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Comparison Of Legal Reasoning Models In Consideration Of Decision No. 064/G/2014/PTUN SMG, NO. 135/B/2015/PT.TUN.SBY, And No. 99/PK/TUN/2016 In The Case Of Pt Semen Gresik (Persero) Tbk Environmental Permit In Rembang Regency, Central Java

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ABSTRACT

Purpose of the study: This study aims to understand the lawsuit of the Samin Community in Rembang Regency against Governor's Decree No. 660.1/17/2012, which permits the development and exploitation of natural resources in the Kendeng Mountains. This dispute not only shows a lawsuit but, more broadly, is the counter-hegemonic movement between local law and national law, which is marked by the victory of the Samin Community at the level of Judicial Review at the Supreme Court.
Methodology: The research was carried out through observation, interview, and literature review to explain local and national legal disputes, which were analyzed

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qualitatively using legislation, unwritten law, and the Gramsci Counter Hegemony approach.
Results: The study revealed that: first, local law disputes against national law in Rembang Regency occurred because of the dominance of national law over local law, which recognizes indigenous people only when stated in the law. Second, the Samin Indigenous people still adhere to traditions, myths, and ecological principles called Saminism, which only allow them to farm and serve as a cultural identity. Therefore, they may not be able to survive if they have another profession. Third, the judge's decision in the form of a caliph on earth is influenced by the soul of the mother earth community of the Samin Community and forms a new norm so that it becomes a new hegemony against national law.
Application of the study: This research can be used by law enforcers so that their legal decisions rely on not only legal positivism values but also transcendental local legal concepts.
Novelty/Originality of research: No previous research has linked the dispute over permits for constructing a cement factory in the Rembang Regency and Decision No. 99/PK/TUN/2016 with a counter-hegemonic approach and transcendental-based local laws.
Keywords: legal comparison, legal reasoning, environmental law, court judgment

ABSTRAK

Tujuan Kajian: *Kajian ini bertujuan untuk memahami gugatan masyarakat Samin di Kabupaten Rembang terhadap Keputusan Gubernur No. 660.1/17/2012 yang mengizinkan pembangunan dan ekspolitasi sumber daya alam di pegunungan Kendeng. Sengketa ini tidak hanya menunjukan gugatan hukum namun yang lebih luas adalah gerakan kontra hegemoni antara hukum lokal dengan hukum nasional yang ditandai dengan kemenangan masyarakat Samin pada tingkat Peninjauan Kembali di Mahkamah Agung.*
Metodologi: *Penelitian dilaksanakan dengan melakukan observasi, wawancara, dan kajian literatur yang dimaksudkan untuk menjelaskan sengketa hukum lokal dan nasional yang dianalisis secara kualitatif dengan menggunakan perundang-undangan, hukum tidak tertulis dan pendekatan Kontra Hegemoni Gramsci.*
Hasil-hasil: *Hasil Penelitian ini menunjukan bahwa pertama, Sengketa hukum lokal melawan hukum nasional di Kabupaten Rembang terjadi karena adanya dominasi*

hukum nasional atas hukum lokal yang hanya mengakui masyarakat adat hanya jika disebutkan oleh Undang-Undang. Kedua, masyarakat Adat Samin masih berpegang pada tradisi, mitos dan prinsip-prinsip ekologis yang disebut Saminisme yang yang hanya mengizinkan mereka untuk bertani saja dan sebagai identitas budaya, sebab itu mereka tidak mungkin mampu bertahan hidup apabila berprofesi lain; dan Ketiga, Amar putusan hakim berupa khalifah di muka bumi dipengaruhi oleh jiwa masyarakat ibu bumi masyarakat Samin dan membentuk norma baru sehingga menjadi hegemoni baru melawan hukum nasional.

Aplikasi Kajian: *Penelitian ini dapat digunakan bagi penegak hukum agar putusan hukumnya tidak hanya bersandar pada nilai-nilai positivisme hukum, namun juga konsep hukum lokal yang bersifat transendental.*

Kebaruan/Originalitas Penelitian: *Belum ada penelitian sebelumnya yang menghubungkan sengketa izin pembangunan Pabrik Semen di Kabupaten Rembang dan putusan No. 99/PK/TUN/2016 dengan pendekatan kontra hegemoni dan hukum local berbasis transendental.*

Katakunci : *Perbandingan Hukum, Penalaran Hukum, Hukum Lingkungan, Putusan Pengadilan*

INTRODUCTION

The state is the reality of political power, which has dominated social relations through institutions monopolizing physical coercion. The relationship between society and the state is not always normative because the economic realm is fundamental. Even though the world of politics is an arena for playing hegemony, the world of politics also demonstrates a higher level of development in the history of social classes (Muharram, 2020). In essence, the relationship between these two components always adheres to rights and obligations, so that the dialogic process runs harmoniously by following the norms required by the Constitution. If the relationship is in a state of conflict, society is usually in a weak position. The state will hegemony the community through its normative rules so that legitimacy can flow from society to the state (Al-Hakim, 2019). This process of forcing legitimacy often creates conflicts between countries with their normative rules and people who adhere to local wisdom principles passed down from generation to generation. Hegemony manipulates public awareness to make the rulers acceptable to those controlled as something natural and right.

