resources

MDPI

Article

Political Law on the Environment: The Authority of the Government and Local Government to File Litigation in Law Number 32 Year 2009 on Environmental Protection and Management

Nurul Listiyani * and M. Yasir Said

Faculty of Law, Universitas Islam Kalimantan Muhammad Arsyad Al-Banjari Banjarmasin, South Kalimantan 70123, Indonesia; yasirsaid93@gmail.com

* Correspondence: nurullistiyani5@gmail.com or mys.legal.correspondent@gmail.com

Received: 5 October 2018; Accepted: 20 November 2018; Published: 23 November 2018

Abstract: The construction of legal norms concerning the government's right to file litigation for compensation in Article 90 paragraph (1) of Law No. 32 Year 2009 on Environmental Protection and Management (hereafter referred to as UUPPLH) is very important. However, Article 90 paragraph (1) of UUPPLH raises legal problems in the form of obscurity of norms, regarding the basis that underlies government institutions' and regional governments' authority to file claims for compensation. The first hypothesis believes that most of the environmental problems are caused by the ineffectiveness of supervision by the government itself. This research focuses on studying the government's right to file litigation as a law enforcement effort in the natural resources sector. The method used in this research is normative juridical, which comprehensively assesses the norms regulated by the government's authority on the environment. The result of the study shows that the legal rights of the government can be utilized to claim civil liability in the form of compensation for ecosystem losses. Constitutionally, the legal basis of the government's right to file litigation is the State's right to control the earth, water, and natural resources as regulated in ground norm Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, to enforce article 90, the government needs to realize that supervision is the key element of preventive measures.

Keywords: authority; environment; natural resources; legal studies; Indonesia

1. Introduction

1.1. Research Background

One of the objectives of environmental protection and management as stated in Article 3 letter (a) of Law Number 32 Year 2009 on Environmental Protection and Management (hereinafter refers as UUPPLH) is to protect the land from pollution and damage. Based on this reason, since the first process (planning), it is important to estimate the impact on the environmental zone as a result of future mining activities.

Environmental protection and management is currently carried out through a law enforcement mechanism. According to Satjipto Rahardjo, law enforcement is defined as a process employed to realize legal desires, namely the thoughts of the legislative bodies that are formulated and stipulated in regulations which are then implemented [1].

Soedarto interpreted law enforcement as the attention to and cultivation of unlawful acts that have actually happened (*onrecht in actu*) and illegal acts that might occur (*onrecht in potentie*) [2]. Moreover, Soerjono Soekanto also stated that: "the activities to harmonize the relationships of values described in

the principles that are solid and embodiment in attitudes and actions as a series of translation of the final stage values, to create and maintain peace and association. Conceptually, the core and meaning of law enforcement lies in social life".

Moreover, according to Otto Soemarwoto, every development activity, wherever and whenever, will definitely have an impact that occurs as a result of an activity that can be natural, chemical, physical, or biological [3]. In the implementation of environmental protection and management, the State works on several principles of the state's responsibility, which makes the country a central point. The concretization of strengthening the principles of State responsibility in Law No. 32 Year 2009 on Environmental Protection and Management is the formulation of norms that regulate the government's right to file litigation for compensation in Article 90 paragraph (1) of Law No. 32 Year 2009 on Environmental Protection and Management. This states that: "*Institutions of the government and regional governments in charge of environmental affairs shall be authorized to file litigation for compensation and certain measures against businesses and/or activities causing environmental pollution and/or damage inflicting environmental loss*" [4].

The legal consequences of Article 90 paragraph (1) are that the government can file a claim if the mining activities are harmful to the environment. The mandate and the foundation regarding the legal position and interests of the government and regional government in filing a civil lawsuit for environmental interests are very important. In addition to strengthening the aspects of legal standing in court (*standi in judicio*), it also should aim to restore environmental quality that has been polluted or damaged. This also acts as an implementation of the *welfare state concept*, where the state and government have an obligation to provide general welfare for the citizens.

Moreover, the construction of legal norms concerning the government's right to file litigation in Article 90 paragraph (1) of Law No. 32 Year 2009 on Environmental Protection and Management is very important in Indonesia; however, Article 90 paragraph (1) of Law No. 32 Year 2009 raises a legal loophole. The legal loophole referred to is on the basis of the government's institutions' and regional governments' liability in environmental affairs. The authority to file litigation for compensation will be ineffective. This is because the authors believe that most of the environmental problems in this case are caused by the ineffectiveness of supervision carried out by the government and local governments.

In previous research, based on UUPPLH, supervision is the authority and responsibility of the government and regional government as a preventive measure against environmental pollution and destruction, as stipulated in Article 71, which states that:

1. *The Minister, governors, and regents/mayors by virtue of their authority shall supervise the compliance of personnel in charge of businesses and/or activities to the provisions stipulated in environmental protection and management legislation.*
2. *The Minister, governors or regents/mayors may delegate the authority to conduct the supervision to technical functionaries/institutions in charge of environmental protection and management affairs.*
3. *In executing the supervision, the Minister, governors or regents/mayors shall stipulate environmental supervisors constituting functional officials.*

In this regard, there also appears to be a contradiction between the legal norms of Article 90 paragraph (1) of UUPPLH, which regulates the government's authority to file litigation on environmental pollution/damage, and the legal norms of Article 71 of UUPPLH on the Supervision by the Government and Regional Governments in environmental protection and management in Indonesia.

