

## Conference Paper

# Sustainable Development: Legal Status and Formulation

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## Abstract

Since 1990s almost every country in the world has acknowledged and adopted sustainable development as the objective of the country's environmental policy and development agenda. According to the World Commission on Environment and Development, sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. However, the concept of sustainable development lacks clarity, which leads to various and conflicting interpretations. In addition, the legal status of sustainable development is also debatable. This paper attempts to answer the question of how the concept of sustainable development has been developed, interpreted, implemented, and adopted in various international talks addressing global environmental problems and in Indonesian environmental law.

**Keywords:** sustainable development, principles of environmental law, global environmental problems

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## 1. Introduction

Along with the increasing awareness of the community about the bad condition of environment and the importance of environmental protection, the environmental issue will get an important place in the formulation of policy, be it at national and international level. In this context, economic growth is no longer seen as an inviolable goal. Instead, economic growth must be placed within the framework of environmental protection. Development, therefore, is a sustainable development. The environmental law in Indonesia itself since the beginning has included ideas on sustainable development. In chapter 3 Law number 4 of 1982 on the basic provision of environmental management (UULH) stated that environmental management is conducted to "support sustainable development for the improvement of human welfare". In addition, chapter 4 of Law number 4 year 1982 also states that one of the goals of environmental management is "the

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implementation of environmentally sound development for the benefit of present and future generations". From the sounds of chapter 3 and 4 it is seen that although Law number 4 of 1982 uses environmentally sound development and sustainable development principles, these two provisions can still be said in conjunction with sust.

Meanwhile, Law number 23 of 1997 on environmental management, which is a substitute for Law number 4 of 1982, has clearly included sustainable development in its provisions. This can be seen from chapter 3 on the principle that one of the acts of environmental management is "environmentally sustainable development". Thus, Law number 23 of 1997 has begun to use the term "sustainable development", although it is still incorporated into "environmentally sound" rases. In addition, recognition of inter-generational values is seen in Article 4 of Law number 23 of 1997 which states that one of the targets of environmental management is "ensuring the interests of present and future generations." Recognition of the importance of the issue of justice as part of sustainable development is reaffirmed in the Elucidation of Article 3 stating that:

*Sustainability implies that everyone assumes their duty and responsibility for future generations, and to each other in one generation. For the implementation of these obligations and responsibilities, the environmental capability must be preserved. The preservation of environmental capability becomes the cornerstone of continued development.*

Sustainable development was also recognized in Law number 32 of 2009 on the protection and management of the environment, in lieu of Law number 23 of 1997. Article 2 of Law number 32 of 2009 states that the principle of environmental protection and management is the principle of sustainability and sustainability and the principle of justice. Elucidation of Article 2 states that the meaning of as sustainability and sustainability are:

That everyone carries obligations and responsibilities to future generations and to his fellowmen in one generation by taking efforts to preserve the carrying capacity of ecosystems and improve the quality of the environment.

While the meaning of as as justice is: That protection and management of the environment should reflect proportional justice for every citizen, either across regions, across generations, or across gender. From the quotation of Article 2 and the explanation it can be concluded two things. First, Law number 32 of 2009 recognizes that sustainable development is the principle of environmental law. Second, Law number 32 of 2009 adds justice to one generation, as well as intergenerational justice, as part of sustainable development. In addition, Law number 32 of 2009 also stated that the purpose

of environmental protection and management is to "ensure the fulfillment of justice of present and future generations", and "to realize sustainable development". Thus, sustainable development and intra-generation and intergenerational justice are considered not only as the principle of environmental law, but also the objectives of environmental law arrangements in Indonesia. In this section, it should also be mentioned that in addition to the law on environmental management, sustainable development is even incorporated into the constitution.

In this case, Article 33 Paragraph (4) of the 1945 Constitution (Fourth Amendment) states that the Indonesian economy is based on several principles, including sustainable principles and environmentally sound principles. Thus, Indonesia is not only one of the few countries that includes provisions on the protection of the environment within its constitution, but also a country that has clearly made sustainable development as the axis of its economic system. However, the concept of sustainable development is not a ready-made and "ready-to-use" concept, but a multi-tafsir concept that still requires development. In this case, the question arises whether sustainable development is a concept only, or is a legal principle and normative. On the other hand, there is also the question of how sustainable development is acknowledged and applied in international law, as well as what is the meaning of the sustainability principle itself. To answer the above questions, this paper will be divided into sections. Following this Introduction, Part 2 will briefly explain the development of sustainable development and ethical justification for sustainable development. Section 3 describes how the recognition of sustainable development in some international judicial bodies conventions and decisions. Furthermore, debates and discussions related to the legal meaning of sustainable development will be presented in Section 4. While Section 5 will provide conclusions from this paper.

## 2. The Concept of Sustainable Development

### 2.1. Introduction of concept

The concept of Sustainable Development is not a concept that emerges at one time, but is the result of a long debate process between the need for development and awareness of the importance of environmental protection. In 1983, the UN General Assembly established an institution that was tasked with reviewing several important issues related to development and the environment, and formulating innovative, concrete and realistic steps to overcome those problems. This institution is called the World Commission on

Environment and Development (WCED) or often referred to as the Brundtland Commission.

In 1987, WCED released a report entitled *Our Common Future*. This commission is not a commission that discovers the term Sustainable Development, although it is acknowledged that it is this commission that popularized the term and placed it in the center of international policy-making. The Commission defines sustainable development as "development that meets the needs of the present without compromising the ability of the offsure generations to meet their own needs". According to the Commission's explanation, the above definition contains two elements: the needs element and the limitations. In relation to the needs element, the Commission considers that these needs are primarily the needs of the poor, which should be a priority of fulfillment efforts needs. As to un limits, the Commission defines it as a limitation of environmental capability, created by the conditions of technology and social organization, to meet the needs of present and future generations.

On 3-14 June 1992 in Rio de Janeiro, Brazil, a high-level conference was attended by heads of states from around the world, named United Nations Conference on Environment and Development (UNCED) or better known as the Rio Conference. The conference resulted in 5 documents as well as I institutions essential for sustainable development [1].

1. Rio Declaration (Rio Declaration),
2. Agenda 21-a blueprint for a work plan for the implementation of sustainable development in the 21st century,
3. Forestry Principles,
4. The UN Convention on Biodiversity (Convention on Biodiversity)
5. The UN Framework Convention on Climate Change, 8 and In its entirety, the Commission declares: *sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:*
6. *The concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and*
7. *The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.[2]*

8. Commission on Sustainable Development—a commission created to monitor the implementation of Rio's agreement and the Agenda 21.