The state and capital owners always have the interest and authority to accumulate significant capital and control natural resources by carrying out a strategy of territorialization over natural resources. In the case of forest resources, state control over forest resources is carried out by establishing laws and regulations regulating state control over land and separating forested and non-forested areas, and then politically determining the boundaries, hence the politicization of

forests (El-Aidi & Yechouti, 2017). The state claims that all land classified as belonging to anyone is state land. The territorialization of forest areas as state control over the utilization of forest resources has given corporations such a prominent role. It results in problems in the allocation and use of forests, monopolistic practices, marginalization, weakening of social capital, and destruction of the local culture, so that forests become an arena of conflict between the state, authorities, and society (Handayani, Wilujeng, Prasetyo, Triyanto, & Tohir, 2018).

Additionally, the exploitation of natural resources is not always followed by good environmental restoration. Environmental damage was becoming increasingly severe and uncontrollable, with massive floods inundating entire cities in one province and abandoned mine pits causing a loss of life. The use of abandoned ex-mine pits is not in accordance with the conditions; for example, mines are used for fish ponds and tourism. Meanwhile, the Final Processing Site (TPA) is used for settlements (Absori et al., 2019). In the Kendeng Mountains, carelessness in exploiting natural resources can be overcome by an analysis of the Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan Hidup*), hereinafter abbreviated as AMDAL. However, the government and companies that will exploit natural resources often bias the data provided.

The dispute between PT Semen Gresik and the Samin Community in Rembang Regency, Central Java, was caused by the issue of environmental damage. The Watuputih Aquifer Basin is a customary area designated as a geologically protected area. As an aquifer recharge area, the Watuputih Aquifer still has a good aquifer system, and the Samin Rembang Community utilizes this water source for their daily needs, including agriculture (Oktafia & Mawardi, 2017). In this context, natural changes occur. It results in the loss of native species, decreases environmental quality, and even threatens the sustainability and harmony of human life itself. In fact, humans and nature must follow a mutualistic symbiosis and the principle of dependence. The central concept of the ecological chain promotes harmony between humans and nature to achieve survival (Santoso, Atfalusoleh, Kusmanto, & Hasjim, 2020).

The Samin indigenous people and their *Sedulur Sikep* adhere to the *"wong sikep school karo pacul"* principle, which prohibits them from doing business and prefers farming as a livelihood (Mardikantoro, 2017). Economic learning in the Samin Community is an informal process within the family and community, prioritizing affective and psychomotor development and developing cognition as a supporting element (Rohmah, Wahjoedi, Suman, & Sunaryanto, 2016). In daily legal practice, the Samin Community also accommodates the existence of state criminal law if one of the parties to the dispute suffers a loss and wants to bring this case to state law (Widyawati, 2016).

The issuance of Central Java Governor Regulation No. 660.1/17 of 2012, which permitted PT Semen Gresik (Persero) Tbk to carry out limestone and clay mining activities and build a factory in the Watuputih Groundwater Basin (CAT) area, has the potential to cause considerable environmental damage (Absori, Yulianingrum, Hasmiati, & Budiono, 2021). The environmental damage includes loss of groundwater sources, reduced water discharge, drought,

and environmental pollution. The people of Tegaldowo Village and several other villages under the Gunem Rembang Sub-district, together with the *Sedulur Sikep* Community in Rembang, who are members of the Network of Communities Care for the Kendeng Mountains (*Jaringan Masyarakat Peduli Pegunungan Kendeng*) hereinafter abbreviated as JMPPK, opposed the construction of the cement factory. Central Java Governor Regulation No. 660.1/17 of 2012 also contradicts the Spatial and Regional Planning (RT-RW) of Rembang Regency, Central Java Province RT-RW, national RT-RW, and Presidential Regulation, which regulates the protection of water catchment areas. Then, Law No. 23 of 2014 concerning Regional Government is the operational basis for regions to carry out sustainable development that guarantees local communities. Therefore, interventions in development must be holistic and comprehensive by considering the needs (needs, drives, and motives) of the local community. As targets and agents of development, humans are the focus and locus of development.

Humans as targets denote that the purpose of development is to improve the community's welfare. In contrast, the development actors are participatory-democratic activities, starting from identifying needs (need assessment), planning, implementation, and evaluation/control, so that accountability and transparency coincide (Sadhana, Ndung, & Hariyanto, 2021). The plan to build a cement factory in the Kendeng Mountains area, Pati Regency, which the government approved, contradicts the development model above and threatens the environment and economic sustainability of the *Sedulur Sikep* or Samin community (Nur & Gurning, 2018).

The concern of the Samin Community is justified because they cannot survive in an urban environment because of their educational background. Therefore, what is expected from development is prosperity. However, the opposite happens because poverty can be caused by development policies that do not favor the people and the tendency towards a market economy that can access more productive economic resources (Budiono, Absori et al., 2022). As a result, poverty and social inequality emerge due to the aforementioned development process. This leads many parties, especially the Samin People themselves, to reject the permit to build a cement factory.

On the contrary, the government considers the issuance of Environmental Permit No. 660.1/17 of 2012 does not violate the law. Since 1994, there have been illegal mining activities carried out by small companies in Tegaldowo Village. The mining activity obtained a permit from the Rembang Regent through Rembang Regency Regional Regulation No. 5 of 2006 on General Mining Business Management. It was supported by Rembang Regent Regulation No. 28 of 2007 on Mining Licensing Procedures and Requirements. Thus, Environmental Permit No. 660.1/17 of 2012 does not violate the law. The jurisdictional ambiguity occurs because the Environmental Permit issued by the Central Java Governor, namely Decree No. 660.1/17 of 2012, overlaps with the applicable laws and regulations (Ariningrum, Swasono, & Hidayana, 2019). In this context, the government also acts as an intellectual who creates historical blocks dealing with the community or community alliances, creating new ones (Ibragimova & Raisovich, 2019).