1.2. Problem Analysis

Environmental pollution not only has an impact on a local scale, but also has a broad impact on a national and even international scale, so it is considered to be a problem of "*common grasslands*". This assumption rests on the environmental meaning as stipulated in Article 1 number 1 UUPPLH, that the Environment is a unity of space with all objects, power, circumstances, and living things,

including humans and their behavior, which affect nature itself, the continuity of life, and human's welfare and other living things.

As we look back to 1997 and 2015, there was a thick haze due to forest fires that occurred in Kalimantan, Sumatra, and Riau, which covered most of Indonesia to neighboring countries, such as Malaysia and Singapore. The smoke haze caused air pollution that had an international impact, creating environmental disputes.

The essence and main elements of international environmental disputes lie in the environmental damages that impact other countries. There are many environmental disputes on an international scale. For example, in the 1974 Nuclear Test case, France conducted nuclear weapons testing in the Pacific Islands that caused a lawsuit by Australia and New Zealand on the basis that the test had caused environmental changes in both countries due to the scattering and falling of radioactive substances, which presented a high risk of contaminating the air.

Therefore, it is necessary for the government to utilize the authorities given by the 1945 Constitution and UUPPLH. This is not only to actively perform litigation against companies which have caused environmental damage, as stipulated in Article 90 paragraph (1) of UUPPLH. It is also to understand the core issue that environmental damages can be avoided in the first place with the enforcement of article 71 of UUPPLH, which gives the authority to the Minister, Mayor, and Regent in order to strictly supervise the compliance of personnel in charge of environmental activities.

Generally, international environmental disputes happen because of the conflict between parties, whereas environmental pollution/damages in one country impact others, which then finally arises in legal consequences, such as a civil lawsuit. Based on these events, to be able to sharpen the study of the polemic of the right to file litigation by the government and regional government in Law No.32 Year 2009 on Environmental Protection and Management, the author conducted research entitled "*Political Law on Environment: The Authority of Government And Local Government to File Litigation in Law Number 32 Year 2009 on Environment Protection and Management*". The aim of this research was to identify the underlying legal politics of the government's right to file a litigation against the environmental damage. If traced normatively, as can be seen in the results of previous studies, environmental pollution and damage have the potential to occur due to weak supervision carried out by the government or regional government. [5].

2. Materials and Methods

2.1. Type of Research

Based on the type of study, this research focuses on the authority of the government and local governments as an effort to prevent pollution and environmental damage. This research also can be categorized as legal research in the domain of normative or doctrinal juridical studies. According to Soetandyo Wignjosoebroto, doctrinal research is a study of law which conceptualizes and develops the basis of the doctrine against the issue. The doctrinal legal research works to find the correct answers in proving the truth sought in or from the prescription of the written law or religious scripts or the underlying doctrine.

2.2. Research Design

The research design used in this study is action research, which began with a preliminary study or problem identification. By using the action plan, a common perception that the government and regional government have the right to file litigation against activities that cause environmental pollution and damage to bear the costs of environmental recovery, as stipulated in article 2 letter (j) of the UUPPLH regarding the doctrines of polluters' pay, was investigated.

2.3. Type and Source of Legal Material

The type of legal material used in this study includes primary legal material and secondary legal material. Primary legal material can be seen as authoritative material, meaning that it has authority consisting of laws and regulations, official records or minutes in the drafting of laws and regulations, or court decisions. In contrast to this, secondary legal materials are all publications concerning the legal problems.

In analyzing the issues, the source of primary legal material used consists of environmental legislation, namely, Law Number 4 Year 1982 on the Environment (State Gazette of the Republic of Indonesia Year 1982 Number 12, Supplementary State Gazette of the Republic of Indonesia Number 3215), Law Number 23 Year 1997 on Environmental Management, and Law Number 32 Year 2009 on Environmental Protection and Management. Next is the legislation in the field of mining, namely Law Number 11 Year 1967 on General Mining and Law Number 4 Year 2009 on Mineral and Coal Mining (State Gazette of the Republic of Indonesia Year 2009 Number 4, Supplementary State Gazette of the Republic of Indonesia Number 4959). Other legal material which is the source of primary legal material in reviewing the legal issue of research is the Legislative Draft and the minutes of the meeting on Law Number 32 Year 2009 on Environmental Protection and Management, Legislative Draft, along with the minutes of the meeting of Law Number 4 Year 2009 on Minerals and Coal Mining and Government Regulation Number 27 Year 2012 on Environmental Permits (State Gazette of the Republic of Indonesia of 2012 Number 48, Supplementary State Gazette of the Republic of Indonesia Number 5285). Sources of secondary legal materials include materials that support primary legal materials, such as books, research, articles and journals, published papers, printed/electronic mass media news, and interviews and respondents (institutions, apparatus, and community), as they contain references.

