

# STATE RESPONSIBILITY FOR AIR QUALITY: CASE STUDY OF DECISION NUMBER 374/PDT.G/LH/2019/PN.JKT.PST RELATED TO CITIZEN LAWSUIT OVER AIR POLLUTION IN DKI JAKARTA AND SURROUNDING AREAS

Oryza Trivia Astarina<sup>a)</sup>

<sup>a)</sup> University of Indonesia, Depok, Indonesia

<sup>\*)</sup>Corresponding Author: oryza.trivia@ui.ac.id

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**Abstract.** Air is an absolute necessity for human life and livelihood. The existence of pollution and damage to air quality will greatly impact humans in all areas of life. The Indonesian Constitution in Article 28H paragraph (1) guarantees the right of its citizens to obtain a good and healthy environment, so that *mutatis mutandis* this also raises the burden of state responsibility to fulfill it. Due to the occurrence of air pollution in the DKI Jakarta Province and surrounding areas that have disrupted the activities of citizens, the Ibukota Movement Advocacy Team (Inisiatif Bersihkan Udara Koalisi Semesta) filed its claim for healthy air with a citizen lawsuit mechanism. Through the Central Jakarta District Court Decision Number 374/PDT.G/LH/2019/PN.JKT.PST, the panel of judges decided that the government had committed an illegal act, so the state must be responsible for the air pollution that occurred.

**Keywords:** Air Pollution; Citizen Lawsuit; Environment

I.

## II. INTRODUCTION

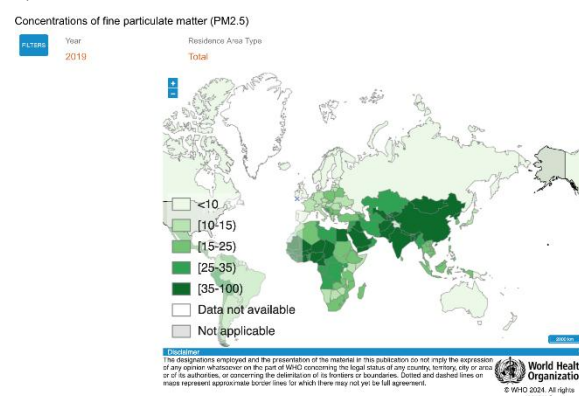
The progress of the era and changes in human civilization towards modernization increasingly require support, especially from the industrial sector. The development of the industrial sector in fact not only has an impact on human convenience, but also environmental destruction. The disposal of modern industries, including factories producing household appliances, packaged foods, clothing, and so on, contributes to waste and environmental pollution, including air conditions. In addition, the use of motorized vehicles and other human activities that produce carbon also contribute to air pollution.

The World Health Organization (WHO) stated that based on field measurements in 7182 settlements in 120 WHO member countries, it was found that pollutants produced with nitrogen dioxide (NO<sub>2</sub>) concentrations measured on average annually, found particulate matter with a diameter of  $\leq 10 \mu\text{m}$  (PM<sub>10</sub>) or  $\leq 2.5 \mu\text{m}$  (PM<sub>2.5</sub>), to represent the average city as a whole. The pollutants in question mainly come from human activities related to the use of fossil fuels.

The IPCC report highlights that human activities have played a significant role in the environmental challenges of this century, commonly known as global warming. The report underlines that the warming of the global climate system is clearly visible through the increase in average temperatures in the air and oceans, as well as the melting of snow and ice, which in turn causes sea level rise.

According to the data, to date, there has been no effort to measure a country's national responsibility for ecological,

social, or economic damage caused by excess global CO<sub>2</sub> emissions. The conceptual approach to national responsibility for emissions focuses on annual territorial emissions (local by region), without taking into account the scale of national emissions compared to the population in a country (Hickel, 2020).



**Figure 1. Concentration of Particulate Matter in the World's Air (WHO data)**

In terms of air quality, the Special Capital Region of Jakarta, as the busiest city in Indonesia, often ranks as the most polluted city in Indonesia and is even among the top five cities with the worst air quality in the world. In the first half of 2019, from January 1 to June 4, the average concentration of PM 2.5 reached 57.66 micrograms per cubic meter. Simply put, this level of pollution indicates the presence of very fine particles

in the air, which can easily penetrate masks and pass through the natural filters in our noses, entering the lungs (Mantalean, 2019). The contributor to the murky air conditions is suspected to be industrial waste that is discharged through chimneys in satellite cities of Jakarta, such as Tangerang, Karawang, Cikarang, and so on. In addition, the dense population that causes the number of motorized vehicles in the capital and its surroundings to soar, which produce carbon monoxide through their exhaust fumes, is also the cause of the bad air. Instead of seeing the blue sky in the sky, Jakarta residents at that time were only able to find gray clouds and dark skies but not cloudy clouds. Complaints of shortness of breath and difficulty getting oxygen flow when exercising outdoors in the capital are also often topics of discussion in the mass media.