The Central Java Governor issued Decree No. 660.1/17 of 2012, dated June 7, 2012, concerning Environmental Permits for Mining Activities and Construction of a Cement Factory by PT Semen Gresik (Persero) Tbk in Rembang Regency, Central Java. This decision letter was challenged by JMPPK and registered at the Semarang State Administrative Court on September 1, 2014, with Case Registration No. 064/G/2014/PTUN.Smg. Through its organic intellectuals, JMPPK began to form alliances with several parties, such as the Indonesian Forum for the Environment (*Wahana Lingkungan Hidup Indonesia*), hereinafter abbreviated as WALHI, and the Semarang Legal Aid Institute (*Lembaga Bantuan Hukum*), hereinafter abbreviated as LBH. LBH is an actor involved in counter-hegemony, which operates in the realm of law, studying and assisting parties who need legal assistance (Zembylas, 2013). The independence of LBH is to help anyone who needs legal assistance. Because the concept of Samin's advocacy is different from the advocacy model in Australia (Gulliver, Fielding, & Louis, 2019), in this case, LBH has assisted communities that oppose the construction of a cement factory in tracing permit documents for PT Semen Indonesia (Persero) Tbk.

Meanwhile, WALHI is an environmental organization engaged in preserving environmental functions, e.g. monitoring and controlling environmental pollution and damage. WALHI also carries out concrete activities in the field of litigation, such as filing environmental disputes in court. WALHI's encourages self-awareness and concern for environmental preservation, including increasing the movement for environmental management by involving as many community members as possible. The complementary relationship above arises from an awareness of the limitations in terms of advocacy and legal steps in framing the objection to the establishment of a cement factory in the North Kendeng Mountains, thus requiring the roles and functions of other actors who also participate in the struggle to preserve the North Kendeng Mountains.

The object of the lawsuit is the Decree of the Central Java Governor No. 660.1/17 of 2012, dated June 7, 2012, concerning Environmental Permits for Mining Activities by PT Semen Gresik (Persero) Tbk in Rembang Regency, Central Java, issued by the Central Java Governor, which essentially grants Environmental Permits to PT Semen Indonesia (Persero) Tbk to carry out the activities of limestone mining, clay mining, construction of factories and utilities, construction of production roads, and construction of mining roads. The plaintiffs argue in their lawsuit that *a quo* decision contradicts Articles 20, 21, and 25 of Law No. 7 of 2004 concerning Water Resources and Presidential Decree No. 26 of 2011 on the Determination of Groundwater Basins. The location of PT Semen Indonesia Tbk's mining activities is a water resources conservation area. Based on the Decree of the President of the Republic of Indonesia No. 26 of 2011 concerning the Establishment of Groundwater Basins, the location is the Watuputih Groundwater Basin category B at coordinates III 029' 0.73" - 1110 32' 56.27", coordinates (latitude) -060 50' 41.56" - 60 50' 41.56".

RESEARCH METHOD

The normative research method with the object of the decision is a qualitative normative juridical method (Christiani, 2015). This method refers to legal norms contained in court decisions. In contrast to the pattern of positive legal reasoning, it is considered that the essence of law is the Constitution (Budiono, Prasetyo, et al., 2022). In contrast, the sociological jurisprudence school considers that the essence of law is the judge's decision. According to Roscoe Pound, the law is a tool for social renewal. In Indonesia, this concept is adopted with a sociological basis from the judge's decisions, namely the aspect of expediency, in addition to the juridical basis in the form of legal certainty and philosophy, which contain justice aspects (Jasin, 2019). Pound also stated that judges as lawmakers are part of the development of law and society through jurisprudence (Wardiono & Rochman, 2018). Furthermore, the technique used in this research was a literature study carried out by collecting and inventorying legal materials from copies of decisions and comparing them regarding the reasoning model used by judges. The referred decisions were Decisions No. 064/G/2014/PTUN Smg, No. 135/B/2015/PT.TUN.SBY, and No. 99/PK/TUN/2016.

RESULTS AND DISCUSSION

A. Legal Considerations of the Semarang State Administrative Court

After going through 19 trials, on April 16, 2015, the judge's decision was finally handed down regarding a lawsuit filed by residents of Rembang Regency to the Central Java Governor concerning the Environmental Permit for the construction of a cement factory by PT Semen Indonesia (Persero) Tbk. Through Decision No. 064/G/2014/PTUN Smg, Semarang Administrative Court rejected the citizen's lawsuit because it was considered expired and had passed the specified deadline. This decision was taken by the first-level Panel Judges because, during the trial, the Panel of Judges obtained the legal fact that on April 18, 2013, based on the attendance list, the socialization event for cement factory construction and mining was held in the hall of the Regional Secretary of Rembang Regency. Baskoro Budhi Darmawan, as the Head of the Rembang Regency Mining and Energy Service, and Baskoro Budhi Darmawan as a representative from JMPPK, were aware of the development and mining that Defendant Intervention II would carry out. Furthermore, all permits for mining activities, including the issuance of the object of *a quo* dispute, have been declared complete by the Regent at the socialization event.

The Panel of Judges also stated in their legal considerations that after the object of the dispute was published, there was also news in several daily mass media, including news in the daily Suara Merdeka mass media dated January 29, 2013, weekly news Infoku published on February 27-March 8, 2013, and daily news Jawa Pos published on February 19, 2013. The Respondent also announced the issuance of the disputed decision through the Central Java Province Environmental Agency's multimedia website regarding the Announcement of the

Environmental Permit for the Construction of the Semen Gresik (Persero) Tbk Factory in Rembang Regency on June 11, 2012.