2.4. The Procedure of Collecting Legal Material

When collecting the legal material, the researcher performed the following steps: The first step was to collect primary legal material and secondary legal material that are relevant to the issues. The material was collected with a recording system that used a qualified file card based on the sub-topics discussed in this study. For primary legal material, this resulted in an inventory of legislation review, while for secondary legal material, cards were collected with the intention of recording a quotation card and analyzing the summary. After legal material was inventoried and classified, the second step was to interpret the primary legal material and then conduct a qualitative juridical analysis based on legal reasoning and legal argumentation in a coherent manner [6].

2.5. Analysis on Legal Material

Legal material that has been successfully collected was then analyzed. In analyzing the data, the researcher used a descriptive qualitative analysis, which is an analysis that describes the prevailing regulations and then reviews the legal material to find legal obscurity, as referred to in the formulation of the problem.

3. Results

3.1. The Authority to File Litigation in Law No. 32 Year 2009 on Environment Protection and Management

The right to file litigation is broadly interpreted as the access of individuals, groups/organizations, or government institutions in the court as the plaintiff to demand the restoration of their rights that have been violated by the defendant, or compensation for what he or she has suffered [7]. In its content material, the UUPPLH regulates and guarantees access to parties to claim their rights. Access is given to: (1) Individual claimants; (2) the Environmental organization (NGO) claimants; (3) class action; (4) the government's claimants; and (5) citizen lawsuits.

3.2. The Authority to File Litigation for Government and Local Government

The government's right to file litigation can be utilized to demand a civil liability against personnel responsible for activities that cause ecosystem losses in order to obtain compensation for the damages. The government's right to file a civil lawsuit has been regulated in the old law, namely Law Number 23 Year 1997 on Environmental Management (hereinafter written UUPLH). The UUPLH states that: *"If the community suffers due to environmental pollution and/or damage in such a way as to affect the basic life of the community, then the government institutions responsible for the environmental sector can act in the interest of the community"* [8].

Furthermore, in its material, the UUPPLH regulates the government's right to file a civil lawsuit, as follows: "Institutions of the government and regional governments in charge of environmental affairs shall be authorized to file litigation for compensation and certain measures against businesses and/or activities causing environmental pollution and/or damage inflicting environmental loss".

The difference between these two norms is based on the object of the lawsuit. The current environmental law (UUPPLH), explicitly states that the object of the government's lawsuit is to file a claim for compensation and certain actions against activities that cause environmental pollution or damage which results in environmental losses. Conversely, the UUPLH (Old Law) states that the government's right to file a civil lawsuit lies in the suffering of the community due to environmental damage. In this matter, the government and regional government act to represent the public. In the UUPPLH, the community is no longer represented by the government and regional government. However, the UUPPLH gives every citizen the right to file a lawsuit.

3.3. The Political and Legal Basis of Article 90 Paragraph (1) UUPPLH

3.3.1. Legal Standing of Environmental Lawsuit

Legal Standing is a civil lawsuit process carried out by a person, group of people (class action), or organizations to court for the utility of the natural objects. Legal Standing formulation is regulated in Article 38 of Law No. 23 Year 1997 on Environmental Management (UUPLH). This legal right arises because of the influence of Prof. Christopher Stone (1972). According to Stone in his essay "Should Trees Have Standing?: Toward Legal Rights for Natural Objects", at first, people thought only their families had rights, but gradually in the world of law, the recognition of rights increasingly developed, so that there is not just one who has rights, but all humans; besides that, not only people have rights, but also forests, seas, and rivers, as natural objects, deserve legal rights [9].

According to Stone, we are now accustomed to something that was never thought of before and considered impossible, and then became a reality, and this kind of thing happened repeatedly in the development of the law. Additionally, based on this observation, Stone suggests that rights be given to forests, seas, oceans, rivers, and other natural resources that are in the environment, as well as the environment itself.

Stone's doctrine was also justified by Prof. Koesnadi. He believes that natural resources have rights. Achmad Sentosa & Sembiring also explained his thinking: that forests, seas, and rivers, as natural objects, are possessed and at the same time have rights attached. However, because the natural object cannot speak or is "inaminative", the object cannot enforce its rights. Therefore, it must be "represented"; in this case, through the role of non-governmental organizations s as "guardians" of the environment [10,11].

In addition, the recognition of environmental rights is relevant and strategic, because environmental law enforcement is not only monopolized by the government, but also creates a space for NGOs (non-government organizations) to participate in it. In this way, the state's obligation to implement the principle of sustainable development can be controlled by the existence of an active and critical role of environmental organizations [12].

Recognition of Legal Standing in Indonesia began with legal findings by the court in WALHI's case against five government institutions, namely: Investment Coordinating Board (BKPM), Minister

of Industry, Minister of Forestry, Minister of State for Population and Environment, and Governor of North Sumatra and PT IIU (the main core of Indorayon) in the Central Jakarta District Court in 1998, and more specifically influenced by Prof. Paulus Effendi Lotulung's opinions. He stated that the legal position of NGOs is important. Therefore, it needs to be regulated juridically, so that there are strict restrictions when acting as a legal subject in the court.