In response to these conditions, Melanie Soebono and 31 members of the Capital Movement Advocacy Team (Clean Air Initiative of the Universe Coalition) initiated a citizen lawsuit addressed to the President (Defendant I), the Minister of Environment and Forestry (Defendant II), and other parties. This lawsuit is basically aimed at upholding the rights of citizens, especially residents of the DKI Jakarta Province and its surroundings, to enjoy clean air, so that they can carry out activities properly and comfortably, as guaranteed by the 1945 Constitution. The lawsuit was filed based on public complaints about the uncomfortable air conditions in Jakarta for carrying out outdoor activities to the many cases of respiratory tract infections caused by dirty air. The government, through the regulatory framework outlined in Law 32/2009 concerning the Environment, has underlined the state's obligation to ensure a healthy environment. Specifically, Article 2 paragraph (1) letter a of the law explicitly states that the State of Indonesia is committed to the principle of state responsibility as the basis for environmental protection and management in Indonesia. But further in its implementation regarding the guarantee of a healthy environment in general and freedom of society from air pollution problems in particular, further study is still needed, considering that there are no specific technical regulations governing the state's responsibility for good air quality in Indonesia. Regarding this matter, there are 2 things that the Author wants to study, namely to find out the form of state responsibility for a good environment in Indonesia, to find out the legal protection of society by the Indonesian government for air pollution and the state's responsibility in air pollution cases in DKI Jakarta and its surroundings through the decision of the citizen lawsuit case 374 / Pdt.G / LH / PN.Jkt.Pst. This research was conducted using the normative legal research method or a study conducted on secondary sources, namely written legal sources such as laws and regulations, court decisions, and other documents. The author specifically conducted a study of the case and the judge's considerations in the civil decision of the air pollution lawsuit in Jakarta and its surroundings which was filed using the citizen lawsuit mechanism in the Decision of the Central Jakarta District Court Number 374/Pdt.G/LH/PN.Jkt.Pst and related facts, in order to obtain answers to the problems contained above.

### III. RESEARCH METHOD

That environmental management is not only carried out when environmental pollution has occurred, but efforts can be made before pollution occurs, namely in prevention mechanisms. The potential for environmental damage can actually be mapped early on before serious environmental damage occurs (Spaltani, 2023). Therefore, the government as the holder of control over environmental information and management should be able to fulfill its responsibility for the environment by carrying out better mitigation, including by setting environmental quality standards in accordance with international standards and ensuring that all activities related to environmental utilization do not cause damage that exceeds the established threshold.

Air pollution that occurs, especially in DKI Jakarta and its surroundings, occurs not only due to changes in weather and the role of climate in it, but also due to government negligence in setting air quality thresholds as set by WHO as a reference. In addition, the government is also weak in the supervision sector, so that the implementation of standard quality regulations is not the main criterion for government policies given to community actions that have an impact on air quality.

Citizen lawsuits serve as a powerful tool for communities to assert their constitutional rights to a healthy and sustainable environment, ensuring that the protection promised by the government is upheld and enforced. The government has neglected its responsibilities as a state administrator and implementer of the constitution. Therefore, the government or state in this case should be the party responsible for the damage to air conditions in DKI Jakarta and its surroundings, with forms of responsibility including the obligation to take action, including improving regulations that do not comply with internationally set standards, and making every effort, both supervision and efforts to restore healthy and good air conditions in DKI Jakarta and its surroundings for its citizens.

Good regulation is needed as part of the institutionalization of environmental law, which will act as a framework for human behavior towards its environment in a country. All actions should have been considered good and bad and the role of law is very important to be its guideline.

Currently, almost no one argues that intergenerational equality is a binding obligation as part of positive law; on the contrary, this principle is better understood as a guideline for the application and interpretation of 'hard' or rigid norms (Betram, 2023). It is important to remember that the good environmental conditions that we maintain today are also an investment for the fulfillment of the rights of future generations to a good and healthy environment. One of the latest innovations is the emergence of the idea of green innovation, which is all technological innovations that can reduce environmental pollution and improve the ecological environment. Green innovation is all forms of innovation that involve energy savings, emission reduction, and pollution reduction that aim to reduce environmental impacts as a basic goal and achieve increased.