The legal facts found by the Panel of Judges strengthened their decision that the community around the cement factory area of Rembang Regency had, in principle, known about the construction and mining activities that Defendant would carry out. It was based on the attendance list for a socialization event held by the Government of Rembang Regency and PT Semen Gresik (Persero) Tbk with residents of Gunem and its surroundings on June 22, 2013, which was attended by representatives of ring-1 residents of Rembang Regency, including Joko Prianto.

Based on this evidence, the Panel of Judges obtained the legal fact that the community around the cement factory area of Rembang Regency, in principle, knew that Defendant was planning to carry out construction and mining activities. Considering Article 55 of Law No. 5 of 1986 concerning the State Administrative Court, which states that the deadline for filing a lawsuit is 90 (ninety) days after the Central Java Governor issues a decision, the Semarang State Administrative Court Panel of Judges decides to reject the citizen's lawsuit because it has expired and exceeded the time limit specified in the law.

B. Legal Considerations of the Surabaya State Administrative High Court

Most residents opposing the construction of a cement factory were dissatisfied with the Semarang State Administrative Court. Even though the judges stated that the residents' lawsuit had expired, they never lost their enthusiasm to continue defending the environment. On April 27, 2015, the residents officially filed an appeal to the Surabaya State Administrative High Court (*Pengadilan Tinggi Tata Usaha Negara*), hereinafter abbreviated as PTUN. After about seven months since the appeal was filed, in November 2015, the Surabaya State Administrative High Court Decision No. 135/B/2015/PT.TUN.SBY strengthened the Semarang District Court, which stated that the residents' lawsuit had expired. The reason is that the object of the dispute, namely the Decree of the Central Java Governor No. 660.1/17 of 2012 dated June 7, 2012, has been socialized from 2012 to 2013, so it is not true that the appellate party (JMPPK) only found out about the object of the dispute on June 18, 2014.

Even though they had submitted an appeal to the PTUN Surabaya, the decision was still not in favor of residents who opposed the construction of a cement factory. Residents then filed an appeal but were rejected because it had passed the allotted time limit. However, the residents never gave up, and finally, after finding new evidence, the residents, together with WALHI, submitted a Judicial Review (*Peninjauan Kembali*), hereinafter abbreviated as PK to the Semarang Administrative Court on May 4, 2016. The Applicant for the Judicial Review found new decisive evidence on January 15, 2016, in the form of airplane tickets and boarding passes in the name of Joko Prianto with Garuda Indonesia Airline accompanied by a flight statement legalized by Mrs. Alisa Marselini (Garuda ticketing department) with Garuda Indonesia flight No. JKTKLGA 9740 on January 26, 2016.

New evidence (novum) basically explains that Joko Prianto (KTP No. 3317030501820004) had flown on Garuda Indonesia flight GA 0507 from Pontianak to Jakarta on June 22, 2013, at 15.00 WIB, with ticket No. 126-3970060282. Thus, Joko Prianto did not attend the meeting facilitated by the Head of Gunem Sub-district on June 22, 2013, because he was on his way from Pontianak to Jakarta. The Panel of Judges was previously of the opinion that Joko Prianto was present at the gathering with several residents of ring 1 (residents affected by the Environmental Permit issued by the Defendant) in the vicinity of the location of the Environmental Permit, which the Panel of Judges based on Article 55 of Law No. 5 of 1986 concerning the State Administrative Court (PTUN) stated that the lawsuit had expired with the sentence "the 90 (ninety) day period for filing a lawsuit has passed."

In the attendance list submitted as evidence by the Defendant at the trial, there was the name Joko Supriyanto from RW 1 Tegaldowo Village, as the person present at the meeting. Joko Supriyanto, listed in the attendance list, was not the same person as Joko Prianto, who filed the lawsuit. The presence of different signatures could prove it. With the discovery of the novum, the Petitioner believed that Decisions No. 135/B/2015/PT.TUN.SBY and No. 064/G/2014/PTUN.Smg contained factual errors, and there were strong reasons to submit a Judicial Review to the Supreme Court. In addition, the Petitioner also argued that *Judex Factie* had ignored the Supreme Court Circular Letter No. 2 of 1991 concerning Instructions for the Implementation of Several Provisions in Law No. 5 of 1986 concerning the State Administrative Court, Article 55, point (3):

"For those who are not the parties addressed by a State Administrative Decision but feel their interests have been harmed, the time limit referred to in Article 55 is calculated on a casuistry basis since they feel a State Administrative Decision has harmed their interests and are aware of the said State Administrative Decision."

The Petitioners for Judicial Review, consisting of seven people: Joko Prianto, Sukimin, Suyasir, Rutono, Sujono, Sulijan, and WALHI, claimed to have legal standing to file this administrative lawsuit, even though based on the potential impact of mining, they had different legal interests and could not be equated with one another. This risk was adjusted to the location where they lived in the mining area. Legal interest based on risk can be seen in the following table:

The Petitioners and Their Legal Interests Based on Potential Risks

Petitioner I	Joko Prianto lives in Tegaldowo Village, RT/RW 006/001, Gunem Sub-district, Rembang Regency. Based on *a quo* decision, the mining location is only 500 meters from Tegaldowo Village, so Petitioner I is at risk of experiencing a loss, namely the loss of the water source used for drinking and daily needs. Cement mining also has the potential to generate dust, which can irritate the respiratory tract and cause eye irritation.