The remedies to provide legal protection with the affirmation that the environment has rights which are then called environmental rights in the Indonesian legal system was a step forward to better legal development, in order to fight for the interests of the community against violations of public rights and political civil rights, especially in the environmental field. Therefore, according to Prof. Koesnadi, based on the WALHI case, it was the right decision when the judge of the Central Jakarta District Court ruled that WALHI was given the right to act on behalf of the environment in the case of Indorayon (IIU).

Based on that historical view, in order to maintain environmental conditions and fight for a clean and healthy environment for every citizen, as regulated in Article 5 paragraph (1) of the UUPLH, the participation of the community and NGOs in managing the environment is very necessary for both starting planning and implementing the use of monitoring rights. Therefore, the participation of NGOs (WALHI) in the field of Environmental Law and Enforcement, as happened in the case of Indorayon, deserves support and role models by all Indonesian people.

3.3.2. Political Law of Government's Authority to File Lawsuit on Environmental Cases

The 1945 Constitution of the Republic of Indonesia (here and after will refers as 1945 Constitution) states that a good and healthy environment is a human and constitutional right of every Indonesian citizen [13]. Therefore, the state, government, and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development so that the Indonesian environment can remain a source and support the people of Indonesia and other living natures. Therefore, the Indonesian environment must be protected and managed properly based on the principle of state responsibility, principles of sustainability, and principles of justice. In addition, environmental management must be able to provide economic, social, and cultural benefits based on the principles of prudence, environmental democracy, decentralization, and the recognition and appreciation of local culture and environmental culture.

The standing of Political Law is critical in the formulation, implementation, and development of law. Therefore, Political Law must be clearly formulated to avoid confusion and obscurity at the stage of implementation. According to Von Kichmann, a warehouse full of books about the laws in the library can be thrown away when there is a political decision in parliament that changes the contents of the law. Therefore, Political Law is a legal policy that will be implemented nationally by a government [14].

From the perspective of environmental law, the welfare is the goal of the Nation. It is not enough for Political Law to only be based on the rule of law and democracy; it must also must be based on the principles of environmental management. This is especially true in the utilization of natural resources as one of the key elements of development. By referring to these arguments, conceptually, environmental law and politics can be formulated as a direction of legal policy established by the state to achieve the goals and objectives of environmental management [15].

The ground norms as a starting point for the development of environmental law and politics in Indonesia are presented in the fourth paragraph of the Preamble to the 1945 Constitution, which reads: "*Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and their entire native land, and in order to improve the public welfare . . .* "

The fundamental basis contained in the word "*protect all the people of Indonesia*", means that the state has a duty and responsibility to protect all sources of livelihood for the people to provide general welfare. The sources of livelihood are none other than the natural resources and the environment, with the basic idea that the meaning is concretely formulated in Article 33 paragraph (3) of the 1945

Constitution of the Republic of Indonesia, which reads: *"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people"*. This provision has not explicitly formulated the politics of environmental law, but from the phrase "controlled by the state" and "the greatest prosperity of the people", has become the only initial reference to environmental law politics in Indonesia at that time.

Political Law in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is stipulated as the control of the state over natural resources in the context of the national economy, namely to provide general welfare. Nevertheless, in accordance with the nature of the Constitution as general principles or general norms, environmental conception of environmental management law can be drawn from the formulation of the article, because, grammatically, the phrases "controlled by the state" and "used for the greatest prosperity of the people" have the meaning that the state is the natural resources manager. The state is responsible for maintaining the sustainability to achieve prosperity in a sustainable manner.

In Indonesia, the direction of legal policy will be created, in addition to the aim of creating a national legal system, by, more importantly, an understanding of the concept of the welfare state. On the basis of this view, according to Abdul Hakim Garuda Nusantara, Indonesian Political Law must be oriented to the ideals of the state of law based on the principles of democracy and social justice in Indonesia, as stated in the Preamble of the 1945 Constitution [16].

The legal policy of environmental management experienced a fundamental change in the 1945 Constitution since the second amendment on 18 August 2000 and the fourth amandement on 10 August 2002. One aspect of the idea of the constitutional content is the legal policy of environmental management. Constitutional protection of individual environmental rights has two reasons: First, it becomes a strong basis for individuals to defend the environment from damage that affects them. Second, it is the basis for demanding the state to realize these rights. This is based on Heinhard Steiger et al., who proposes two functions of subjective rights, namely:

1. *The function of defence (abwehrfunktion) is the right of the individual to defend himself against an interference with his environment which is to his disadvantage;*
2. *The function of performance (leistungsfunktion) is the right of the individual to demand the performance of an act in order to preserve, to restore or improve his environment.*

The function of defense is more internal, that is to defend itself from disturbance to the environment which has an impact on it, while the function of performance is more external, in the form of an obligation of the state to reflect subjective environmental rights. From this perspective, it can be seen that the urgency of environmental protection through the constitution is to provide legal certainty for every citizen to defend their environmental rights and at the same time provide an obligation to the state to realize these rights.