The concept of sustainable development is clearly embodied in principles 1, 3 and 4 of the Rio Declaration and animates the whole principle of this declaration. This declaration states that mankind is central to attention to sustainable development. Thus, human beings are entitled to a healthy and productive life and harmonious with nature. Furthermore, the Rio Declaration also states that the right to development must be achieved to equally meet the needs for development and the environment of present and future generations. In addition, the Rio Declaration also states the importance of integrating environmental considerations in state policy. In this context, the Rio Declaration states that in order to achieve sustainable development, environmental protection must be an integral part of the development process and can not be viewed as something separate from it.[3]

Furthermore, the commitment to implement sustainable development was reaffirmed in the World Summit on Sustainable Development, which took place in Johannesburg, South Africa, in 2002. The world leaders' summit adopted the Johannesburg Declaration on Sustainable Development, which among others reaffirmed the promise of leaders the world to mankind to ensure the realization of sustainable development. [4]

## 2.2. Justification of sustainable development: Utilitarian, Deontological, and Rawlsian perspective

The utilitarian view is often categorized into the consequentialist view. According to this view, the value of an action is determined by the outcome or purpose of the action. In this case, Bentham, as quoted by Alder and Wilkinson, stated that:

*An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.[5]*

From this quotation it is seen that the measure used to determine whether an action is true or not is the end result of the action, that is whether it produces the greatest happiness or not. If happiness, as a measure of the goodness of an action, is drawn so that it goes beyond the limits of generation, we will glimpse the aspect of sustainability of the ethics of utilitarianism. In this context, the maximization of welfare as the goal

of utilitarianism must be non-discriminatory against time, in the sense that each generation should be seen to have equal importance and weight, so that the measure of welfare should be a cross-generational welfare. The happiness or welfare of the present generation should not be considered higher or more valuable than the happiness of future generations. It is on this basis that this ideal utilitarian principle becomes close to the flow of "enlightened anthropocentrism", which sees that the protection of human interests ultimately entails as well as the protection and maintenance of an environment system that serves to support human life (environmentally ~ re supporting System).[5]

Meanwhile, the deontological view rejects the idea that the value of an action is determined by the ultimate result. This view poses ideas based on rights and duties, in which an intrinsic value act is done because the action itself is a goal. The deontological view can be clearly seen in Kant's philosophy about the categorical imperative, with Kant's infamous maxim: *act only on the maxim through which you can at the same time will it to be a universal law.*

Based on this maxim, then environmental protection measures are considered categorical imperatives. We can assume that this environmental protection is desired by all people, both living in the present and future generations. On the contrary, since current contamination is likely to have consequences in the future, we can also assume that environmental pollution will not be universally desirable: even if such pollution is desired by future generations, it is certain that the next generation will not want the pollution [5]. Thus, sustainable development can also be regarded as an effort which is a categorical imperative, desired by all humanity in every generation.

Finally, sustainable development can be examined in Rawls's view of justice. According to Rawls, a system is said to be fair if it meets two principles. First, everyone has equal rights over equal basic liberties. Second, economic or social inequality is structured in such a way that this inequality on the one hand will benefit the least advantaged, and on the other hand related to open positions based on equality of opportunity [6]. In this connection, sustainable development is justified by Rawls' theory, if sustainable development is defined as development that not only provides equality or fundamental rights, but also provides protection to the most disadvantaged, both living and future generations.

Rawls himself states that the principle of justice can be applied to intergenerational relations in relation to what he calls the "just saving principle". In this case, Rawls states that:

A resource that must be set aside for each generation to be fair. In this case, Rawls states that: *obviously if all generations are to gain (except perhaps the earlier ones), the*

*parties must agree to savings principle that insures that each generation receives its due form its predecessors dan does its fair sharefor those to come”.*

*Persons in different generations have duties and obligations to one another just as contemporaries do. The present generation cannot do as it pleases but is bound by the principles that would be chosen in the original position to define justice between persons at different moments of time. In addition, men have a natural duty to uphold and to further just institutions and for this the improvement of civilization up to a certain level IS require.*

Based on the above quote, in Rawlsian's perspective, environmental protection in order to realize sustainable development can be justified for two reasons. Firstly, environmental protection or sustainable development is an attempt to be taken by the parties in the original position, namely the veil of ignorance. Parties who do not know whether they will live now or in the future will, when faced with the choice of either sustainable use of resources or depleting current resources and leaving a future nature crash, are assumed to choose the first option. This is because by choosing the first option, the parties are spared the worst possible, that is when they are alive in the future (and in a state of degraded environment and depleted resources). Second, Rawls's view that each generation has a natural obligation to set aside (resources) for future generations, shows that the sustainability of resource use is a universal act. In this context, Rawlsian's explanation as a continuous development becomes aligned with the deontological view.

### 3. Legal Status of Sustainable Development

In the previous section it has been described the adoption of the concept of sustainable development in the 1992 Rio Declaration and the 2002 Johannesburg Declaration. Legally, sustainable development positions have not been so strong. because theoretically the declaration is merely a source of "soft law" law. namely political commitment that is not legally binding? In this section will be explained how development [7]. According to Kiss and Shelton, declarations, resolutions, recommendations or work plans are soft law instruments, which are instruments containing non-legally binding political agreements or statements. Alexandre Kiss and Dinah Shelton, "Guide to International Environmental Law". According to Kiss and Shelton, soft law instruments evolved for a variety of reasons, including that in non-legally binding, more culturally active strains were adopted in various "hard law" instruments, such as conventions and decisions, to show that in the development of sustainable development has in fact gained a fairly strong position by law.

### 3.1. Sustainable development in various conventions

As mentioned earlier, the Earth Summit in Rio de Janeiro in 1992 has produced two conventions, the UNFCCC and the CBD. Both of these conventions have clearly adopted sustainable development. In the context of climate change, the opening paragraph of the UNFCCC states that States Parties are determined to protect the climate system for present and future generations [8]. Furthermore, the UNFCCC also states that States Participants have the right to and should support sustainable development. Climate protection policies and measures shall be in accordance with the conditions of each State, and shall be integrated within the development programs of each State. In this regard, the UNFCCC recognizes that economic development is an essential element for addressing climate change [9]. Furthermore, the UNFCCC also wants the realization of equal work among States Parties to create a world economic system that leads to sustainable economic growth, especially in developing countries, enabling States Parties to tackle climate change better.