Petitioner II	Sukimin works as a farmer/planter. His land is located in Suntri Village, Gunem Sub-district, Rembang Regency. Agriculture in Suntri Village relies on water from springs in the Watuputih Groundwater Basin (CAT). Mining resources based on *a quo* decision can potentially eliminate these springs.
Petitioner III	Suyasir works as a farmer/planter. His land is located in Timbrangan Village, Gunem Sub-district, Rembang Regency. Agriculture in Timbrangan Village relies on water from a spring in the Watuputih Groundwater Basin (CAT). The existence of mining based on *a quo* decision can potentially eliminate water sources and generate dust, which can irritate the respiratory tract and cause eye irritation.
Petitioner IV	Rutono works as a farmer/planter. His land is located in Tengger Village, Sale Sub-district, Rembang Regency. Agriculture in Tengger Village relies on water from springs in the Watuputih Groundwater Basin (CAT). The existence of mining based on *a quo* decision has the potential to eliminate these springs.
Petitioner V	Sujono lives in Bitingan Village, RT/RW 001/001, Sale Sub-district, Rembang Regency. Bitingan Village has already felt the impact of existing mining activities, namely reduced water sources and frequent natural disasters in the form of landslides. The existing conditions will worsen with mining based on an a quo decision.
Petitioner VI	Apart from working as a small entrepreneur (rice miller), Sulijan works as a farmer/planter. His land is located in Dowan Village, Gunem Sub-district, Rembang Regency. Agriculture in Dowan Village relies on water from a spring in the Watuputih Groundwater Basin (CAT). The existence of mining based on *a quo* decision has the potential to eliminate the spring water source.
Petitioner VII	WALHI is a non-governmental organization that grows from and by the community based on concern for preserving environmental functions, promoting, protecting, enforcing, and respecting the law, especially environmental law in Indonesia.

The reasons for the request for Judicial Review were finally granted by the Supreme Court. The new evidence (novum) submitted by the Judicial Review Applicants was decisive and showed that *Judex Factie* had made an apparent mistake. Regarding the expiration of the lawsuit, the Panel of Judges, in their legal considerations, thought that *Judex Factie* had made a mistake in determining the deadline for filing a lawsuit if it was only based on Article 55 of Law No. 5 of

1986, even though *a quo* dispute is a special State Administrative dispute in the field of environmental protection, which has special characteristics that differ from State Administrative disputes in general. Therefore, the procedure for calculating the deadline for filing *a quo* lawsuit must also consider the existence of Article 89 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management. Article 55 of Law No. 5 of 1986 states:

"A lawsuit can only be filed within ninety days from the decision of the state administrative body or official being received or announced."

Furthermore, Article 89 paragraph (1) of Law No. 32 of 2009 states:

"The deadline for submitting a lawsuit to the court follows the time limit as stipulated in the provisions of the Civil Code and is calculated from when the environmental pollution and/or damage is known."

Therefore, based on those reasons, the petition for Judicial Review submitted by the Applicant was finally granted. Through Decision No. 99 PK/TUN/2016, dated October 5, 2016, the Supreme Court annulled the Surabaya State Administrative Court Decision No. 135/B/2015/PT.TUN.SBY dated November 3, 2015, and the Semarang State Administrative Court Decision No. 064/G/2014/PTUN.SMG dated April 16, 2015. The Supreme Court also declared invalid the Decree of the Central Java Governor No. 660.1/17 of 2012 dated June 7, 2012, concerning Environmental Permits for Mining Activities by PT Semen Gresik (Persero) Tbk in Rembang Regency, Province Central Java. It obliged the Respondent to revoke the Decree of the Central Java Governor No. 1/17 of 2012 dated June 7, 2012, concerning Environmental Permits for Mining Activities by PT Semen Gresik (Persero) Tbk in Rembang Regency, Central Java Province.

C. Considerations of Judges of the Supreme Court of Indonesia

In Indonesia, Judicial Review is carried out by the Constitutional Court (MK) and the Supreme Court (MA). Although these two institutions have the authority to conduct Judicial Review, they have different scopes of authority. In this case, the Constitutional Court has the authority to review laws against the 1945 Constitution. Meanwhile, the Supreme Court has the authority to review statutory regulations under the law against the law (Articles 28, 29, 30, 33, and 34 of the Supreme Court Law No. 14 of 1985).

In the Environmental Permit case of PT Semen Gresik (Persero) Tbk in Rembang Regency, after new evidence was found in the form of tickets and boarding passes for the Garuda Indonesia flight JKTKLGA 9740 brought by Joko Prianto, JMPPK, and WALHI on May 4, 2016, they finally agreed to submit an application for Judicial Review (PK) to the Supreme Court through the Registrar Office of the PTUN Semarang PTUN. This new (novum) evidence proves that Joko Prianto did not attend the meeting, which was said to be a socialization event on June 22, 2013, because he was on his way from Pontianak to Jakarta. In the previous legal

effort, the *Judex Factie* Panel of Judges stated in their legal considerations that Joko Prianto was present at a meeting with several affected villagers. Based on these facts, the *Judex Factie* Panel of Judges finally stated that *a quo* lawsuit had expired or "had exceeded the time limit of 90 (ninety) days (Article 55 PTUN)."

