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## DEEP -ECOLOGY APPROACH TO ENVIRONMENTAL PROTECTION AND SAVING THROUGH ENVIRONMENTAL CASE SETTLEMENT IN COURT

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### ABSTRACT

**Objective:** The purpose of this article is to examine and analyze whether judges in resolving environmental cases in court are oriented towards protecting and saving the environment and the obstacles they experience.

**Theoretical framework:** Humans in meeting their needs sometimes pay less attention to the impact that will be caused on the environment. Moreover, if humans think that the environment is used as an object to fulfill their interests, then environmental pollution and/or damage is certainly ignored. This will result in environmental sustainability not being realized. Likewise with judges who, when resolving environmental cases in court, do not use a deep-ecology approach and are not oriented towards protecting and saving the environment, the sustainability of the environment cannot be questioned.

**Method:** This research is examined utilizing a socio-legal approach, which places an emphasis on describing social and legal realities as well as attempting to comprehend and explicate the logic underlying the relationship between the two.

**Results and conclusion:** The results of the research show that judges who handle environmental cases are not oriented towards protecting and saving the environment. The obstacle experienced by judges in the judicial process to realize ecological justice is the principle of ultra-petita which shackles judges in exploring environmental cases that are oriented towards protecting and saving the environment. Judges who handle environmental cases are not oriented towards protecting and saving the environment. The obstacle experienced by judges in the judicial process to realize ecological justice is the principle of ultra-petita which shackles judges in exploring environmental cases that are oriented towards protecting and saving the environment.

**Implications of the research:** This has implications for continuing research to focus on the environment and obstacles they experience, especially for judges in enforcing the law.

**Keywords:** deep-ecology, sustainability, environment, protection, rescue.

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## ABORDAGEM DE ECOLOGIA PROFUNDA PARA PROTEÇÃO E ECONOMIA AMBIENTAL ATRAVÉS DE RESOLUÇÃO DE CASOS AMBIENTAIS NO TRIBUNAL

### RESUMO

**Objetivo:** O objetivo deste artigo é examinar e analisar se os juízes na resolução de casos ambientais em tribunal estão orientados para proteger e salvar o meio ambiente e os obstáculos que enfrentam.

**Referencial teórico:** O ser humano ao satisfazer as suas necessidades por vezes presta menos atenção ao impacto que será causado ao meio ambiente. Além disso, se os humanos pensam que o ambiente é utilizado como um objecto para satisfazer os seus interesses, então a poluição e/ou os danos ambientais são certamente ignorados. Isto resultará na não concretização da sustentabilidade ambiental. Da mesma forma, com os juízes que, ao resolverem casos ambientais em tribunal, não utilizam uma abordagem de ecologia profunda e não estão orientados para proteger e salvar o ambiente, a sustentabilidade do ambiente não pode ser questionada.

**Método:** Esta pesquisa é examinada utilizando uma abordagem sócio-jurídica, que enfatiza a descrição das realidades sociais e jurídicas, bem como a tentativa de compreender e explicar a lógica subjacente à relação entre as duas.

**Resultados e conclusão:** Os resultados da pesquisa mostram que os juízes que tratam de casos ambientais não estão orientados para proteger e salvar o meio ambiente. O obstáculo enfrentado pelos juízes no processo judicial para concretizar a justiça ecológica é o princípio da ultra-petita, que prende os juízes na exploração de casos ambientais orientados para a protecção e salvação do ambiente. Os juízes que tratam de casos ambientais não estão orientados para proteger e salvar o ambiente. O obstáculo enfrentado pelos juízes no processo judicial para concretizar a justiça ecológica é o princípio da ultra-petita, que prende os juízes na exploração de casos ambientais orientados para a protecção e salvação do ambiente.

**Implicações da investigação:** Isto tem implicações para a continuação da investigação centrada no ambiente e nos obstáculos que enfrentam, especialmente para os juízes na aplicação da lei.

**Palavras-chave:** ecologia profunda, sustentabilidade, meio ambiente, protecção, resgate.

### 1 INTRODUCTION

Human behavior that sees the environment as an object, so that the environment is seen as a means to meet human needs, then the emergence of environmental pollution and/or damage is of course ignored. This will result in environmental sustainability that cannot be maintained. The environmental problems in question are actions caused by human actions. Human actions in the utilization of natural resources, industrial activities



and in the settlement of environmental cases have not paid attention to environmental sustainability, which in turn causes environmental pollution and/or damage. From a philosophical aspect this is also influenced by the views of rationalism. The view of rationalism has placed the human mind as the only standard that is considered valid for human activities, work and life. Rationalism has placed a superior position on human beings with all their intellectual abilities, so that human actions in fulfilling human needs pay little attention to the impact they have on environmental sustainability (Rochmani, 2023).

The results of empirical research, especially in Indonesia, show that global environmental damage has reached the threshold level of tolerance for natural regeneration (self-regulating), both at the local, national and regional levels. for example acid rain, air pollution, erosion, flash floods and landslides, as well as globally such as global warming, climate change, the use of dynamite to catch fish which has an impact on the destruction of coral reefs and the extinction of marine, river, land biota, and damage to the ozone layer in the stratosphere (Devall, 2014). In addition, the environmental crisis due to human activities has also led to physical changes in the environment and the inconsistency of living environmental organisms, such as the degradation of protected forests and productive lands including mangrove forests in coastal areas, decreased quality and quantity of groundwater, subsidence of the soil surface, increase in sea levels, rising air temperatures, increasing water, soil, air pollution, coastal and river abrasion, including damage to coastal resources due to the accumulation of various industrial wastes or hazardous and toxic waste (B3) (Muslim, 2015).