In addition, Sands argues that while it does not yet have a binding legal force, in strum en soft law plays an important role in the development of international law. According to him, soft law serves to provide guidance on the direction of the development of environmental law in the future, as well as to reflect or codify international custom law. Philippe Sands, "Principles of International Environmental Law: Vol. I, Frameworks, Standards, and Implementation ",(Manchester: Manchester University Press, 1995), page.103.

Still within the context of climate change, some references to climate change are also contained in the Kyoto Protocol 1997 [10]. In this Protocol it is stated that in general the reduction of GHG emissions by developed countries (Annex 1 nations) is directed to promote the realization sustainable development [11]. In order to achieve this objective, developed countries are required to take some steps to reduce emissions by, among other things, by adopting sustainable agricultural practices and forest management [12]. In the context of engaging non-Annex 1 nations in emission reduction efforts, the Kyoto Protocol has produced a mechanism called the Clean Development Mechanism (CDM). The Kyoto Protocol states that on one hand the CDM aims to assist countries non-Annex 1 embodies sustainable development and is involved in GHG emission reduction efforts; while on the other hand, CDM also aims to assist Annex 1 countries to implement their commitment to reduce GHG emission reduction. Related to biodiversity, the CBD contains references to sustainable development, which in this case is defined as the sustainable use of biological resources. In the CBD it is stated that the objectives of this Convention are the conservation of biodiversity, the sustainable use of these resources,



and the sharing of benefits from the fair and equitable sharing of benefits. Through this mechanism, non-Annex 1 countries can make efforts to reduce GHG emissions with the assistance of Annex 1 countries. The result of this emission reduction is called Certified Emission Reduction (CER), which is then regarded as emission reductions by Annex 1 countries. Thus, non-Annex 1 nations are expected to benefit from the emission reduction project; while for Annex 1 countries, the expected advantage is that with CERs, such emission reduction projects can be used as an effort to reduce their emissions. In more detail, the Kyoto Protocol formulates the CDM mechanism in: Kyoto Protocol 1997, U.N. Doc FCCC / CPI1997/171 Add.I, 37 ILM. 22 (1998), art. 12.

Sustainable use is interpreted as the utilization of biodiversity components by means and in the rate of utilization that in the long run will not lead to the decline of biodiversity, so as to maintain the potential of biodiversity resources to meet the needs of present and future generations. Other conventions that also include references to sustainable development include UN Convention to Combat Desertification (UNCCD), the UN Convention on Prevention of Desertification, 1994. In the opening section, UNCCD recognizes that development of sustainable economic growth, social development, and poverty alleviation is a priority of developing countries, and is an important part of achieving sustainability goals. In this section it is also stated that prevention and elimination efforts should be placed in the framework of achieving the goals of sustainable development. On this basis, the UNCCD declares that as the objective of the Convention, efforts to address the desertification and its impacts are undertaken in order to contribute to the achievement of sustainable development in desertified countries. In addition, as noted by Segger, the UNCCD contains more than references to the word "sustainable", whether in the context of development, utilization, management, exploitation, production, or sustainable (or unsustainable) practice.

### 3.2. Sustainable development in various decisions

In addition to being adopted in declarations and conventions, sustainable development has also been incorporated in decisions. At an international level, some cases clearly refer components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. On sustainable development, among others, is the decision of the International Court of Justice (ICJ) in the case of *Gabcikovo-Nagymaros (Hungary v. Slovakia)* the decision of a permanent arbitration body between Belgium and the Netherlands in the case of the Rhine Iron (*Ijzeren Rijn*) Railway on 2005, and ICJ's decision] in the

case of Uruguay's Pulp Mills on the River (*Argentina v. Uruguay*), particularly the opinion of Judge Trindade.

### 3.2.1. Gabčíkovo-Nagymaros (*Hungaria v. Slovakia*)

In the case of Gabčíkovo-Nagymaros, argues that the environmental impact, which may be derived from project work. In 1977, Hungary and Czechoslovakia signed an agreement on the construction and operation of the dam system on the Danube River, in the area of Gabčíkovo (Czechoslovakia) and Nagymaros (the Hungarian region). This agreement is intended as an attempt to build hydroelectric power in the Danube River, the improvement of the river navigation system, the protection of the Danube River basin from the flood. In addition, Hungary and Czechoslovakia also agreed to ensure that the planned development project will not degrade the water quality of the Danube River and that in the execution and operation of the project is also done with due regard to environmental protection. Under the agreement, Hungary is responsible for project work in the Nagymaros region, and Czechoslovakia is responsible for project work in Gabčíkovo. In addition, the agreement also states that the two projects in these two areas should be regarded as a single project entity that can not be separated from one another. The case of Gabčíkovo-Nagymaros, 1997 ICJ 7, p. 17-20. As a result of domestic pressure, on May 13, 1989 Hungary unilaterally decided to postpone work in Nagymaros. On October 27, 1989, Hungary subsequently decided to discontinue once a project in Nagymaros. In reaction to this unilateral decision, Czechoslovakia decided to develop an alternative dam development project, called "Variant C". This Alternativ changed the proposed dam construction previously agreed upon under the 1977 treaty. On October 23, 1992, Czechoslovakia decided to stem the Danube River under its new plan ("Variant C")

The Danube River Dam in the Gabčíkovo-Nagymaros region, is an important issue. Nevertheless, Iel also states that the need for development is also an equally important aspect. Iel sees that in this case there are two conflicting interests, namely the need for development on the one hand, and the need for protection on the other. In this case, Iel sees sustainable development as a principle to reflect these two conflicting needs. More firmly, Iel states:

*Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind-for present*

*and future generations-of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development. ”*

Slovakia assumes that the need for environmental protection can not be an excuse by Hungary not to perform its obligations under the 1977 Treaty. Slovakia also assumes that some of the environmental concerns worried by Hungary can actually be overcome without the need to violate the Treaty of 1977. In addition, Slovakia states that in implement environmental obligations based on sustainable development, the need for development is an aspect that can not be ignored. In this regard, the Slovak side, as quoted by judge Weeramantry, stated that: *inherent in the concept of sustainable development is the principle that developmental needs are to be taken into account in interpreting and applying environmental.*

In Gabčíkovo-Nagymaros received widespread attention from the jurists, especially the karen a dissenting opinion expressed by Weeramantry, one of the judges who tried the case. In this dissenting opinion, Weeramantry stated that if environmental considerations were the only consideration used in the case of Gabčíkovo-Nagymaros, then the measures taken by Hungary ie the unilateral halt of development implementation under the Treaty of 1977, became justifiable. However, according to Weeramantry, he should give balanced consideration to the need for development on one side (in this case the interest of Slovakia) and the need for environmental protection on the other (in this case the interests of Hungary). In Weeramantry's view, the principle of law that can bridge two conflicting needs is the principle of sustainable development. Furthermore, Weeramantry says that sustainable development is not only a concept but a normative legal principle.