The Panel of Judges at the Surabaya State Administrative Court, in their previous legal efforts, were also considered to have ignored the existence of the Supreme Court Circular Letter No. 2 of 1991 concerning Instructions for the Implementation of Several Provisions in Law No. 5 of 1986 concerning the State Administrative Court, Roman V, Deadline (Article 55), No. (3), which states, *"For those who are not the parties addressed by a State Administrative Decision but feel their interests have been harmed, the time limit referred to in Article 55 is calculated on a casuistry basis since they feel a State Administrative Decision has harmed their interests and are aware of the said State Administrative Decision."* This provision has become *factie prudence* (prudential principle) in the Supreme Court Decision No. 1/1994/PK in the Jalan Sabang Jakarta case (Jazim Hamidi, 2015). It states, *"For parties or people who are not directly intended recipients, the 90-day time limit is calculated casuistically, namely from the time a third party feels that their interests have been harmed by a State Administrative Decision which is disputed according to law."*

The Petitioners for Judicial Review argued in their *petitum* that *Judex Factie* had made a mistake in concluding that the meeting on June 22, 2013, was a socialization meeting of cement factory permit, even though the applicants were not involved at all in the process of preparing environmental documents up to the issuance of Environmental Permits. The meeting at the Gunem Village Hall on June 22, 2013, which the Rembang Regent held, cannot be categorized as a socialization meeting in the laws and regulations because the meeting was not explicitly intended to announce an Environmental Permit.

The Supreme Court agreed with the reasons given by JMPPK and WALHI because the novum submitted by the Petitioners for Judicial Review was sufficiently decisive and showed that *Judex Factie* had made a fundamental mistake. Based on the novum in the form of a Garuda ticket, boarding pass, flight statement, and email from Garuda to Panin Tour, it was revealed that on the same date as the meeting, Joko Prianto flew from Pontianak to Jakarta using Garuda GA 0507. Thus, it was proven that Joko Prianto did not attend the meeting on June 22, 2013, with the Rembang Regent and PT Semen Gresik (Persero) Tbk with the people of Gunem.

Regarding the dissemination of the object of the dispute through electronic documents and print media mentioned in the *Judex Factie* decision, the Supreme Court Panel of Judges was of the opinion that *Judex Factie* only relied on the assumption without evidence that with the dissemination and publication through electronic media and print media, it was assumed that all people in the Rembang Regency had been aware of the existence of an Environmental Permit as the object of the dispute. However, objectively, the level of education and habits of the villagers in Rembang Regency, who are generally traditional farmers who are far from the internet and newspapers, should also be considered so that it could not be generalized that all

people in Rembang Regency were aware of the existence of an Environmental Permit as an object of dispute, even more about the consequences for the environment. To answer (decide) the Judicial Review request from JMPPK and WALHI, the Supreme Court Panel of Judges divided the core issues of this Judicial Review case into three points: 1. Is it true that the State Administrative lawsuit has expired as referred to in Article 55 of Law No. 5 of 1986 concerning State Administrative Courts and premature as referred to in Article 48 Law No. 5 of 1986? 2. Do the Plaintiffs have legal standing to file a lawsuit? 3. Is it true that the procedure for issuing an Environmental Permit for the object of the dispute has been supported by an adequate AMDAL document?

Regarding the expired lawsuit, *Judex Factie* stated that the plaintiff's lawsuit had passed the deadline in the previous hearing. The Judicial Review Panel of Judges was of the opinion that *Judex Factie* had made a mistake in determining the deadline for filing a lawsuit if it was only based on Article 55 of Law No. 5 of 1986, even though *a quo* dispute is a State Administrative dispute specifically in the field of environmental protection, which has a unique character and is different from State Administrative disputes in general. Therefore, calculating the grace period for filing *a quo* lawsuit must consider Article 89 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management. Article 55 Law No. 5 of 1986 states: "*A lawsuit can only be filed within ninety days from the date of receipt or announcement of a decision by a state administrative body or official."* Furthermore, Article 89 paragraph (1) of Law No. 32 of 2009 states: *"The deadline for submitting a lawsuit to the court follows the grace period as stipulated in the provisions of the Civil Code and is calculated from the time environmental pollution and/or damage is known."*

Referring to Article 55 of Law No. 5 of 1986 and Article 89 paragraph (1) of Law No. 32 of 2009, in accordance with the character of environmental State Administration disputes, the deadline for filing a claim for environmental State Administration disputes must be calculated as 90 (ninety) days from the discovery of potential environmental damage and/or pollution (potential risk/potential loss) due to the issuance of an Environmental Permit for the object of dispute. The deadline is calculated from the explanation given by Baskoro Budhi Darmawan to the Plaintiffs on June 18, 2014, based on Baskoro Budhi Darmawan's request for information from the Environmental Agency of Central Java Province. Therefore, the filing of a lawsuit by JMPPK and WALHI on September 1, 2014, could not be categorized as a lawsuit that had missed the deadline. Meanwhile, *Judex Factie's* legal considerations that Joko Prianto and ring-1 residents knew about the issuance of *a quo* case object from the gathering of the Rembang Regency Government and PT Semen Gresik (Persero) Tbk on June 22, 2013, were refuted by the existence of a novum submitted by JMPPK and WALHI in this petition for Judicial Review.

The legal interests of the Petitioners for Judicial Review, in this case, were considered by the Panel of Judges based on Article 65 paragraph (1) of Law No. 32 of 2009, which confirms that *"Everyone has the right to a good and healthy environment as part of human rights."* Juncto Article 67 Law No. 32 of 2009, which states:

"Every person is obliged to maintain the preservation of environmental functions and control environmental pollution and/or damage," as the caliph on earth who must protect the universe, in accordance with the provisions of Article 70 paragraph (1) of Law No. 32 of 2009, which states: "The community has the same and widest possible rights and opportunities to participate actively in the protection and management of the environment," became a solid legal basis for the legal standing of the applicants for judicial review in filing a quo lawsuit.