It is not enough for environmental policy to only be regulated in ordinary legislation; for fundamental matters, it needs to be regulated at the constitutional level, so as to provide certainty for citizens and the environment itself to demand their rights, as well as state obligations to fulfill these demands.

Heinhard Steiger (et al.) argues that there are various models of pouring environmental rights into a country's constitution, namely: first, a constitution that does not guarantee basic rights at all; second, a constitution that contains certain environmental rights; third, a constitution that combines these rights explicitly with other fundamental rights; and fourth, the constitution that links the guidelines for state policies or mandates on the environment addressed to the organs of the state with individual environmental protection.

Jimly Asshiddiqie also divides models of environmental constitution into four groups, but presents differences when compared with the grouping of Steiger (et al.). First, the constitution which contains specific provisions concerning environmental protection, for example, the Spanish Constitution. Second, the constitution that integrates provisions on the environment in terms of human

rights, for example, the Polish constitution. Third, the constitution that only regulates the environment implicitly or determines that the guarantee of certain human rights can be used for the benefit of environmental protection in practice. An example of this group is the Indonesian Constitution, because Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia only states the basic principles that must be used as a basis for environmental policy. Fourth, a constitutional group that links certain environmental policy outlines with the duties or responsibilities of certain state institutions to preserve the environment and overcome damage to nature, for example, the Portuguese constitution, which links environmental policy with state responsibility to protect and preserve it [17].

Furthermore, Mas Ahmad Santosa presents other categories, which at the same time, provide the level of state commitment to environmental protection, namely: First, the highest commitment category, including the recognition of legal rights for nature which is equipped with subjective rights and state obligations in the field of environmental management, as well as the direction of the development pattern, namely sustainable development in packaging specific environmental charters or *charte* for nature. This category offers a new paradigm, namely *ecosentrism vis a vis anthropocentrism*. Secondly, a high commitment category; namely, there is a subjective rights recognition equipped with a duty of state in the field of environmental management and the direction of the pattern of sustainable development in a special package of environmental charters. The paradigm offered in this category is still *anthropocentrism*. Third, the category of commitment is adequate; namely, there is recognition of subjective rights equipped with a duty of the state in specific articles. Fourth, the category of medium commitment, which provides recognition of subjective rights without specifically recognizing the duty of the state in the field of environmental management, but includes the pattern and direction of sustainable development even though it is not placed in special articles, but superimposed or mixed with other fundamental rights. This category includes constitutions which only recognize subjective rights or duty of the state alone, which is mixed with other fundamental rights. Fifth, a low commitment category, namely a constitution that does not recognize environmental norms (subjective rights or duty of the state) or the pattern and direction of development [18,19].

Referring to the categories stated above, Mas Ahmad Santosa categorizes Indonesia as the medium category (fourth group) because it recognizes subjective rights in environmental management, as stipulated in Article 28H of the 1945 Constitution, and the existence of environmental and sustainable elements, as stated in Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Moreover, the right to have a good and healthy environment is the main consideration for the issuance of Law No. 32 Year 2009 on Environmental Protection and Management. This means that the state, government, and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development so that Indonesian environment, including natural resources, can remain a source and support for the people of Indonesia and other living things.

The enactment of Law Number 32 Year 2009 of Environmental Protection and Management (UUPPLH) after the second amendment of the 1945 Constitution marks the era of environmental protection and management based on good governance because each process of formulating and implementing preventive instruments or countermeasures and law enforcement requires the integration of aspects of transparency, participation, accountability, and justice.

The government's authority to file a lawsuit can be utilized for civil liability to the personnel responsible for the business that causes ecosystem losses in order to obtain compensation for environmental damages. This right is regulated in Article 90 paragraph (1) of the UUPPLH. Furthermore, in the Elucidation of Articles UUPPLH, it is formulated that what is meant by environmental loss is a loss arising from pollution or damage to the environment that is not private property in order to ensure that no negative impacts on the environment will occur or recur.

4. Discussion

The Correlation between Article 90 Paragraph (1) of UUPPLH with the Principles and Purpose of Law in Environmental Protection and Management

Environmental law was initially simple and contained civil aspects, but in its development, shifted towards state administrative law, in accordance with the increasing role of the government in the form of interference with various aspects of life in increasingly complex societies. The shift in the role of this state arose along with the birth of a modern state that transformed the function of the state from the night watchman into a welfare function. This change in function requires state interference in managing various interests of the community, including in the environmental sector. Thus, the greater role of the state in managing the environment causes the broader legal substance of the administrative environment [20,21].

Generally, environmental law experts recognize that most of the substance of environmental law is administrative law [22], but what is meant by the administrative environment law has not been formulated clearly. Siti Sundari Rangkuti, for example, emphasized that administrative environment law arises when the decision of the authority is outlined in the form of rules (*beschikking*), the environment, EIA procedures, the determination of environmental feasibility, and so on [23].