### IV. RESULT AND DISCUSSION

#### A. Principles of State Responsibility for the Environment

In its development, history has documented the evolution of the basic principles of environmental management in Indonesia, most of which are in line with the principles outlined in the Stockholm Declaration, the Johannesburg Declaration, and the Rio Declaration (Rafiq, 2021). From these declarations, general international principles related to the environment can be drawn (Fadli, 2016), namely:

- a. "Right to healthy environment
- b. Intergenerational and intragenerational equity;
- c. Biodiversity conservation;
- d. Precautionary principle;
- e. Sustainable use of natural resources;
- f. Eradication of poverty;
- g. Prevention of environmental harms;
- h. Public participation;
- i. Access to information;
- j. Environmental impact assessment and informed decision making;
- k. Peaceful settlement of disputes;
- l. Equal, expanded and effective access to judicial and administrative proceedings; and
- m. Sovereignty over natural resources and responsibility not to cause damage to the environment of other states or to areas beyond national jurisdiction (state sovereignty over natural resources and state responsibility not to cause environmental damage in the jurisdiction of other states)." Implicitly, the principle of state responsibility in the eyes of international law appears to form two opposing poles, namely the existence of state sovereignty over its natural resources, but the prohibition of the state not to cause damage to the environment. But then through declarations and conventions that continue to roll, the United Nations emphasized that the rights of the community to permanent sovereignty over natural resources and wealth contained in the environment of a country where it is located must be implemented by the state for the sake of national development and common welfare (Soto, 1996).

The second principle of the Rio Declaration highlights that state sovereignty gives states the right to exploit their resources in accordance with their own policies and development plans, while also imposing the responsibility to ensure that such activities do not harm the environment of other countries (UN, 1996). The declaration directly limits the state's responsibility for the effects of environmental damage in other countries due to resource exploitation. However, this principle forgets the state's responsibility for its own life, what if the exploitation of natural resources actually causes damage to the environment of its own country. Although it is not directly stated regarding the state's responsibility for the environment in its territory, we can actually see that the basic principles regarding the environment in question can be implemented only with the participation of the state as the main axis. For example, in the implementation of the right to a healthy environment, the state has an important role through its authority to determine regulations regarding the threshold of a healthy environment, in detail for example regarding the threshold of healthy air, the threshold of environmental pollution, regulations regarding the use of technology that can damage the environment, analysis of the impact of activities related to the environment, to regulations regarding environmental utilization permits. On the other hand,

the role of society in implementing regulations and management to the utilization of the environment is also expected to be sustainable to mutually maintain the condition of nature and the environment.

Discussing regulations, as a country of law, the Indonesian state in the constitution does not fail to formulate the form of state responsibility in its text. As Article 28H paragraph (1) of the UUD has regulated that the Indonesian state guarantees the lives of its citizens in prosperity with a good and healthy environment. While then, in Article 33 of the constitution, it regulates state control over natural resources in Indonesia which are utilized or intended for the prosperity of its people. The interpretation of the provisions of Article 28H paragraph (1) should be carried out in conjunction with the provisions of Article 33 paragraph (3), so that it can be interpreted that the utilization of natural resources or the environment in Indonesia is the power of the state which is intended to fulfill the right to life of all citizens, which simultaneously gives rise to the state's obligation to provide a good and healthy environment.

Furthermore, from what is stated in the constitution of the Republic of Indonesia, the law has outlined the principles of state responsibility in relation to the environment, including that state responsibility is in the form of:

1. guaranteeing the utilization of natural resources that can be of maximum benefit for the welfare and quality of life of the people, with a sustainable development perspective for current and future generations;
2. guaranteeing a good and healthy environment; and
3. guaranteeing the prevention of environmental utilization activities that can cause pollution or damage to nature.

Not only in the form of regulation (regelling), the power and responsibility of the state over the environment can be seen through the state's authority to issue policies (beschikking) on environmental utilization activities. As regulated in PP 27/2012, the Indonesian government has the authority to determine the suitability or unsuitability of the environment. The control in question is intended to ensure the implementation of environmental utilization that continues to pay attention to good and healthy environmental quality, and is oriented towards sustainable development and is inseparable from the part of the state's responsibility for the environment.