There are three types of human activities and those that can cause environmental pollution and damage (Rochmani R. , 2020). First, activities that reduce the quality and quantity of resources, especially if they are exploited beyond their carrying capacity. Second, population growth. The higher the population, the more resources needed to meet the needs of life. Third, access to the environment and resources is unequal. This imbalance is usually caused by legal institutions, thus causing the control of property rights by a small group and scarcity for other groups. All of that, of course. Mutualism and harmony characterize the link between human relations and the environment, which means that both are mutually necessary and complement one another. As a result, both the environment and humanity are utterly dependent on one another for survival. When people interact with their environment, both as a source of sustainability and as polluters



of the ecosystem itself, they create an environmental problem that is sometimes referred to as an environmental conflict. Moral considerations, spiritual awareness, intellectual prowess, sociocultural context, exploitative lifestyles, possibilities for action, and the impact of individual and group interactions on the environment and civilization all play a significant role in how people react to their environment (Muslim, 2015) (Satjipto, 1980).

These environmental problems must be resolved immediately, not just let it continue to happen. An effective solution is needed to be able to provide protection and rescue for the damaged and/or polluted environment. In this settlement it is highly prioritized to end and provide protection, save the environment for its sustainability. One of the settlements of environmental cases (Rochmani R. F., 2019) can be done through the courts to be able to provide protection, save the environment for its sustainability.

Legal action is one effective technique to address environmental issues. The judge, who makes decisions in court, is one of the judiciary's components with the most role compared to other judicial components. Judges through their decisions can provide protection and rescue of polluted and/or damaged environments by using a deep-ecology approach. In settling environmental cases in court, it is hoped that ecological justice can be realized for the sake of environmental sustainability. Court decisions that are not oriented towards protecting, saving the environment for sustainability will affect the realization of justice for the environment. From this background, the research title is, DEEP –ECOLOGY APPROACH IN ENVIRONMENTAL PROTECTION AND SAVING FOR SUSTAINABILITY. The problems that arise are, a. Are the judges that handling environmental cases oriented towards protecting and saving the environment? b. What obstacles are experienced by judges in resolving environmental cases in court in the context of protecting and saving the environment?

## 2 THEORETICAL FRAMEWORK

Humans in fulfilling their needs sometimes pay less attention to environmental sustainability, even the environment becomes an object to fulfill their needs. Uncontrolled human exploration of natural resources, and crossing the threshold of appropriateness, can cause imbalances in environmental ecosystem organisms, so that it can bring various natural disasters that harm all parties, as well as can damage the joints of human life personally and massively. In the end, it will give birth to predatory humans who prey on



anything to fulfill their lust without paying attention to their environmental ethics (Djuned, 2013).

These environmental conflicts must be resolved immediately, not just allowed to continue to occur. It needs to be resolved effectively to be able to provide protection and rescue for the damaged and/or polluted environment. In this settlement, it is very important to end and provide protection, save the environment for its sustainability. One of the settlements of environmental cases can be made through the court to be able to provide protection, save the environment for its sustainability.

The judge as the deciding party who is one of the judicial elements that plays the most role of other judicial elements. If the judge does not pay attention to the sustainability of the environment in the settlement of environmental cases and is not oriented towards protection, environmental protection will, will affect the realisation of justice for the environment.

There are three types of human activities that can cause pollution and/or damage to the environment. First, activities that reduce the quality and quantity of resources, especially if exploited beyond their carrying capacity. Second, population growth. The higher the population, the more resources are required to fulfil the needs of life. Third, unequal access to the environment and resources. This imbalance is usually caused by legal institutions, leading to control of property rights by a small group and scarcity for other groups. All of these events, in addition to degrading the quality of the environment, also have the potential to cause social conflict (Homer-Dixon, 2007).

Likewise, human activities in fulfilling their needs do not pay attention to the impact that will be caused to the environment. Moreover, if humans think that the environment is used as an object to fulfil their interests, then the pollution and / or environmental damage that will be caused will not be ignored. This will result in environmental sustainability that cannot be maintained.

Sustainability according to Donella H Meadows, et al, is an environmental condition that can last from generation to generation, not damaged either from the physical or social systems that support it (Donella H Meadows, 1992).

The principle of environmental sustainability requires the responsibility of everyone in a generation to preserve the ability of the environment to fulfil the needs and justice of both present and future generations. An ideal that should remain focussed and abstracted into the reality of environmental management in Indonesia (Bethan, 2008).

There are several moral positions and arguments that can be used as a guide for human behaviour in relation to the environment. Moral positions and arguments according to Richard Sylvan and David Bennett are prudential and instrumental arguments. The prudential argument mainly emphasises that human survival and well-being depend on the sustainability and quality of the environment. Human survival depends on the preservation of the universe and everything in it. Although according to anthropocentrism, humans are considered separate and above nature, the theory of anthropocentrism cannot deny the ecological reality that there is a very close relationship, as understood by Aristotle and Thomas Aquinas, between all creatures in nature, including humans. Thus, humans have an interest in preserving the capabilities of the environment, because by preserving the capabilities of the environment, humans maintain their own lives (Keraf, 2010).