Further, Weeramantry assumes that neither Hungary nor Slovakia actually recognize the existence of the principle of sustainable development. The only difference between them is the question of how to run this principle [13]. To support his opinion, Weeramantry then demonstrated various declarations, conventions, practices in several countries, and practices at several international institutions that adopt and implement sustainable development [13]. From Ufmannya III, Weeramantry then concludes that sustainable development becomes a legal principle not only because of the logic it contains, but

also because of the widespread acceptance by the international community. According to him: *the principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community.*

Furthermore, Weeramantry describes various experiences of experience in several countries and from various periods showing how since time immemorial human beings have been accustomed to reconcile and bridge the conflict between the need for development and the need for environmental protection. On this basis, Weeramantry then concludes that sustainable development is not just a principle of modern law, but it is also one of the oldest human ideas and has evolved over thousands of years, and has an important role in international law. In this regard, Weeramantry states that: *sustainable development is thus not merely a principle of modern international law. It is one of the most ancient of ideas in the human heritage. Fortified by the rich insights that can be gained from millennia of human experience, it has an important part to play in the service of international law.*

### 3.2.2. Ijzeren Rijn (Belgia v. Belanda)

Meanwhile, the case of "Ijzeren Rijn" was the decision of the arbitration body, the Permanent Court of Arbitration in The Hague, which adjudicated a dispute between Belgium against the Netherlands, in connection with the reactivation of a train connecting the port of Antwerp, Belgium, with Rhine rivers in Germany, through Noord-Brabant and Limburg in the Netherlands. This train line was opened in the 1830s, and operated until 1991. Then, in 1998 came a proposal from the Belgian Government to re-engage, adapt and renew this railway line. [14] One of the questions that the Arbitration Agency needs to answer is the degree to which Belgium or the Netherlands should bear the financial costs and risks associated with the use, restoration, adaptation and modernization of the Iron Rhine line in the Netherlands. Upon this question, the Arbitration Board provides an important statement regarding environmental law, namely that:

*Applying the principles of international environmental law, the Tribunal observes that it is faced, in the instant case, not with a situation of a trans-boundary effect of the economic activity in the territory of one state on the territory of another state, but with the effect of the exercise of a treaty-guaranteed right of one state in the territory of another state and a possible impact of such exercise on the territory of the latter state. The Tribunal is of the view that, by analogy, where a state exercises a right under international*

*law within the territory of another state, considerations of environmental protection also apply. The exercise of Belgium's right of transit, as it has formulated its request, thus may well necessitate measures by the Netherlands to protect the environment to which Belgium will have to contribute as an integral element of its request. The reactivation of the Iron Rhine railway cannot be viewed in isolation from the environmental protection measures necessitated by the intended use of the railway line. These measures are to be fully integrated into the project and its costs;*

In relation to sustainable development, the Arbitration Board recognizes that within the field of environmental law there are debates on rules, principles and soft laws, as well as on the contribution of treaties or environmental principles to the development of customary international law. Despite this, the Arbitration Board states that the principle of environmental law, regardless of its legal status, always refers, one of them, to prevention, sustainable development, and the protection of future generations. In this case, the Arbitration states:

*The emerging principles, whatever their current status, make reference to conservation, management, notions of prevention and of sustainable development, and protection for future generations.*

### **3.2.3. Pulp mills on the river Uruguay (Argentina v. Uruguay)**

On May 4, 2006, Argentina filed a lawsuit against [e] in connection with alleged Uruguayan violations of several obligations contained in the Uruguay River Statute Agreement signed by Argentina and Uruguay on 26 February 1975. In this case, Argues that the Uruguayan Government's decision to allow the construction of two pulp mills on the banks of the Uruguay River within Uruguay is a violation of the Uruguayan River Treaty of 1975, especially in relation to the impact of both plants on the water quality of the River Uruguay and the surrounding area. 58 In this case, Argentina argues that Uruguay has the case involved the construction of two paper mills (pulp mill) built on the banks of the Uruguay River in Uruguay.

The first factory is "Celulosas de M'Bopicua S.A." ("CMS"), a factory built by a Spanyol company, "Empresa Nacional de Celulosas de Espana" ("ENCE"). On July 22, 2002, the initiator of the CMS-ENCE Project Development filed an Amdal document to the Directorate of Environment of Uruguay, "Direccion Nacional de Medio Ambiente" (DINAMA). At the same time, representatives of the CMS also provided information on the project's rene to the CARU KepaJa ("Comision Administradora del Rio Uruguay" -The Uruguayan

River Administrative Commission). Then, on October 7, 2002, and repeated on 21 April 2003, the CARU Chief asked the Uruguayan Environment Minister to provide an Amdal document from the CMS-ENCE project. This request was later fulfilled by Uruguay on 14 May 2003. Subsequently, on 15 August 2003, and repeated on 12 September 2003, CARU requested Uruguay to provide additional information on some matters from the CMS-ENCE paper mill project. On October 2, 2003, DINAMA gave its report to the Ministry of Housing, Spatial and Environmental Affairs of Uruguay (MVOTMA) which contains recommendations to grant permission environment for the CMB-ENCE project. Then on October 8, 2003, the Government of Uruguay promised CARU that DINAMA would immediately provide its report on the CMB-ENCE project. On October 9, 2003, MVOTMA issued an environmental permit for the construction of the CMB-ENCE plant. On October 9, 2003, the President of Argentina and the President of Uruguay met. In this meeting, on the basis of Argentina's claim, the President of Uruguay pledged not to grant permission for CMB-ENCE development prior to a discussion of Argentina's concerns about the possible environmental impacts of the development. On October 10, 2003, CARU said it would immediately proceed with technical analysis of the CMB-ENCE project if Uruguay submitted the necessary documents.