The state's responsibility according to the Dictionary of Law is:

"Obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law", or it can be interpreted that the state's responsibility can be understood as an obligation to provide reparation for violations of legal obligations under international law, which are caused by the actions or negligence of the state.

In theory (Suparno, 2018), state responsibility is basically divided into 2 parts:

#### a. Risk Theory

This theory leads to the principle of objective responsibility, or absolute responsibility, which states that the state is fully responsible for any activity that creates a dangerous condition, regardless of whether the activity is in accordance with the law or not.

#### b. Fault Theory

This theory introduces the principle of subjective responsibility, which states that the state is responsible for its actions only if it can be proven that there was an error or negligence in the action.

So in theory, the state's responsibility in relation to the environment can be in both conditions. Viewed from the risk theory, the state should be responsible for environmental damage that occurs in the jurisdiction of its country, including if there is no unlawful act committed by the state, for example due to natural disasters, weather instability that causes damage or loss to society, to pollution that occurs. Meanwhile, from the perspective of fault theory, the state can and is also responsible if environmental damage occurs as a result of its unlawful actions, for example in granting inappropriate permits that result in environmental damage, or establishing a policy that is contrary to international and national laws and regulations.

*B. Government Actions in Guaranteeing Legal Protection for the Community for an Environment Free from Air Pollution Reviewed from the Decision of the Citizen Lawsuit of the Central Jakarta District Court Number 374/Pdt.G/LH/2019/PN.Jkt.Pst.*

The emergence of responsibility is a result of an error or loss caused by a certain action. Citizens' rights have been guaranteed through the Indonesian constitution, including their right to a good and healthy environment. So in this case, all citizens have the right to demand accountability from the state for damage to an environment.

All Indonesian citizens who experience losses due to pollution or environmental damage have the right to file a lawsuit which can be referred to as a citizen lawsuit. As per the procedural law regulated in PERMA 1/2002 concerning, lawsuits related to the environment can be carried out through a class action mechanism and filed by a group of victims represented by a class representative (Fatah, 2019).

Citizen lawsuits began with the spirit of lawmakers to provide citizens with the right to sue regarding the environment as embodied in environmental law. The Chief Justice, through Decree No. 36/KMA/SK/II/2013, stipulated that citizens can file lawsuits against unlawful acts due to negligence or failure of the government or environmental organizations to fulfill their legal obligations. Citizen lawsuits can be said to be a machine that drives environmental law (James, 2022). It can be said that the citizen lawsuit mechanism is a way for citizens to be able to claim their rights through the judicial mechanism for and on behalf of the interests of citizens and/or the public interest, to be able to protect their interests that are harmed by the "actions" or "negligence" carried out by state administrators (government) in implementing the provisions of laws and regulations. The decision of the citizen lawsuit is in the form of a court order addressed to the government as the Defendant to issue a policy that is expected to minimize the occurrence of negligence in fulfilling citizens' rights and the occurrence of citizen losses due to environmental damage/pollution in the future (Awaliyah, 2020). The Capital Movement Advocacy Team (Plaintiffs) through a civil lawsuit with a citizen lawsuit mechanism sued the President, Minister of Home Affairs, and Minister of Environment and Forestry and Minister of Health for air pollution that occurred in the DKI Jakarta, Banten, and

West Java Provinces. The President and his three Ministers are considered responsible for carrying out supervision and evaluation and facilitating the DKI Jakarta, Banten and West Java Provincial Governments in controlling cross-border air pollution.

Air pollution has occurred and caused losses to the community, especially in the DKI Jakarta area and its surroundings. The pollution in question has disrupted the activities of residents and very small air particles have even caused various respiratory diseases. Particle pollution has been linked to dementia, cognitive decline, increased infant mortality, cardiovascular disorders, childhood asthma, cancer, and nervous system damage, among many others (Wohler, 2022).

According to the Plaintiffs, the occurrence of air pollution or pollution is caused by pollutant parameters that have exceeded the National Air Quality Standards as regulated in PP 41/1999. The regulation has been followed up with a stipulation by the Governor of DKI Jakarta Province in Decree No. 551 of 2001. In addition, in fact the determination of the quality standards regulated by the government does not comply with the quality standards set by WHO.