According to (Keraf, 2010), the current ecological crisis is not a technical problem but rather a global moral crisis and a problem of human behaviour. There is a shift in view where humans act as the ruler or centre, which is then reinforced by the Cartesian paradigm of science and technology with the main characteristics of reductionistic mechanism, namely there is a separation between nature as an object and humans as a subject. This has led to manipulative and exploitative behaviour towards nature. Therefore, ethics and morality are needed to overcome this.

There are three theoretical models of environmental ethics: anthropocentrism, biocentrism and ecocentrism.

a. Antroposentrism

Anthropocentric ethics is a Western misconception, where the main assumption is that ethics only applies to humans. It assumes that human beings are the centre of the universe, while all other components are merely tools to fulfil human needs.

b. Biosentrisme dan Ekosentrisme

It is a critique of anthropocentrism. Biocentrism and ecocentrism view humans as one of the entities in the universe that is part of biological or ecological beings, that humans and their lives are dependent on all other life in the universe. In this view, ethics apply to all living things. Biocentrism holds that every living thing has value and worth in itself, while Ecocentrism emphasises that ethics apply to the entire layer of life on earth (the biosphere). This view is known as *Deep Ecology*. (Aldila Rahma, Menyelamatkan



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Deep Ecology theory was first introduced by Norwegian philosopher Arne Naess in 1973. Deep Ecology theory emphasises not just theory but also moves to the level of praxis. Arne Naess strongly emphasises lifestyle changes because he sees the ecological crisis experienced today all rooted in human behaviour, such as production and consumption patterns that are very excessive and not ecological, all technologies invented by humans tend to damage the environment either directly or indirectly. In Deep Ecology theory, there is a recognition and appreciation of ecological diversity and complexity in a symbiotic relationship. This symbiotic relationship directs that life is shared and interdependent, so that the existence of one supports the existence of the other. (Rothenberg, 1993).

### 3 METHODOLOGY

Type Of Research Is A socio-legal approach is used to examine this research, emphasizing the description of social and legal facts as well as an effort to comprehend and articulate the reasoning behind the relationship between the two (Satjipto, 1980). Research Specifications Descriptive legal research is the type of research that was used in this study. The goal of this study is to provide a detailed explanation of several legal phenomena, specifically the deep ecology approach to environmental preservation and sustainability. Data Source Secondary data are one of the data sources used in this investigation. The study's secondary data came from main legal documents. Statutory rules are the main source of law. Secondary legal information that can be found in academic publications, books about the topics being discussed, and research findings. Data Collection Methods This study used a literature review as the primary method of data collecting. The focus of this research's literature review is on procedural law and environmental law. Data Presentation Method, The data presentation method is presented in the form of descriptions of the deep-ecology approach in protecting and saving the environment for the sake of sustainability. The method of data analysis is carried out by qualitative analysis by examining data and concepts, theories and doctrines as well as related laws and regulations to achieve clarity regarding the deep-ecology approach in protecting and saving the environment for the sake of sustainability.



## 4 RESULTS AND DISCUSSION

### 4.1 ENVIRONMENTAL RESCUE AND PROTECTION

Rescue in KBBI is: process, method, act of saving, and legal protection is an effort to protect legal subjects with existing regulations. The earth and the ecosystem in which we live are deteriorating rapidly. Because people are so irresponsible, they frequently engage in ecologically unfriendly actions, which contributes to the ongoing and tending environmental degradation. The belief that big, spectacular things are required in order to save the environment frequently goes hand in hand with this lack of concern. In actuality, we can contribute to efforts to safeguard and save the environment by doing easy, straightforward, and small actions (Coglianese, 2017).

There are three types of human activities and those that can cause environmental pollution and damage. First, activities that reduce the quality and quantity of resources, especially if they are exploited beyond their carrying capacity. Second, population growth. The higher the population, the more resources needed to meet the needs of life. Third, access to the environment and resources is unequal. This imbalance is usually caused by legal institutions, thus causing the control of property rights by a small group and scarcity for other groups. All these incidents, of course, apart from degrading the quality of the environment, also have the potential to cause social conflict (Homer & al, 2007).

There are little, straightforward actions that can be taken to safeguard the environment, prevent further harm from occurring, or both. Here are seven straightforward ideas that anyone can try at any time.

1. Reduce your energy use

One of the best things we can do is reduce our consumption of electricity. Even though it can seem insignificant, conserving power will significantly contribute to environmental protection, particularly in Indonesia. First, Indonesia is a nation with "poor" access to power. And secondly, fossil fuels still account for 80% of Indonesia's electrical energy sources, not renewable energy. The increased usage of fossil fuels will accelerate global warming.

2. Conserve Water

Despite having enormous water resources, Indonesia has struggled to adequately manage its use of it. Floods are almost always caused by the abundance of water during the rainy season, while drought is caused in many different areas during the dry season.



Not to mention the widespread water pollution from rivers to oceans. Making biopores and infiltration wells at home can help you participate in the effort to protect the environment by conserving water.

### 3. Save Paper

Wood is the primary raw material used to make paper. 15 reams of A4-sized paper are produced from a single tree trunk. despite the fact that the forest provides roughly 70% of the raw materials for paper. Just by looking at one example, we can see how cutting less on paper use can help the environment.

