mechanism for resolving the environmental cases with judges who have special and specific competence in the field of environmental law, who have a more futuristic view in solving the environmental cases in environmental cases he was handling. It can be said that ecological justice is not accommodated in the Makassar Administrative Court Verdict Number 11/G/LH/2016/PTUN.Mks, Appeal Verdict Number 30/G/LH/2017/PTUN.Mks, and Cassation Verdict Number 253 K/TUN/LH/2017.

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