In its assessment, the Panel of Judges concluded that the government had failed to provide healthy air, a right protected by various laws and regulations. The negligence constitutes a violation of the legal obligation to ensure a healthy environment, which results in the failure to fulfill the basic rights of citizens to clean air. Thus, the requirements of the object of the lawsuit, namely the negligence or failure of the government in carrying out its legal obligations, have been fulfilled. Evidence of the government's less than optimal performance is its failure to meet ambient air quality standards, which causes disease and an increased risk of premature death and conditions such as acute respiratory infections, coronary heart disease, asthma, stroke, hypertension, and chronic obstructive pulmonary disease among the community. In addition, the government, which has been aware of all the risks of the poor air conditions in question, has not properly informed the citizens about the facts and threats in question. The President as Defendant I is the main person responsible for the losses of citizens due to air pollution that occurs as in the a quo lawsuit. This is based on the fact that the President is considered to have been negligent in carrying out the orders of the environmental law, namely to improve air quality management policies in Indonesia. In its development, the President has issued PP 22/2021 but cannot eliminate the unlawful act which the Panel of Judges considered to have been carried out for at least 10 (ten) years, namely since the enactment of Law 41/1999.

Thus, the government is declared to have committed an unlawful act and is declared responsible for the air pollution that occurred in the DKI Jakarta Province and its surroundings. The form of accountability imposed on the state through the a quo case decision is in the form of issuing regulations or government policies that regulate thresholds in accordance with international provisions through WHO provisions.

As with the principle of prevention of environmental harms as the 6th principle in the Rio Declaration, we can measure national responsibility for environmental damage by assessing



the extent to which the country has exceeded the safe limit for the global emission budget. This method makes it possible to calculate the country's responsibility for excess emissions produced by calculating the scale and population. For countries that have exceeded the specified limit, they should owe a climate debt to countries that still have a share (Jason, 2022).

In relation to air pollution in the Jakarta area and its surroundings, the state must be responsible as the main provider of a good environment for its people according to the mandate of the constitution. However, the developing social contract needs to review the burden of responsibility that should also be borne by emission-producing companies as contributors to pollution so that they can be more environmentally friendly (Prasad, 2020). The establishment of a regulation with the threat of appropriate punishment is needed to achieve the expected environmental order and welfare. A convergence approach to strengthen the legal and ethical framework is needed so that the proposed framework can run. The current regulatory mechanism and framework for implementing environmentally friendly ethics have in fact failed to provide significant encouragement for independent awareness and pressure on stakeholders, in this case including companies that exploit the environment (Jason, 2022).

## V. CONCLUSIONS

That environmental management is not only carried out when environmental pollution has occurred, but efforts can be made before pollution occurs, namely in prevention mechanisms. The potential for environmental damage can actually be mapped early on before serious environmental damage occurs (Spaltani, 2023). Therefore, the government as the holder of control over environmental information and management should be able to fulfill its responsibility for the environment by carrying out better mitigation, including by setting environmental quality standards in accordance with international standards and ensuring that all activities related to environmental utilization do not cause damage that exceeds the established threshold. Air pollution that occurs, especially in DKI Jakarta and its surroundings, occurs not only due to changes in weather and the role of climate in it, but also due to government negligence in setting air quality thresholds as set by WHO as a reference. In addition, the government is also weak in the supervision sector, so that the implementation of standard quality regulations is not the main criterion for government policies given to community actions that have an impact on air quality. Citizen lawsuits serve as a powerful tool for communities to assert their constitutional rights to a healthy and sustainable environment, ensuring that the protection promised by the government is upheld and enforced. The government has neglected its responsibilities as a state administrator and implementer of the constitution. Therefore, the government or state in this case should be the party responsible for the damage to air conditions in DKI Jakarta and its surroundings, with forms of responsibility including the obligation to take action, including improving regulations that do not comply with internationally set standards, and making every effort, both supervision and efforts to restore healthy and

good air conditions in DKI Jakarta and its surroundings for its citizens. Good regulation is needed as part of the institutionalization of environmental law, which will act as a framework for human behavior towards its environment in a country. All actions should have been considered good and bad and the role of law is very important to be its guideline. Currently, almost no one argues that intergenerational equality is a binding obligation as part of positive law; on the contrary, this principle is better understood as a guideline for the application and interpretation of 'hard' or rigid norms (Betram, 2023). It is important to remember that the good environmental conditions that we maintain today are also an investment in fulfilling the rights of future generations to a good and healthy environment. One of the latest innovations is the emergence of the idea of green innovation, which is any technological innovation that can reduce environmental pollution and improve the ecological environment. Green innovation is any form of innovation that involves energy savings, emission reduction, and pollution reduction that aims to reduce environmental impacts as a basic goal and achieve increased profits for the company at the same time (Zhong, 2022).

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