### 4. Tree Planting

An average of 1.2 kg of oxygen are produced and absorbed daily per stem by trees. Additionally, each individual needs 0.5 kg of oxygen every day to breathe. In order to prevent flooding and create groundwater as a water reserve until the dry season, trees also collect and store precipitation. Numerous species that form a natural equilibrium with their food webs also find a home in trees. The many advantages of these trees make planting trees an effective way to protect the environment.

### 5. Reduce the Use of Plastic

Materials that are bad for the environment are used to make plastic. It becomes an object that takes the earth up to hundreds of years to degrade when it is not used and is discarded. So that even when we pass away, the plastic we use now will still harm the ecosystem. Using less plastic is helping to protect the environment.

### 6. Lessen Your Dependence on Motorized Vehicles

One of the main causes of air pollution is motorized transportation. Additionally, it contributes to global warming. Up to 2 billion tons of carbon dioxide are thought to be emitted annually by motor vehicles worldwide, and this number is rising. When traveling short distances, consider using non-motorized vehicles (like bicycles) or opting for mass transit when traveling farther distances to reduce the use of motorized vehicles.

### 7. Apply the “3 R’s”

Humans find it challenging to discard trash because of their many activities. Due to the emission of gases during the waste decomposition process, both organic and non-organic waste have a severe impact on the environment, causing anything from soil pollution to water pollution to marine pollution to global warming. The best option to reduce trash is to use the 3R's (Reuse, Reduce, and Recycle). Reduce anything that



produces trash, recycle or recycle waste, and reuse or reuse whatever that can still be used.

These are seven straightforward actions that, if taken, can significantly contribute to protecting the environment and preventing environmental harm. The earth is still the only planet where people can live, thus it needs our attention to safeguard and preserve it so that we, our children, and our grandchildren and great-grandchildren can all live peacefully on it in the future (alamendah, 2022). Besides the simple things mentioned above, it can protect and save the environment, protection and saving the environment can also be done through the settlement of environmental cases through the courts.

#### 4.2 ENVIRONMENTAL SUSTAINABILITY

According to the definition of sustainability provided in article 2 letter b of Law No. 32 of 2009 Concerning the Protection and Management of the Environment (UU PPLH), everyone has duties and obligations to current and future generations as well as to one another by working to maintain ecosystems' carrying capacity and raise environmental quality. According to Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction's Elucidation of Article 2 Letter B, everyone has a duty and responsibility to preserve sustainability for present and future generations as well as for one another within a generation. Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not being damaged both physically and by the social systems that support it (Donella H, Dennis L, Joger, & Randers, 1992).

According to Huey D. Johnson sustainability is not a plan of action but a philosophical statement, a way of thinking about how humans relate to nature (Huey D). In environmental sustainability, there is a continuous relationship between humans and nature. This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment. The principle of sustainability also requires choosing alternatives in resolving environmental cases based on protecting and saving the environment. Settlement of environmental cases based on protecting and saving the environment, not only resolves the cases of the parties as victims and other parties who cause victims, but also thinks about the people who will be affected by environmental damage and the environment itself. In order to meet the demands and uphold justice for both the present and future generations, the principle of environmental sustainability

mandates that each individual within a generation be responsible for preserving the capacity of the environment. An idealistic perspective that ought to stay narrow and abstracted in the context of preserving and defending the environment (Syamsuharya, 2008).

According to Arne Naess, attaining broad environmental sustainability necessitates a fundamental shift in national policy that prioritizes the preservation of life forms on this planet. When it comes to environmental sustainability, conserving the ecosystem and all of its diverse living forms is the primary goal rather than development itself. For the sake of national progress, this must be made into a political commitment; otherwise, environmental damage and risks to human life on this planet will persist (A. Sonny, 2015).

Sustainable development is of course not difficult to realize if the character of environmental law is incidental, commensal (places environmental law as a minority regulation), partial and sectoral (prioritizing sectoral laws which are often out of sync with relevant legal regulations), and shortcuts (should be regulated by higher regulations but regulated by lower regulations (e.g. by Ministerial Regulation) (N.H.T, 2004). Therefore, the nature and insight of the environmental legislation that will be regulated must show 3 (three) characters or patterns of legal policy, namely (Erda, 2015):

1. Regulations are environmental policies, namely regulations specifically aimed at managing environmental/ecosystem units.
2. Regulation is an integral policy.

In this form of regulation, the non-environmental sector is the main portion of the purpose of making laws and regulations but still pays attention to and several articles on environmental conservation and protection are formulated. Every law and regulation that is made is mutually supportive and in line, will not conflict with the environmental policies that have been adopted. Every law and regulation must reflect the integration of the various environmental policy patterns that have been stipulated.

3. Regulations are a supporting policy/beyond policy, in the sense of legal regulations in all sectors, as long as they are capable of being involved to encourage increased participation in environmental development.