On 17 October 2003, at the request of Argentina, CARU held a special meeting to discuss the CMB-ENCE project. During the meeting, Argentina filed an objection to the issuance of a ling permit on October 9, 2003. On 27 October 2003, Uruguay sent a copy of Amdal and DINAMA's assessment of the CMB-ENCE project's environmental management plan to Argentina. On this, Argentina says that procedures under the Uruguayan River Treaty of 1975 have been ignored, and that the Amdal and DINAMA copies do not provide adequate information on the impact of the CMB-ENCE project. On November 7, 2003, Uruguay submitted all documents related to the CMB-ENCE project to the Argentine Ministry of the Environment, which then on 23 February 2004 forwarded the documents to CARU.

On May 15, 2004, the CARU Water Quality and Pollution Control Subcommittee made an assessment of water quality around the River Uruguay. This plan was approved by CARU on November 12, 2004. On 28 November 2005, the Government of Uruguay granted permission for the construction of the CMB-ENCE plant. However, on March 28, 2006, CMB-ENCE halted the plant construction project, and then on September 21, 2006, the company declared that they no longer intend to build a paper mill in a previously designated area. The second project involved in this case was the construction of the Orion paper mill by the company Oy Metsii-Botnia AB, a Finnish company, in the Fray Bentos area, a few kilometers from the CMB-ENCE project site. On March 31, 2004, the

initiator of Orion plant construction submitted an application for environmental clearance to the Government of Uruguay. Then on 29 and 30 April 2004, CARU held an informal meeting with the Botnia. As a follow up of the meeting, on June 18, 2004 CARU asked Botnia to provide additional information related to the Orion development project. In a follow-up meeting with Botnia, CARU again asked Botnia to provide information related to the application for environmental permit that he had submitted to DINAMA. On 12 November 2004, CARU decided to ask Uruguay to provide information on the application for environmental clearance submitted by Botnia. On December 21, 2004, DINAMA held a hearing attended by CARU representatives, related to the Orion development project (Botnia) in Fray Bentos. Then on February 11, 2005, DINAMA recommended to MVOTMA to grant environmental permission for the Orion project (Botnia).

On February 14, 2005, MVOTMA issued an environmental permit for Botnia to build the Orion plant (Botnia) and a deviates the Uruguayan River Treaty of 1975 and other obligations under international law, in the form of: the obligation to take the necessary measures for the optimum and rational use of the River Uruguay; the obligation to notify the Uruguayan River Administrative Committee (CARU) and to the Argentinean Party; procedural obligations under the Uruguayan River Treaty 1975; the obligation to take the necessary measures to safeguard the aquatic environment and prevent pollution, as well as the obligation to protect biodiversity and fishery resources, including the obligation to conduct a thorough and objective environmental assessment; as well as the obligation to work equally in efforts to prevent pollution and protection of biodiversity. On the basis of this, Argentina requested the ICJ to declare that by unilaterally granting permission for the construction of CMB and Orion paper mills, as well as facilities associated with the plant, the Uruguayan Government violated the Uruguayan River Treaty of 1975. Argentina further requested that the ICJ ordered Uruguay to: immediately stop its unlawful act (internationally wrongful acts); to observe the Uruguay River Treaty of 1975; restore the situation as it was before the unlawful act occurred; to pay compensation to Argentina at the extent of the damage incurred by the unlawful act in the amount required by Argentina to recover the damage; and ensure that Uruguay shall in turn continue to abide by the Uruguay River Treaty of 1975, in particular the provision of procedural obligations to consult. The Uruguayan declared that Argentina was unable to show evidence of any danger or risk of a danger to the Uruguay River as a result of Uruguay's violation of its substantive obligations under the Uruguayan River Treaty of 1975. In addition, Uruguay declared that the closure and dismantling of the Botnia plant would have serious economic consequences for Uruguay, as well as a disproportionate move. Uruguay



July 2005, permitting the construction of a pier near Orion (Botnia). Subsequently, in the following months, the Government of Uruguay approved the construction of a chimney, a foundation, a wastewater treatment plant from an Orion plant (Botnia). On 24 August 2006, the Government of Uruguay permitted the operation of the dock near the Orion site (Botnia), and finally on November 8, 2007, the Government of Uruguay granted permission for the operation of the Orion plant (Botnia). These agreements, although reported by the Government of Uruguay to the CARU, remain in favor of Argentina's request that the construction of Orion (Botnia) be stopped. notices that Uruguay does not provide information to CARU quickly and comprehensively. ICJ considers that the environmental permit granted by the Government of Uruguay has been carried out without CARU involvement. On that basis, ICJ concludes that:

"Uruguay has fulfilled its procedural obligations under the Uruguayan River Treaty of 1975." Uruguay has fulfilled its procedural obligations under the Uruguayan River Treaty of 1975.

Furthermore, the court also stated that if CARU observed that a project could potentially prohibit other countries, based on the Uruguayan River Treaty of 1975, the country which initiated the project had an obligation to provide notification to the other country. Contends that the obligation to provide this notification is intended:

Furthermore, the ICJ concludes that under the Uruguayan River Treaty of 1975, the obligation to provide notification is an important part of the consultation process, so that parties can assess the potential of a plan, and can negotiate with changes to the plan to control the potential of the darn. 66 ICJ also believes that the notification process:

*Must take place before the State concerned decides on the environmental viability of the plan, taking due account of the environmental impact assessment submitted to it.*

In this case, ICJ saw that the notification process to Argentina was done without going through CARU, and that Uruguay notified Argentina after Uruguay gave environmental permission for the construction of a paper mill. The Court is of the opinion that prior to the notification, Uruguay shall not grant such environmental consent. On this basis, the ICJ concludes that Uruguay has failed to fulfill its legal obligations relating to notification obligations to other countries (Argentina) under the Uruguayan River Treaty of 1975.