Another opinion states that in addition to the form of stipulation, other forms of administrative law are the decisions of regulating authorities (*reguleren*). Administrative environmental law, either as part of environmental law or as a special administrative field, will relate to the authority of the government, institutions, legal instruments, and environmental management procedures by the government [24–26]. This is in line with the implementation of administrative law as stated by P. De Haan et al., where the administrative law has normative functions, instrument functions, and certainty functions. Normative functions are related to the norms of governing power, instrumental functions related to the determination of instruments used by the government to use power, and the certainty function that the instruments used must guarantee legal protection for the people [6].

Therefore, the administrative environmental law is also related to the three administrative functions, which include the authority, procedures, and management institutions; instruments used in management; and legal protection for the people, including the environment [27].

Environmental regulation is a fundamental part of articulating and implementing the values contained in environmental law itself. Therefore, it can be concluded that law is a basis of the government's policy, especially in the field of environmental management. Therefore, the regulation of the government's right to litigate against environmental damage is the implementation of the norms of the government's authority to control.

The state, as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, controls the earth, water, and natural resources contained in the soil. Based on this control, the state has the authority to regulate and manage the environment. In the context of environmental management, the relation between environment law and environment policy is a part of the national development process [28]. Environmental management in Indonesia has a strong legal basis due to its universal nature based on environmental principles. Therefore, in the event of a violation that results in contamination or damage to the environment, the state has the authority to file a lawsuit against the personnel that carried out activities that resulted in pollution or damage.

The government's lawsuit regulated in Article 90 paragraph (1) of UUPPLH is closely related to article 87 in the same law. Provisions in Article 87 paragraph (1) of UUPPLH confirm that every personnel in charge of activities that caused violation of the law in the form of environmental damage incurring losses on other people or the environment shall be obliged to pay compensation for the losses and/or take certain measures. Elucidation of Article 87 paragraph (1) of the UUPPLH explains that the provisions in this paragraph are the realization of the principles that exist in the environment called the principle of polluting pay. In addition to being required to pay compensation, environmental polluters can also be charged by the court to take certain actions, such as orders to: a) install or repair waste

treatment units so that waste is in accordance with the specified environmental quality standards; b) restore environmental functions; and/or c) eliminate the cause of environmental pollution and/or damage. Therefore, compensation is a cost that must be borne by the person in charge of the activity or business due to environmental damage. Moreover, the regulation on Article 90 UUPPLH states:

1. Institutions of the government and regional governments in charge of environmental affairs shall be authorized to file litigation for compensation and certain measures against businesses and/or activities causing environmental pollution and/or damage inflicting environmental loss.
2. Further provision on the environmental loss as referred to in paragraph (1) shall be regulated by a regulation of the Minister.

In the Elucidation of Article 90 paragraph (1), the UUPPLH formulates that what is meant by "environmental loss" is the loss arising from environmental pollution or damage which is not private property. In contrast to this, what is meant by "certain actions" is the prevention and prevention of pollution and/or damage and the restoration of environmental functions to ensure that no negative impacts on the environment will occur or recur.

Further provisions regarding compensation, as referred to in Article 90 paragraph (2) UUPPLH, are regulated by the Republic of Indonesia State Minister of Environment Regulation Number 7 Year 2014 on Environmental Losses Due to Environmental Pollution and Damage (hereafter referred to as PermenLH No.7/2014). Based on Article 1 number (2) PermenLH No. 7/2014, Environmental Losses are losses arising from environmental pollution or damage which are not on private property. Then, Article 3 of PermenLH No.7/2014 regulates that environmental losses include [29]:

a. Losses due to exceeding the Environmental Quality Standards as a result of not carrying out all or part of the obligation to treat waste water, emissions, and management of hazardous and toxic waste materials;
b. Losses for reimbursement of the costs of implementing the Environmental Dispute Resolution, including costs: field verification, laboratory analysis, expert and supervision of the implementation of environmental loss payments;
c. Losses to replace the cost of handling pollution and environmental damage and restoring the environment; and
d. Ecosystem loss.

According to these provisions, the government and regional governments have the authority to file compensation claims and certain actions against activities that cause environmental pollution and damage which results in environmental losses that are not private property. This means that if damage occurs against the environment that is privately owned, then the personnel responsible cannot be requested for a civil lawsuit based on Article 90 of UUPPLH, and if the private owner is the person in charge of the activity which is damaging the environment, then he or she is obliged to take certain actions, namely preventive measures and the restoration of environmental functions to ensure that no negative impacts on the environment will occur. In the event that the responsible party is unable to carry out certain actions, the responsible party may submit to a third party or the government and regional government, whose entire costs are borne by the person in charge of the business and/or activity.

Provisions of Article 87 paragraph (1) UUPPLH contain the following elements: violation of law; pollution or environmental damage; people and environmental loss; business responsibilities; and paying compensation or performing certain actions. Therefore, to be able to file a claim for compensation, certain actions must fulfill the elements stated in Article 87 paragraph (1) of the UUPPLH. Violations of law as referred to in Article 87 paragraph (1) are violations of the law in the form of "environmental pollution or damage"; without causing pollution or environmental damage, it is not sufficient to file environmental claims. In order for claims to be viable, they must also "cause harm to people or the environment", so that those qualified as victims are people or the environment.