#### 4.3 DEEP ECOLOGY CONCEPT

The environmental philosophy known as deep ecology was initially put forth in 1973 by the Norwegian philosopher Arne Naess. Deep ecology calls for a new ethic that places all living things—not just humans—at the heart of attempts to solve environmental issues. The moral universe is no longer centered on man. Instead, deep ecology emphasizes the importance of all species, even those that are not human. Deep ecology places equal emphasis on long-term and short-term interests. Therefore, the Deep Ecology moral standards take into account the needs of the entire natural community (A. Sonny, 2015). Thus Deep ecology does not only pay attention to the current state of the environment, but also pays attention to future environmental conditions or environmental sustainability. Not only quality is considered by Deep Ecology but also the quantity of the environment, including the humans in it. Deep ecology wants to pay attention to environmental sustainability.

Deep ecology is a theory that shifts the human perspective from being anthropocentric, in which humans are seen as the center of the world, to being ecocentric, in which humans are seen as a component of the ecosystem. Deep ecology itself is used to explain why people care about the environment (pipitkecilku, n.d.). In Deep Ecology theory there is recognition and respect for diversity and ecological complexity in a symbiotic relationship. This symbiotic relationship directs that live together and depend on each other, so that the existence of one supports the existence of the other (Arne, 1993).

In his book *Nets of Life*, Fritjof Capra claims that Deep Ecology does not exclude humans or anything else from the natural world. In this instance, the world is a network of phenomena that are inherently interrelated and interdependent rather than a collection of discrete items. According to deep ecology, all living things have intrinsic value and humans are merely a thread in the web of life (Fritjof, 1996). It is hoped that the Deep Ecology approach will be used as a basis for judges in giving decisions on settling environmental cases that are oriented towards protecting and saving the environment. If law enforcers are oriented towards protection and rescue for the sake of environmental sustainability in every settlement of environmental cases, this shows the commitment of law enforcers to protect and save the environment for environmental sustainability for human welfare.

According to Keraf (2010), the current ecological crisis is not a technical problem but rather a global moral crisis and a problem of human behavior. There has been a shift

in views in which humans play the role of ruler or center, which is then strengthened by the Cartesian paradigm of science and technology with the main characteristics of reductionist mechanism, that is, there is a separation between nature as an object and humans as subjects, which eventually gives birth to manipulative and exploitative behavior towards nature. For this reason, ethics and morality are needed to overcome them.

There are three models of environmental ethics theory, namely anthropocentrism, biocentrism and ecocentrism.

a. Anthropocentrism

Anthropocentrism-style ethics is a mistake in the Western perspective, where the main assumption is that ethics only applies to humans. This understanding assumes that humans are the center of the universe, while the external components only act as a means of meeting the needs of human life.

b. Biocentrism and Ecocentrism

This understanding is a criticism of anthropocentrism. The understanding of biocentrism and ecocentrism views humans as one of the entities in the universe that is part of biological or ecological beings, that humans and their lives depend on all other life in the universe. In this understanding, ethics applies to all living things. The understanding of biocentrism holds that every living thing has value and is valuable in itself. Meanwhile, ecocentrism focuses more on ethics that applies to all layers of life on earth (the biosphere). This view is known as deep ecology (Aldila).

#### 4.4 SETTLEMENT OF ENVIRONMENTAL CASES IN COURT

The following are court decisions relating to environmental cases.

1. Decision Number: 103/Pid/Sus/2015/PN.Smg. concerning transporting forest products without being accompanied by a valid certificate of forest products" Verdict : Sentenced the defendant S bin A with imprisonment for 1 (one) year and a fine of Rp. 500,000,000.00 (five hundred million rupiahs) Subsidiary 1 (one) month in prison Declared that the defendant S bin As had been legally and convincingly proven guilty of committing the crime of "transporting forest products without being accompanied by a valid certificate of forest products";



2. Decision Number: 157/Pid.Sus/2015/PN/Smg concerning the crime of logging trees in a forest area without having a permit issued by an authorized official. : 1 (one) year and a fine of Rp. 500,000,000.00, - (five hundred million rupiah), if the fine is not paid it is replaced by imprisonment for 2 (two) months.
3. Decision Number: 182/Pid.B/LH/2020/PN Smg regarding committing the crime of "Participating in the Transport of Timber Forest Products which is not accompanied by a Certificate of Legality of Forest Products. Decision; Declare the Defendant M. K bin S has been proven legally and convincingly guilty of committing the crime of "participating in transporting timber forest products that are not accompanied by a certificate of forest product validity"; Sentenced punishment on the Defendant mentioned above with imprisonment for 1 (one) year and 6 (six) months and a fine of Rp. 500,000,000.00 (five hundred million rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 3 (three) ) month;
4. Decision Number: 185/Pid.Sus/2016/PN Smg regarding the crime of carrying out a "mining business without being equipped with an IUP (Mining Business Permit). Stated that the defendant S Bin K had been legally and convincingly proven guilty of committing the crime of committing a "mining business without an IUP (Mining Business Permit)"; Sentenced a sentence against the defendant mentioned above, with imprisonment for 7 (seven) months, and a fine of Rp. 1,000,000,000.- (one billion rupiah) if not paid then as a substitute with imprisonment for 2 (two) months.
5. Number: 282 /Pid.SUS/2015/PN.Smg concerning the crime of logging trees in a forest area without having a permit issued by an authorized official, declared the defendant MALS B BIN S guilty of committing the crime of logging trees in the area forest without having a permit issued by an authorized official, those who did it, who ordered it to do it, and who took part in the act. Sentenced the criminal because of it to the defendant with imprisonment for 8 (eight) months.
6. Decision Number : 284 / Pid.Sus / 2015 / PN. SMG regarding the crime of dumping (dumping) hazardous and toxic waste (B3) without a permit. Stating that the defendant LC P bin LT H above was legally and convincingly proven guilty of committing the crime of dumping (dumping) hazardous and toxic waste (B3) without a permit. Sentenced therefore with imprisonment for 1 (one) year and a



fine of Rp. 100,000,000, - (one hundred million rupiah) with the provision that if the fine is not paid then it is replaced by imprisonment for 6 (six) months.