After discussing procedural obligations, ICs then move on to substantive issues. In this case, ICJ outlines some of the obligations that allegedly violated by Uruguay, among them: First, the obligation to contribute to the use of the River Uruguay in an optimal and rational. In this case, ICJ states that the use is optimal and rational:



*Requires a balance between the Parties' rights and needs to use the river for economic and commercial activities on the one hand, and the obligation to protect it from any damage to the environment that may be caused by such activities, on the other.*

Secondly, the obligation to ensure that management of land and forests around the Uruguay River does not interfere with the Uruguay River and its quality. In this case, based on the evidence presented, ICJ argues that Argentina does not have enough evidence to prove that Uruguay has committed a breach of this second obligation. More specifically, ICJ states that the court found no direct evidence showing a connection between land management by Uruguay and the changing water quality of the Uruguay River. *The parties shall co-ordinate, through the Commission, the necessary measures to avoid any change in the ecological balance and to control pests and other harmful factors in the river and the areas affected by it.*

lel believes that under article 36 of the Agreement, compliance with the obligation to avoid changes to the balance of ecosystems can not be obeyed by either party. This obligation compliance, according to lel, requires the existence of a joint scheme and coordinated action among the parties, in order to realize the management and protection of the River Uruguay in a sustainable manner. In conclusion, lel stated that Argentina was unable to show evidence that Uruguay has refused to cooperate in the management of the Uruguay River together. On the basis of the above considerations, lel decided with eleven judges agreeing, and three refusing that Uruguay did not infringe on its substantive obligations under the Uruguayan River Treaty of 1975. In his judgment, lel states that the Uruguay River Treaty of 1975, in particular Article 27, not only reflects the needs of individual countries (in this case riparian States) in the use of resources together, but also illustrates the need to balance the need to utilize the river and the need to carry out river protection in accordance with sustainable development. Unfortunately, lel then only a cursory course of discussion about the sustainable development. In this context, lel states:

*... utilization of River Uruguay- tambahan penulis} could not be considered to be equitable and reasonable if the interests of the other riparian State in the shared resource and the environmental protection of the latter were not taken into account. Consequently, it is the opinion of the Court that Article 27 embodies this interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection that is the essence of sustainable development.*

From this quote, it is seen that Iel interprets sustainable development as a bridge between development needs and environmental protection needs. How this "bridge" works, is not explained further by Iel.

Limited later discussion by Iel this then encourages Judge Trindade to have a different opinion, dissenting opinion, of Ie considerations. According to Trindade, the results of the Uruguay Pulp Mills on the River case leave three issues that are not deeply discussed either by the parties or by Iel. First, the lack of argument from the parties is related to the real impact of paper mills. Secondly, the lack of attention from Iel to some special po in the case of Pulp Mills on the River Uruguay. Third, the absence of Ie's statement regarding the recognition of the role of international law principles of law [15].

In Trindade's view, more than just an ordinary institution, Iel contains the word "justice" in it so that Ie should not ignore the importance of general principles of international law, including the principle of sustainable development, in its consideration. It is this legal principle that guarantees the integration of the international legal system on the one hand, and becomes the material legal source of all laws.

Trindade basically prescribes that sustainable development serves to bridge the interests of development on the one hand, and the importance of environmental protection on the other. In this context, Trindade states: *Sustainable development came to be perceived, furthermore, as a link between the right to a healthy environment and the right to development; environmental and developmental its is the principles of the international legal system that can best ensure the cohesion and integrity of the international legal system as a whole. Those principles are intertwined with the very foundations of International Law, pointing the way to the universality of this latter, to the benefit of humankind. Those principles emanate fi"om human conscience, the universal juridical conscience, the ultimate material "source" of all Law." considerations came jointly to dwell upon the issues of elimination ofpoverty and satisfaction ofbasic human needs.*

Trindade, as well as the Weerarnanry in the Gabcikovo-Nagymaros Case, recognizes sustainable development, in harmony with the principle of preventive action, the principle of intergenerational equity, and precautionary principle, as a principle international environment. In his dissenting opinion, Trindade also showed that both Argentina and Uruguay recognize sustainable development as a legal principle.

Unfortunately, despite the recognition of sustainable development as a legal principle, it is not clear how much of Trindade's opinion is to the conclusion of his dissenting opinion. In fact, Trindade turns out to be one of the rights that approved the conclusion of the board of judges that no evidence of violation of substantive obligations by Uruguay.

In addition, the two judges rejected the opinion of a majority of judges who did not see any connection between a breach of a procedural obligation and a breach of a substantive obligation. According to Al-Khasawneh and Simma, when the court faces a case in which there are conflicting legal principles, such as the principle of equitable use of resources with the principle of sustainable development, procedural obligations are the most important indicator to determine not violation of substantive obligations. In this context, both judges reject the attitude of *lel* which is deemed to be just functioning of the court as *ex post facto*, ie to see whether there is a violation and then to determine the legal consequences (remedies) of the violation. According to them, when a case libkankan problem about risk (which is not necessarily happen), then the court can not use the logic of compensation, but must be guided by the perspective of prevention. In this context, the two judges argued that the court could have served to help the parties even from the very beginning of planning an activity.

## 4. The Legal Meaning of Sustainable Development

This section will discuss some of the legitimate meanings of sustainable development. This section will review Weeramantry's view that sustainable development is not a concept but a legal principle. In this context, if sustainable development is a legal principle, then what characteristics and elements are considered to be in this sustainable development.

### 4.1. Sustainable development: A meta principle?

In the preceding section it has been mentioned how Weeramantry rejects the opinion of *lel* who thinks development is just a concept. For him sustainable development, more than just a concept, is an environmental law principle that has a normative character. This Weeramantry view has gained various criticisms and comments. One of the most frequently discussed criticisms is the criticism expressed by Prof. Lowe. Lowe, as Fitzmaurice explains, rejects Weeramantry's view that sustainable development is a normative principle of law. For Lowe, sustainable development is not a legal norm, since sustainable development does not have the nature of normativity. To be said to have the nature of normativity, a concept must be expressed in the normative language. According to Lowe, since sustainable development can not be poured into normative language, sustainable development does not have "a fundamentally norm-creating character" [16]. For Lowe, sustainable development is therefore only a meta-principle that serves to

reconcile some conflicting principles [17]. Furthermore, Lowe assumes that in addition to being non-normative because it is unable to create norms, sustainable development only serves to modify existing norms. Therefore, sustainable development is only "modifying norm", which functions to change the understanding of an existing norm.

Lowe's opinion above was opposed by Beyerlin as follows: On the one hand, Lowe stated that sustainable development has no norm-creating properties (*norm-creating character*), but on the other hand he also stated that sustainable development serves to change an existing norm (sustainable development function as *modifying-norm*). It shows that Lowe's views contain contradictions [18]. That is, if able to change a norm, and create a new norm (the result of modification), then sustainable development has the nature of the creation of the norm. On the other hand, Beyerlin also stated that Lowe's views have ignored the experience that shows that political or moral ideals, which have *non-norm-creating character*, in reality it is often a catalyst for legal development.