On the basis of "violation of law" in the form of "pollution or damage to the environment" that "cause harm to others or the environment", the personnel responsible is obliged to "pay compensation and perform certain actions".

Provisions in Article 87 paragraph (1) of the UUPPLH do not stipulate further regarding the procedure to file litigation for compensation. The procedure in current regulation is based on the provisions of Article 1365 of the Book of Civil Code, which reads: "*every act that violates the law, which brings loss to another person, obliges the person who for the wrong to issue the loss, compensates for the loss*". Therefore, to get compensation, the following requirements must be met: the act must be illegal; the offender must be guilty; there is a loss; and there is a causal relationship between actions and losses [30].

In correlation to the provisions of Article 87 paragraph (1) UUPPLH, Article 1365 of the Book of Civil Code is related to environmental criminal law enforcement, so criminal acts as regulated in the UUPPLH criminal provisions can be submitted for compensation, as regulated in Article 98 UUPPLH and Article 99 UUPPLH, because Article 98 UUPPLH and Article 99 UUPPLH represent material crime, which requires the emergence of consequences in the form of pollution and or environmental damage; while for other crime as regulated in Article 100, Article 101, Article 102, Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, Article 109, Article 110, Article 111, Article 113, Article 114, and Article 115, UUPPLH cannot be applied for compensation, because the criminal act is a formal crime that does not require any consequences from pollution or damage, except in the case of an offender not being punished based on the provisions of a formal crime, who is also sentenced based on material crimes. For example: the perpetrators of environmental crimes are sentenced under Article 104 and Article 98 of the UUPPLH, because the person concerned is dumping B3 waste without permission (Article 104 UUPPLH) and due to dumping of the waste, environmental pollution is caused, as regulated in Article 98 UUPPLH; or an environmental crime in the form of land fire (Article 108 UUPPLH) is committed and, due to the burning of the land, environmental pollution and damage is caused, as regulated in Article 98 UUPPLH. For further different between criminal elements in UUPPLH, please find in the Figure 1 below:

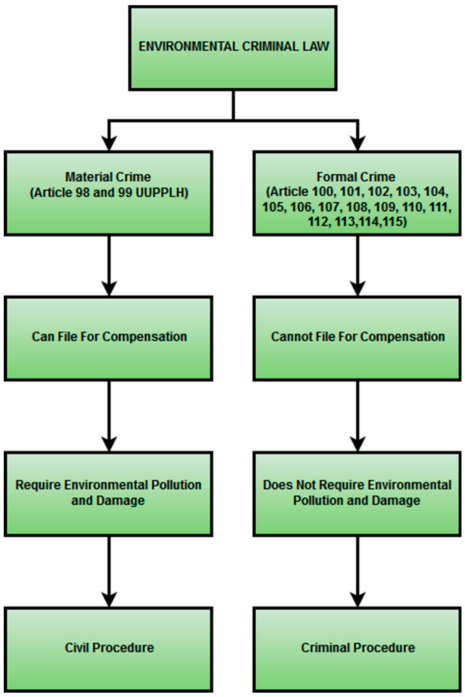

Figure 1. Criminal Law on the environment.

The environmental loss referred to is based on the explanation of Article 90 paragraph (1) in UUPPLH, namely the loss arising from pollution and/or damage to the environment which is not private property. Thus, compensation must be borne by the personnel in charge of the activity due to pollution and environmental damage that is not his or her private property. If pollution and environmental damage occur in an environment that is privately owned, then he or she is subject to a burden to carry out certain actions in the form of preventive measures and countermeasures against pollution or damage and to restore the environmental functions to ensure that no negative impacts on the environment will occur. The UUPPLH and Minister of Environment Regulation No.7 Year 2014 have not regulated environmental damages resulting from environmental pollution or damage in an environment that is privately owned.

5. Conclusions

There are two main conclusions of this study. First, the government's right to file litigation can be utilized to enforce civil liability against perpetrators whose responsible for ecosystem losses to obtain compensation from damages. The government's authority to file a lawsuit is provided by the implementation of the government's constitutional right to control the environment and utilize it for the greatest prosperity of the people.

Second, the concept of a government's lawsuit, as regulated in Article 90 paragraph (1) and article 87 of UUPPLH, is the realization of the principles that exist in the environment, known as the principle of polluting pay. However, to enforce article 90, the government should realize that there is an urgent need to perform better supervision. This is because the root of problems in this regard is the lack of supervision of the environmental activities.