7. Decision Number 324/Pid.Sus/2016/PN Smg regarding the crime of "possessing a protected animal alive without a captive certificate" protected in a living condition without being equipped with a certificate of captive results.

8. Decision Number: 418/Pid.B/LH.2017/PN.Smg concerning intentional crime logging trees in forest areas illegally. The verdict declared the Defendant: The Defendant S Bin N (late), was proven legally and convincingly guilty of committing a criminal act by deliberately illegally logging trees in a forest area, carried out by people residing in and/or around the forest area; Sentenced punishment against Defendant S Bin N (late), with imprisonment for 1 (one) year and a fine of Rp. 500,000 (five hundred thousand rupiahs) with the provision that if the fine is not paid, it is replaced with imprisonment for 1 (one) month;

9. Decision Number. 561/Pid. SUS/2018/PN.Smg regarding the crime "Because of negligence in bringing animals, fish and plants, without a health certificate from Quarantine" ; Declare the Defendant S bin D (Alm) legally and convincingly proven guilty of committing the crime "Because of his negligence in bringing animals, fish and plants, without a health certificate from Quarantine"; Decision; punished Defendant S bin D (Alm) for that reason with imprisonment for: 15 (fifteen) days and a fine of Rp. 5,000,000 (five million rupiahs) and if the fine is not paid, it will be replaced by imprisonment for 1 (one) prison months.

10. Decision Number 786/Pid. B/LH/2017/PN SMG. About committing the crime of "collectively logging trees in a forest area without having a permit issued by an authorized official"; The judge decided that the defendant K Als. K Bin T (Alm) legally and convincingly proven guilty of committing the crime of "collectively logging trees in a forest area without having a permit issued by an authorized official"; Sentenced punishment on the defendant mentioned above with imprisonment for 1 (one) year 3 (three) months and a fine of Rp. 500,000,000.00 (five hundred million rupiah) if not paid is replaced with imprisonment for 1 (one) month.

The aforementioned decision has already imposed a penalty on the defendant who caused pollution and/or damage to the environment, but the decision does not provide ecological justice because the environment itself is the victim and is not considered in the





judge's decision. The verdict does not provide enough protection and rescue for the polluted and/or damaged environment. Protection and saving of the environment can be realized through decisions judge by punishing the party causing environmental pollution and/or damage to restore the polluted and/or damaged environment, even though the parties do not demand restoration of the polluted and/or damaged environment. This is indeed contrary to the principle of ultra-petita which stipulates that judges may not decide more than what is required. For the sake of the benefit of the environment itself which needs to be protected and saved, even though the parties are not prosecuted, a judge with a progressive mind can use a deep ecology approach to decide beyond what is not demanded. The judge is of the view that, the judge may not decide more than what is demanded. The judge is passive. If it is active, for example giving a decision that exceeds what is demanded for fear of being subject to the supervision of the Judicial Commission (KY) (Judges).

Regarding the judge's opinion, that the judge will receive supervision of the Judicial Commission if the judge is active by giving a decision that exceeds the demands of the parties or the demands of the public prosecutor, after the author confirmed with the former Chair of the Judicial Commission that the judge may leave the demands of the parties or the demands of the public prosecutor in the interest of benefit or environmental benefits (Commission). It is best if all judges handling environmental cases agree with the opinion of the former Chairman of the Judicial Commission, that judges dare to step aside from the demands of the parties or the demands of the public prosecutor to examine and decide on environmental cases if there is environmental damage but the parties or the public prosecutor do not make demands for environmental restoration. The courage of such judges will change the view that judges who have been in the settlement of environmental cases are not oriented towards protection and rescue for the sake of environmental sustainability. The view of judges who always pay attention to the environment in every handling of environmental cases will have a role in overcoming environmental pollution and/or damage. Conversely, if the judge does not have adequate environmental awareness and insight, of course the settlement of environmental cases cannot be expected to be able to protect and save the environment. The impact of environmental damage will continue to occur.



#### 4.5 ULTRAPETITA IN ENVIRONMENTAL DISPUTE RESOLUTION

UltraPetita is a Latin term which means beyond what one seeks. Ultra petita is the imposition of a decision by a judge on a dispute that is not prosecuted or a court decision that gives more than what is requested. Ultra petita provisions are regulated in Article 178 paragraph (2) and (3) Het Herziene Indonesisch Regulation (HIR) and its equivalent in Article 189 paragraph (2) and (3) RBg which prohibits a judge from deciding more than what is required (petitum). HIR provisions are procedural law that applies in civil courts in Indonesia.