Meanwhile, Marong holds that the difference of opinion between Weeramantry and Lowe is more of a semantic difference. According to Marong, Weeramantry's view that sustainable development is a principle that becomes a bridge (*intervening principle*) for contradictory principles, is a view based on the perspective of international customary law (*customary international law*). While Lowe's view of sustainable development as a meta-principle with interstitial function, it is a view that sustainable development is a concept from outside the international legal system, which is then applied into international legal norms.

Furthermore, in Marong's view, both Weeramantry and Lowe's opinions imply that sustainable development has only a role to play in judgment and decision-making in courts. Marong refused this opinion. For Marong, sustainable development can serve as a direction for decision making, both in the legislative, judicial and administrative bodies. According to Marong, it is in this function that sustainable development can have a normative nature, as Weeramantry has put it in the case of Gabčíkovo-Nagymaros. According to Marong, several international documents have been provide guidance on good conduct in the process of making, interpreting, and applying laws and decisions related to environmental management. This is what Marong calls the principles of sustainable development. According to him,

*... the discursive processes entailed in the Founex and Brundtland Reports, the work of the IUCN, other NGOs and individuals, as well as the inter-state discourse that took place in preparation for and during the Stockholm and Rio conferences, have generated a set of shared understandings of good conduct that ought to be taken into account in making environmental and*

*development decisions. It is these understandings of good conduct that I refer to as sustainable development principles. I argue that by invoking these principles in processes of rule making, rule-interpretation, and rule application as well as a variety of non-legal decision contexts, legal regimes could contribute to the attainment of sustainable development.*

More importantly, Marong treats sustainable development as an overarching societal objective. This goal consists of several specific principles-some of which may have a normative nature-that serve to realize sustainable development. A deeper analysis of the recognition and legal status of sustainable development is provided by Voigt. Slightly different from Weeramantry, who sees sustainable development from the perspective of customary international law, and Lowe, who sees it from the perspective of the interstitial meta-principle, Voigt sees sustainable development as a general principle of international environmental law. According to him, this general principle has a role to bridge the normative conflict. Voigt argues that as a principle of common law, sustainable development gains its legitimacy from the recognition of the international community (*opinio communis juris*). This recognition may be the practice of countries, or recognition of the international community, whether in the form of recognition from the state or non-state actors. By *demiki*, according to Voigt, a general principle has a fundamental character that can be found in practice in countries (*foro domestico*). At the same time, this general principle can also be derived from the logic of international law. Thus the general principle can not be seen only from the presence or absence of recognition by countries and practices in countries, but also can come from the recognition of the international community [19]. According to Voigt: *the principle of sustainable development is part of general/public international law, it would as such not be contingent upon State consent or coherent practice in order to be relevant to courts and tribunals.*

In addition, Voigt also expressed his critique of Lowe's opinion that sustainable development has no normative nature, and only functions as an interstitial meta-principle. According to Voigt, Lowe's view is based on a narrow perception of international law. First, Lowe seems to see that the source of international law is limited to conventions and customs, and therefore fails to see general principles in international law. Secondly, Lowe fails to see that the general principle is not only derived from the recognition and behavior of the state, but also derives from the *opinio juris communis*, the widespread international awareness of the community. Third, it is different from Lowe's view that sustainable development is incapable of creating norms because of its vagueness and indeterminacy, Voigt sees a core of sustainable development that can be

poured into normative language. This essence is the demand for integration placed within the framework of maintaining the fundamental function of the ecosystem.

Furthermore, Voigt states that the normative power of a legal principle can be applied in two ways. On the one hand, the principle of law can serve to direct the behavior of the state. In this function, the principle of law can serve as the goal of law and policy formation at the national level. In this context, sustainable development is a public will that affects the state's treatment, "*public legitimate expectation that inevitably influences state's conduct.*,"

On the other hand, the normative nature of a legal principle can also be seen from its role in dispute resolution. In this case, the application of the principle of law directly or indirectly may affect the outcome of the judge's decision. In the context of ml, sustainable development is an "intervening principle" within Weeramantry language, or "modifying norm" or "interstitial norm") in Lowe, which can be directly used as a basis for judge consideration, without prior recognition of its legal status. With the application of sustainable development in judge consideration, the normative nature of sustainable development has received direct recognition from the courts. Voigt argues that the "intervening principle" or "interstitial norm" equally indicates the normative nature of the principle of sustainable development, which is the direction for judges to bridge different norms and interests. This function of integration, reconciliation, and modification of norms which Voigt defines as evidence of the normative nature of sustainable development.

## 4.2. Principles of sustainable development?

In the previous section it has been shown that some views which see sustainable development have their own normative properties, as revealed by Weeramantry and Voigt. Meanwhile, there is a view that sustainable development is a meta-principle, which contains several principles to make it happen. This last view is shared by Lower. If this last view is accepted, then the question then is what principles would be regarded as principles that could support the realization of sustainable development. According to Marong, the legal principles that form part of the realization of sustainable development are the principles of inter-generational equity, sovereignty and responsibility, the principle of differentiated responsibility for common but differentiated responsibilities, precautionary principles, the environmental impact assessment principle, and the principle of public participation in decision making (public participation in decision-making). In this regard, it should be pointed out that for Marong the principle of integration is not

an independent principle, but a methodology for the realization of sustainable development. Meanwhile, Palassis discloses some of the principles of sustainable development, consisting of: the principles of intra and intergenerational justice, the principle of sustainable use, and the principle of integration between the core elements of sustainable development. Nevertheless, Palassis also added some other legal principles related to sustainable development, the precautionary principle, prudence, and Amda1.

On the other hand, Silveira states that based on the Rio Declaration, elements of sustainable development consist of: the right to healthy and productive life in harmony with nature; intra and intergenerational justice; elimination of poverty, which is "indispensable requirement for sustainable development"; mutual responsibility and as well as different (common but derentiated responsibilities); reduction or elimination of unsustainable patterns of production and consumption; access to information, access to justice, and the right to participate in decision making; the precautionary princile; and the polluter-pays principle [20].

In the meantime, Wilkinson proposes several principles of environmental law that simply gain consensus, namely: the preventative principle; the precautionary principle; polluter pays principle; the principle that waste is disposed of and processed by waste producers or in places close to where the waste is produced (the proximity principle); and the principle of sustainable development. More importantly, Wilkinson argues that among these principles, sustainable development serves as a meta-principle, in which other principles are directed to contribute to the realization of sustainable development principles.