Author Contributions: Conceptualization, N.L; Methodology, N.L; Validation, N.L; Formal Analysis, N.L & M.Y.S; Investigation, N.L; Resources, N.L; Data Curation, N.L; Writing-Original Draft Preparation, N.L; Writing-Review & Editing, M.Y.S; Visualization, N.L.; Supervision, N.L.; Project Administration, N.L.; Funding Acquisition, N.L., Translation, M.Y.S.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

References

1. Rahardjo, S. *Negara Hukum Yang Membahagiakan Rakyatnya*; Genta Press: Yogyakarta, Indonesia, 2008.
2. Soedarto. Politik Hukum Indonesia. Dalam M. MD. In *Membangun Politik Hukum, Menegakkan Konstitusi*; Rajawali Press: Jakarta, Indonesia, 2011; p. 14.
3. Soemarwoto, O. *Analisa Mengenai Dampak Lingkungan*; Gadjah Mada University Press: Yogyakarta, Indonesia, 2014.
4. Law Number 32 Year 2009 on Environmental Protection and Management. Available online: http://jdih.menlh.go.id/ (accessed on 19 September 2018).
5. Listiyani, N. Dampak Pertambangan Terhadap Hak-Hak Warga Negara. *Al Adl* **2017**, *9*, 1: 67–84.
6. Hadjon, M. *Argumentasi Hukum*; Gajah Mada University Press: Yogyakarta, Indonesia, 2005.
7. Black, H.C. *Blacks Law Dictionary*; West Publishing: Berlin, Germany, 1990.
8. Law Number 23 Year 1997 on Environmental Management. Available online: http://jdih.menlh.go.id/ (accessed on 21 September 2018).
9. Findley, R.W. *Environmentasl Law in a Nutshell*; St. Paul Minn: London, UK, 1988.
10. Salim, H. *Hukum Pertambangan Mineral dan Batubara*; Sinar Grafika: Jakarta, Indonesia, 2014.
11. Saleng, A. *Hukum Pertambangan*; UII Press: Yogyakarta, Indonesia, 2004.
12. Puluhulawa, F. Substansi Hukum tentang Pengawasan Izin pada Usaha Pertambangan. *Pelangi Ilmu* **2010**, *3*, 148.
13. The 1945 Constitution of The Republic of Indonesia. Available online: http://jdih.menlh.go.id/ (accessed on 20 September 2018).
14. Hartono, S. *Politik Hukum Menuju Satu Sistem Hukum Nasional*; Alumni: Bandung, Indonesia, 1991.

15. Akib, M. *Politik Hukum Lingkungan: Dinamika dan Refleksinya Dalam Produk Hukum Otonomi Daerah*; Raja Grafindo Persada: Jakarta, Indonesia, 2012.
16. Nusantara, A.H. Politik Hukum Indonesia. In *Mahfud. MD. Membangun Politik Hukum, Menegakkan Konstitusi*; Rajawali Press: Jakarta, Indonesia, 2011; p. 15.
17. Asshiddiqie, J. *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*; Raja Grafindo Persada: Jakarta, Indonesia, 2009.
18. Santosa, M.A. Greener Constitution in M. A. Santosa. In *Alam Pun Butuh Hukum dan Keadilan*; Serambi Asa Prima: Jakarta, Indonesia, 2016; p. 23.
19. Santosa, M.A. Demokratisasi Pengelolaan Sumber Daya Alam. In *Lokakarya Reformasi Hukum di Bidang Pengelolaan Sumber Daya Alam*; ICEL: Jakarta, Indonesia, 1999; pp. 21–22.
20. Hadi, S.P. *Dimensi Hukum Pembangunan Berkelanjutan*; Badan Penerbit Undip: Semarang, Indonesia, 2002.
21. Susanto, A.F. *Hukum dan Cosilence Menuju Paradigma Hukum Konstruktif Transgresif*; Reflika Aditama: Bandung, Indonesia, 2007.
22. Drupsteen, T. *Upaya Penegakan Hukum Lingkungan Melalui Hukum Perdata-Administrasi*; Citra Aditya Bakti: Bandung, Indonesia, 2014.
23. Rangkuti, S.S. *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*; Airlangga University Press: Surabaya, Indonesia, 2005.
24. Hadjon, P.M. Penegakan Hukum Lingkungan Administrasi. In *Semiloka Penegakan Hukum Lingkungan Administrasi*; Pusat Penelitian Lingkungan Hidup UNAIR-BAPPEDA Provinsi Jawa Timur: Surabaya, Indonesia, 1996; p. 2.
25. Berge, S. Pengantar Hukum Perizinan. Dalam P. M. Hadjon. In *Pengantar Hukum Perizinan*; Fakultas Hukum Unair: Surabaya, Indonesia, 1993; p. 2.
26. Song, W.J. Analysis on the Foundation of Administrative Law Enforcement Interpretation in China. *Can. Soc. Sci.* **2010**, *6*, 20–21.
27. Akib, M. *Hukum Lingkungan Perspektif Global dan Nasional*; Raja Grafindo Persada: Jakarta, Indonesia, 2014.
28. Minister of Environment Regulation Number 7 Year 2014 on Environmental Losses Due to Environmental Pollution and/or Damage. Available online: http://jdih.menlh.go.id/ (accessed on 22 September 2018).
29. Hayati, T. *Eram Pertambangan di Bawah Rezim Undang-Undang Nomor 4 Tahun 2009 Baru Huku*; Yayasan Pustaka Obor Indonesia: Jakarta, Indonesia, 2015.
30. Effendi, A. Penyelesaian Kasus Pencemaran dan Aspek Hukum Lingkungan. Risalah Hukum Magazine, Faculty of Law Universitas Mulawarman: Samarinda, Indonesia, 2011.