The ultra petita provision that was made during the Dutch administration, has long been the basis of civil procedural law in Indonesia. Seeing the long period of time that HIR has been made, of course these provisions are no longer in accordance with the current developments in the interests of society. If the provisions of HIR in Indonesia are still fully enforced, of course it is no longer compatible with the development of society. Moreover, when forced to resolve environmental cases in Indonesia, HIR did not pay attention to environmental interests in terms of sustainability, because global awareness of the importance of providing protection and rescue for the environment only emerged at the 1972 Stockholm Conference.

If in the fundamentum petendi and fundamentum petitum it is not stated that the judge examines a polluted and/or damaged environment, the judge will not examine it even though it is true that there has been pollution and/or environmental damage. If the judge gives a decision outside of the provisions of the fundamentum petendi and fundamentum petitum, then the judge violates the ultra petita principle (the judge may not decide more than what is requested). In the absence of the judge's attention to the polluted and/or damaged environment simply because it is not stated in the fundamentalum petendi and fundamentalum petitum and the existence of the ultra petita principle makes the role of judges 'rigid' in applying the provisions. Thus the protection and saving of the environment cannot be realized so that the sustainability of the environment will be threatened. If the judge in the settlement of environmental cases is not oriented towards environmental sustainability and of course the objective is to protecting and saving the environment will not be achieved. This is a weakness in the settlement of environmental cases.

The role of judges is very large and can be used to integrate environmental protection and rescue through the settlement of environmental cases in court. By



integrating environmental protection and rescue, the judiciary is very effective in realizing environmental protection and saving so that environmental sustainability can be maintained. The judge can protect and save the damaged environment. This also fosters a deterrent effect on perpetrators who commit criminal acts of pollution and/or environmental damage because perpetrators can be given additional punishment by carrying out restoration of a polluted and/or damaged environment even though the parties do not demand restoration of a polluted and/or damaged environment.

Thus the views of judges who do not want to give decisions that exceed what is required because of the *ultra-petitia* principle as mentioned above are not appropriate to be applied in resolving environmental cases that are oriented towards protecting and saving the environment. In resolving environmental cases, of course the orientation is to protect and save the environment itself. If the judge in resolving environmental cases is not oriented towards protecting and saving the living environment for environmental sustainability and does not pay attention to the polluted and/or damaged environment itself, legal protection of the environment will never materialize. This will further exacerbate the impact of pollution and/or the damage it will cause resulting in environmental degradation in both quality and quantity. In protecting and saving the environment, there are several basic principles that become the "spirit" of the Law for protecting and saving the environment (in the modern sense) (*Ergbuth*). These principles are;

First, the principle of maintenance or prevention (*vorsorgeprinzip*). This principle means that the burden, hazard or problem of decreasing environmental quality must be prevented as early as possible before it occurs. The living environment that has been damaged or polluted must also be addressed or there must be restoration of the damaged or polluted environment. This principle also requires a cautious attitude or behavior (*Vorsichtsprinzip*). That is, all activities of the initiator or behavior that may or have the potential to cause environmental pollution or damage must be prevented or prohibited, even though it is doubtful or there is no scientific evidence whether the initiating activity or someone's behavior will actually cause environmental pollution or damage. In principle, this behavior should still be prevented or prohibited because it is "not impossible" to damage or pollute the environment (in *dubio pro securitate*) (*Ergbuth*, *Umweltrecht*, Muechen: C.H. Beck'sche Verlagsbuchhandlung , 1989). The principle of maintaining or preventing *Vorsichtsprinzip* is also found in Article 174 paragraph (2) of



the European Community Treaty (European Community Agreement) which basically requires prevention of uncertain risks. Likewise, this principle is also contained in the provisions of article 15 of the 1992 Rio de Janeiro Declaration which states:

"In order to protect the environment, the precautionary approach shall be widely applied according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

Countries in the world are expected to integrate this principle in their national law to protect and save the environment from the dangers of environmental degradation that threatens environmental sustainability. This principle has important meaning in efforts to prevent and damage the environment. Judges in resolving environmental cases should apply this principle in order to prevent environmental degradation.

Second, the principle of causation (*Verursacherprinzip*). This principle means that anyone who burdens, pollutes or damages the environment must bear the burden of costs to improve the environment and compensate for losses. The principle of this cause that is interesting is that all people are actually the cause of environmental damage or pollution. If everyone (government and society) does nothing to restore environmental functions, then the consequences of pollution and destruction must be borne by everyone together (*Gemeinlastprinzip*). In this case, everyone must feel for themselves the consequences of environmental pollution and/or destruction (*casum sentit dominus*). Thus, environmental protection laws must be formulated in such a way that everyone's behavior is a form of responsibility for environmental sustainability. The law should burden everyone with the obligation to protect their environment.

Third, the principle of cooperation (*Kooperationsprinzip*) or participation. The success or failure of environmental management is also determined by the cooperation and participation of everyone. The responsibility for environmental sustainability cannot be borne solely on the shoulders of the government, but is also the responsibility of everyone. This means that all social strengths and potentials of the community must be involved. Based on this principle, free space for community members must be sought to be able to participate in environmental management, especially in efforts to prevent and control environmental pollution and/or damage (*Huey D*). In reality, many people who should participate in environmental management are still defending companies that cause environmental pollution or damage because they are paid (Judges). This is also reinforced



by the Supreme Court Decision, Number. 1191 K/Pdt/2009 which contained a decision to close the company in Pekalongan, but it could not be executed because the community defended the company causing environmental pollution and/or damage so that it would not be closed down. The reason the community objects to the company being closed down is because if the company is closed down the community will lose their livelihood, the community will no longer be able to work in the company that will be closed down. Losing one's livelihood is a misery, because one can no longer finance family needs. Thus some people still prioritize their own needs at the expense of environmental interests. A damaged or polluted environment is not seen by some people as a problem. Some people still lack concern for the environment. Communities lack extensive knowledge to protect and save the existence of the environment in its sustainability.