Even though they had different legal interests regarding the potential impacts that might occur, they were still entitled to legal status as Plaintiffs to file *a quo* lawsuit. One of the Applicants for the Judicial Review, Sukimin, who lives in Suntri Village, Gunem Sub-district, Rutono in Tengger Village, Sale Sub-district, Sujono in Bitingan Village, Sale Sub-district, and Sulijan who represents Dowan Village, Gunem Sub-district, for example; although not in the disputed Environmental Permit area, the villages were adjacent to the proposed mining site, making them very vulnerable to pollution from the cement factory of PT Semen Gresik (Persero) Tbk. Therefore, the Plaintiffs had the right to file *a quo* lawsuit as referred to in Article 53 paragraph (1) of Law No. 9 of 2004 juncto Article 51 paragraph (1) Law No. 9 of 2004 juncto Article 65 and Article 67 of Law o. 32 of 2009.

The existence of WALHI in the application for Judicial Review refers to Article 92, paragraph (1) of Law No. 32 of 2009, which states that environmental organizations have the right to file a lawsuit in the interest of environmental preservation. The requirements for an environmental organization to file a lawsuit are: (a) it must be a legal entity; (b) it must state in its articles of association that the organization was established to preserve the environment; and (c) it has carried out actual activities following its articles of association for at least two years. WALHI has obtained its legality as a legal entity through the Decree of the Minister of Law and Human Rights No. C-2898.HT.01.02 TH 2007 concerning Ratification of the Articles of Association of the Indonesian Forum for the Environment. This fact has become common knowledge in environmental dispute trials (*notoir feiten*). WALHI is also an organization legally recognized and cares about environmental preservation. WALHI has carried out concrete activities, such as filing environmental lawsuits in court and others. WALHI has a substantial legal interest in participating as a Plaintiff in the current environmental lawsuit.

Regarding the legal validity of the decision on the object of dispute, the Judicial Review Panel of Judges thought that the evidence and documents presented at trial proved that the community had indeed participated in the process of preparing the AMDAL document and the socialization of the establishment of the PT Semen Gresik (Persero) Tbk cement factory, both before and after the publication of the object of dispute. However, a letter of rejection by Rembang Residents against the establishment of a cement factory PT Semen Indonesia in Rembang Regency on December 10, 2014, signed by 2,501 (two thousand five hundred and one) of Gunem Sub-district residents and its surroundings, showed many community members still refused to attend PT Semen Gresik (Persero) Tbk cement factory.

The Judicial Review Panel of Judges stated that the essence of socialization was not only limited to the formality of its implementation but also had to consider the effectiveness or success of conveying messages to all community groups, either directly or indirectly or through representatives, according to their language and social strata. Community participation did not yet reflect the involvement or representation of every component of society that might be directly or indirectly affected. Therefore, the socialization carried out was also considered incomplete. The messages expected to create positive perceptions did not reach some members of the public, so the positive perceptions that should have been created from Defendant II's intervention did not materialize in this case.

In other legal considerations, the Panel of Judges stated that the mining area of PT Semen Indonesia Tbk is a water resources conservation area. The area is designated the Watuputih Aquifer in Presidential Decree No. 26 of 2011. The Watuputih Aquifer, in this case, is a water basin that must be conserved, and mining activities are prohibited. The Panel of Judges concluded that mining and drilling activities above the aquifer were unjustified. In the AMDAL document, in this case, the actual conditions of the disputed location and how mining activities are to be carried out, including the response to the impacts that would arise, had been described accurately.

Nevertheless, there are no visible restrictions and procedures for mining over the CAT area, so it cannot be calculated that the mining activities in the AMDAL will guarantee the sustainability of the aquifer system in the CAT area. AMDAL drafters need to pay attention to the demands of the principles of good governance mentioned previously, including mining restrictions and procedures that can describe and ensure that mining activities do not threaten damage to the aquifer system in the area (Safitri, 2011). Of course, it would be inappropriate if mining activities in the CAT area were carried out like mining in other non-CAT areas.

In addition, in several parts of the AMDAL document, no concrete solutions were visible, and no alternative solutions to problems of community needs, such as a lack of clean water and agricultural needs, were described. It does not align with laws and regulations and the principles of sustainability, prudence, and accuracy in preparing the AMDAL, which are the primary support for issuing objects of dispute (Hadjon & Martosoewignjo, 2011). The precautionary and careful principles contained in the general principles of good governance (AUPB) require the state to prioritize avoiding potential damage/danger rather than benefiting (Marbun, 2003). In other words, to obtain benefits, it is obligatory to avoid potential damage. It proves that the preparation of the AMDAL document contains procedural defects, so the decision on the object of dispute issued based on the AMDAL document also contains legal defects.

Based on the considerations above, the Supreme Court had sufficient reasons to grant the request for Judicial Review submitted by JMPPK and WALHI. Through the Supreme Court Judicial Review Decision No. 99/PK/TUN/2016, dated October 5, 2016, the Panel of Judges annulled the Surabaya State Administrative Court Decision No. 135/B/2015/PT.TUN.SBY, dated November 3, 2015, previously confirmed the Semarang State Administrative Court

Decision No. 064/G/2014/PTUN.SMG dated April 16, 2015. The Panel of Judges, in their decision, stated that they granted the request for Judicial Review from the Petitioners: Joko Prianto, Sukimin, Suyasir, Rutono, Sujono, Sulijan, and WALHI. An interesting consideration is found on page 109 of the Judicial Review Decision No. 99/PK/TUN/2016, in which the Panel of Judges stated that:

"Based on Article 67 of Law No. 32 of 2009, which states that everyone is obliged to maintain the preservation of environmental functions and control environmental pollution and/or damage, this is an obligation that is the same as the obligation of humans in their function as ***caliphs on earth*** *who are obliged to preserve the universe. Therefore, in accordance with Article 70 paragraph (1) of Law No. 32 of 2009, the public has the same and widest possible opportunities and rights to play an active role in protecting and managing the environment."*

According to Ibnu Katsir, the term caliph (QS. Al-Baqarah (2): 30) implies that humans have an obligation to develop and enrich the universe as the party responsible for it (Asmani, 2019). To support this obligation, everything in the universe is its main facility, including the ability to think, act, and choose between good and bad, which is also bestowed upon humans (Moghadam, 2015). The principle of the caliph in the context of Islamic values is related to the principle of trust or mandate, which means that humans are present on earth to fulfill their function as caliphs, which are mandated by Allah to process and preserve the environment (Absori, Dimyati, & Ridwan, 2017). Humans only borrow nature from its true owner, Allah, and will be held accountable for their actions in the afterlife (Suwito, 2011). For this reason, nature must be managed carefully to benefit human life and consider the impact of environmental and cultural damage.

Based on these facts, in their Judicial Review of the case, the Panel of Judges used natural law reasoning in addition to positive legal reasoning because the Panel acknowledged the existence of supernatural and meta-empirical principles. According to Shidarta, the pattern of natural law reasoning begins with placing verses from the Holy Book. In this context, Al-Quran Surah Al-Baqarah verse 30 is the major premise and places empirical reality as a minor premise. Then, a conclusion is built based on the major premise and the minor premise (Shidarta, 2013), with examples:

Major premise	God has given the earth to humans as caliphs on earth to be preserved and protected from corporate exploitation (QS. Al-Baqarah [2]: 30)
Minor premise	Based on the belief in mother earth, the Samin people preserve and protect the environment from corporate exploitation (empirical reality).
Conclusion	The Samin People have carried out the function of the caliph on earth to preserve and protect nature from corporate exploitation.

The concept of the caliphate is also related to the state's role in preserving the environment (Salazar, 2014). Ibn Khaldun argues that the state and society have shared responsibilities with different implementation roles. The state has unlimited power in protecting the environment because the people who gave birth to it have become a fanatical unit (*ashabiyyah*) (Sulastri, 2019). Hence, in the understanding of the caliph, as explained in the decision, the community acted to protect the environment, constitutionally guaranteed in the Judicial Review Decision No. 99/PK/TUN/2016.

In this case, since the Supreme Court is the highest in Indonesia, and there was no further legal action after the submission of Judicial Review, Decision No. 99/PK/TUN/2016 annulled the Surabaya State Administrative High Court Decision No. 135/B/2015/PT.TUN.SBY, dated November 3, 2015, upheld the Semarang State Administrative Court Decision No. 064/G/2014/PTUN.SMG dated April 16, 2015. Furthermore, the Panel of Judges, in their decision, also declared the Central Java Governor's Decree No. 660.1/17 of 2012, dated June 7, 2012, concerning Environmental Permits for Mining Activities by PT Semen Gresik (Persero) Tbk in Rembang Regency, Central Java Province, and required the Defendant to revoke the Decree of the Central Governor Java No. 660.1/17 of 2012 dated June 7, 2012, concerning Environmental Permits for Mining Activities by PT Semen Gresik (Persero) Tbk in Rembang Regency, Central Java Province. At this stage, two lower court decisions, namely in Semarang and Surabaya, using the legal positivism reasoning model, were annulled by the higher court using the natural law reasoning model. Natural law reasoning is basically not widely practiced by judges in Indonesia, but interestingly, it is used by Supreme Court Justices in consideration of Judicial Review Decision No. 99/PK/TUN/2016.

CONCLUSION

The legal reasoning used by judges at the Semarang State Administrative Court and the Surabaya State Administrative High Court is positivistic legal reasoning based on Law No. 5 of 1986 concerning the State Administrative Court, stating that the deadline for filing a lawsuit is ninety (90) days after the Central Java Governor issues a decision. The Panel of Judges at the Semarang State Administrative Court dismissed the plaintiff's lawsuit because it had expired and exceeded the time limit set by law.

Likewise, the Decision of the Panel of Judges at the Surabaya State Administrative High Court No. 135/B/2015/PT.TUN.SBY upheld the Semarang Administrative Court's Decision, which stated that the plaintiff's lawsuit had expired. This decision is because the object of the dispute, namely the Decree of the Central Java Governor No. 660.1/17 of 2012 dated June 7, 2012, had been socialized from 2012 to 2013. Therefore, it was not valid if the Appellant (JMPPK) stated that they only became aware of the object of dispute on June 18, 2014. In Article 46 paragraph (2) Law No. 14 of 1985 concerning the Supreme Court, it is stated that a request for cassation in a civil case must be submitted in writing or orally through the Registrar of the Court of First Instance who has decided on the case within 14 (fourteen) days after the decision or ruling of the court has been notified to the Applicant.

Meanwhile, apart from using positivistic legal reasoning, the judges at the Supreme Court who conducted the Judicial Review also used natural law reasoning. In their legal considerations, they stated that under the mandate contained in Article 67 of Law No. 32 of 2009, everyone is obliged to preserve environmental functions and control environmental pollution and/or damage, as if they were caliphs on earth who had to preserve the universe. Therefore, through the provisions of Article 70 paragraph (1) of Law No. 32 of 2009, the community has equal rights and opportunities to play an active role in maintaining environmental sustainability.

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