Finally it should also be disclosed at Sill's view of the International Law Association (ILA), which on April 2, 2002 has agreed on the ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development [21]. Based on This New Delhi Declaration, sustainable development consists of several legal principles, namely:

1. *The duty of States to ensure sustainable use of natural resources.* This is what is known as the principle of sustainable use (*sustainable use*)
2. *The principle of equity and the eradication of poverty,* including at the principle of intra and intergenerational justice.
3. *The principle of common but difrerentiated responsibilities,* that is the principle of collective responsibility but with different burdens.
4. *The principle of the precautionary approach to human health, natural resources and ecosystems,* which is also known as the principle of prudence (*the precautionary principle*)

5. *The principle of public participation and access to information and justice*, namely the principle of public participation and access to information and justice
6. *The principle of good governance*, namely the principle of good governance *differentiated responsibilities and capabilities, public participation and access to information, dan environmental impact assessment* [22].
7. *The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives*, yang sering juga disingkat sebagai prinsip integrasi (*the integration principle*)

From the above description it can be seen that the most important legal issue to be solved when sustainable development is viewed as a meta-principle is the determination of what legal principles can be regarded as legal principles that can implement sustainable development. Unfortunately, from the literature search it can be seen that there are differences of opinion among lawyers regarding the legal principles that are considered to contribute to the realization of sustainable development. Nevertheless, the view that sees sustainable development as a meta-principle is not entirely a failure. Ultimately, the nonnative nature of sustainable development will become clearer if sustainable development is seen from some of the elements or principles contained therein. That is, the application of these legal principles will ultimately determine whether an action, law or policy is in line with sustainable development or not.

On the other hand, we can accept the opinions of Weeramantry and Voigt who see sustainable development as a legal principle that already has a nonnative character to itself. To explain this nonnative nature, then the explanation of the core elements of sustainable development becomes very crucial. In the context of 1m, Atapattu divides a sustainable development element into a substantive and procedural element. According to Atapattu, the substantive element of sustainable development consists of the right to justice, including intra and inter-generality justice, and the principle of integration. The procedural element consists of the right to information, the right to participate in decision-making, the EIA, and the right to an effective remedy [23]. Indeed, elements of sustainable development can already be traced and derived from the definition of sustainable development itself, in this case the definition provided by the Brundtland report. According to this report, sustainable development is: *sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:*

1. *the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and*



2. *the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.* ”

From the above quote, the core elements of sustainable development are elements of integration, sustainable use, intra-generation justice, and intergenerational justice. III Elements of integration can be inferred from the recognition of the need for development on the one hand, but on the other hand it is recognized that the fulfillment of the need for this development should not impair the ability of future generations to meet their needs. The sustainable utilization element can be seen from the recognition of the impact of technology and social organization on the ability of the environment to meet the needs of present and future generations, as well as the recognition that the development undertaken is concerned with the interests of future generations. Intra-generation justice elements can be seen from the definition of needs (needs) that give priority to the needs of the poor. While intergenerational justice elements can be inferred from the recognition of the balance between meeting the needs of the present generation and the needs of future generations. Unfortunately, due to the limitations of the four pages of these elements can not be explained in detail in this paper.

These elements are also put forward by Sands, which states that the legal element of sustainable development consists of: a). intergenerational equity, which can be seen from the need to protect natural resources for the benefit of future generations; b). the principle of sustainable use, reflected in the sustainable, prudent, rational, wise, and appropriate exploitation of natural resources; c). intra-generation justice, which is demonstrated through the use of natural resources in an equitable use (natural use of natural resources), where the use of natural resources by a single country should pay attention to the needs of other countries; and D). the principle of integration, which calls for assurance that environmental considerations will be integrated into economic and development plans, policies and programs, and that development needs should take account of environmental protection objectives. (Philippe Sands, Op. Cit., Note 24, p. 199). Meanwhile, Magraw and Hawke stated that the elements of sustainable development consist of: intra-generational equity, intergenerational justice, integration principles, and the need to protect the line of life significantly (the environment needs to be preserved at least to a significant degree). See: Daniel Barstow Magraw and Lisa D. Hawke, "Sustainable Development", in: Daniel Bodansky, Jutta Brunnee, and Ellen Hey, "The Oxford Handbook of International Environmental Law". (USA: Oxford University Press, 2007), p. 619.

## 5. Research Methods

### 5.1. Type of research

The research method used in this research is analytical descriptive, supported by empirical or sociological juridical method, meaning that by giving explanation or description of an event under study by analyzing based on data obtained from research result, which then connected with materials primary, secondary and tertiary law, to come to conclusions.

### 5.2. Approach method

The approach used in this research is the normative juridical approach, that is by reviewing the legal principles and legal system related to the subject matter of this research.

### 5.3. Research stages

Stages performed in this research are:

#### 5.3.1. Observation

Conducted to obtain primary data, by collecting data cases related to sustainable development.

#### 5.3.2. Library research

Library research, Which is done to obtain secondary data, which is a method of collecting data by reading or assembling books of legislation and other literary sources related to the object of research. This method is done to obtain secondary data, by conducting an assessment of:

1. Primary Legal Material, is data that has binding legal force.
2. Secondary Legal Materials, are materials that are closely related to primary legal materials and can help and analyze. For example law journals, books, research results, legal papers and so forth.
3. Tertiary Law Material, ie materials that provide about primary and secondary legal materials. For example newspapers, magazines, keliping and so forth.

## 5.4. Data analysis method

The data obtained in this study is then analyzed by qualitative juridical. The qualitative juridical method is a juridical analysis with qualitative data to draw conclusions as outlined in the form of statements and writings. The analysis of this data is based on the legislation as the norm of positive law and without using mathematical models of statistic, after qualitative analysis then the data will be presented descriptively qualitative and systematic.

## 6. Conclusion

Indonesia is one of the few countries to include recognition of environmental protection within its constitution. Moreover, the 1945 Constitution also recognizes that sustainable development is one of the principles underlying its economic system. In addition, sustainable development has also been contained in the environmental laws of Indonesia. Unfortunately, these confessions do not then make sustainable development easy to interpret, let alone implemented. This paper shows that sustainable development has been adopted at various conventions and decisions of international judicial bodies related to environmental issues. In addition, this paper has also shown a group of lawyers interpreting sustainable development merely a concept that has no normative nature. While other groups view that sustainable development is a legal principle that is normative. This paper holds that sustainable development itself has become a normative legal principle. This normative nature can be seen from elements of integration, sustainable utilization, and intra and intergenerational justice.

To clarify the meaning of sustainable development, this paper still needs to be complemented by a discussion of the elements of integration, sustainable use, and intra and intergenerational justice.

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