In the environment, what is meant by victims are humans and the environment. Humans who become victims are humans who have lost their rights to a good and healthy environment. Human rights include the right to make legal claims to demand that their interests in a good and healthy environment be respected. The rights possessed by humans are individual subjective rights and social rights. Individual rights are rights that are owned individually, while social rights are rights that are jointly owned by the community. Violation of this right is a violation that can be prosecuted by individuals as well as by community groups. As stated in Article 91 of Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) that, "the community has the right to file a class action lawsuit for their own interests and/or for the benefit of the community if they experience losses due to environmental pollution and/or damage". Likewise, in Article 92 UUPPLH it is explained that, "in the context of carrying out the responsibility for protecting and managing the environment, environmental organizations have the right to file a lawsuit in the interest of preserving environmental functions.

Environmental sustainability when viewed Preservation of environmental functions to realize environmental sustainability (dos Santos, 2023). Environmental sustainability in the settlement of environmental cases receives less attention from judges. With the Deep Ecology concept, it is a movement among people who have the same attitudes and beliefs, support a lifestyle that is in harmony with nature, and both fight for environmental issues. life and politics. A movement that demands and is based on fundamental and revolutionary paradigm changes, namely changes in perspective, values and behavior or lifestyle.



The environmental sustainability paradigm is a fundamental change in national policy, which gives priority to the preservation of life forms on this planet, in order to achieve environmental sustainability (Mappong, 2023). The main goal of environmental sustainability is to maintain and preserve the environment and all the rich forms of life in it (Diep, 2023). Environmental sustainability must become a commitment in national development politics, otherwise environmental destruction will get worse and there will be a decrease in the quality and quantity of the environment. This will result in a good and healthy living environment becoming an expensive item to be able to meet the necessities of life in human life.

In realizing the protection and saving of the environment through the settlement of environmental cases in court, it is necessary to pay attention to the principles of the Johannesburg Declaration in 2002. These principles are as follows the obligations contained in the Principles The 21 Stockholm Declaration and the principles of the Rio Declaration which govern the sovereign rights of the state over natural resources and the state's responsibility to prevent environmental impacts that cross national borders; the idea of taking preventative measures; the idea of good neighborliness and the duty to engage in international cooperation; and the idea of sustainable development; the need to exercise caution; the "polluter pays" (or "polluter-pays") premise; the idea of shared but distinct responsibility (Evi, 2018).

Likewise, in the context of protecting and saving the environment, in the settlement of environmental cases in court, it is necessary to pay attention to the aspirations of the affected people. Article 70 of the PPLH Law clearly regulates community participation in activities related to protecting and saving the environment. Article 70 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH) states that: the community has the same and widest possible rights and opportunities to play an active role in environmental protection and management. The role of the community as referred to in Article 70 paragraph (1) of the PPLH Law, can be in the form of Social surveillance, Provision of suggestions, opinions, objections, complaints and Submission of information and/or reports. Article 70 paragraph (3) letter d of the PPLH Law states that one of the roles of the community in protecting and saving the environment is carried out through social supervision.

In addition to social oversight aspects, community involvement can also take the form of providing suggestions, opinions, suggestions, objections and/or complaints.



Objections to actions that can damage or reduce the quality of the environment can be submitted by submitting an objection to the authorities or state institutions in charge of environmental management. Submission of complaints or reports can be made by the public to law enforcement agencies or authorized agencies, if they find actions that damage the environment. If in the future it creates a dispute among the people who object to making a complaint, environmental dispute resolution can be taken through the court (litigation) or outside the court (non-litigation). The choice of environmental dispute resolution is carried out voluntarily by the parties to the dispute (Jimly, 2012).

The PPLH Law develops the concept of community participation with a consultative relationship pattern and a partnership relationship pattern (Agustinus, 2023). Consultative relationship pattern focuses on community groups who have an interest in having the right to have their aspirations heard and to be informed by decision makers, although the final decision remains with the decision maker. Community involvement in the context of partnership according to the PPLH Law means that decision makers and community members are equal partners. The parties discussed the problem together, looked for various alternative solutions to the problem and discussed decisions (Kadek, 2019). The environment must be viewed as one of the ecosystem's components that has worth and should be respected, treasured, and preserved because it is essential to maintaining the integrity of human life. Humans are also obligated by this integrity to treat other living things with respect.

## 5 CONCLUSION

The Judges handling environmental cases have not used the deep ecology approach in protecting and saving the environment for the sake of environmental sustainability. The obstacle experienced by judges in handling environmental cases by using a deep ecology approach in protecting and saving the environment is the ultra-petita principle which shackles judges in exploring environmental matters.

This research proposes Suggestions Rescue and deep ecology approaches in protecting and saving the environment are made effective in settling environmental cases in court. Judges should not be shackled to the principle of ultra petita because it will limit the judges in exploring the law in the use of a deep ecology approach for the protection and preservation of the environment.

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