



# PROTECTION OF PUBLIC PARTICIPATION IN THE JUDICIAL PROSSES

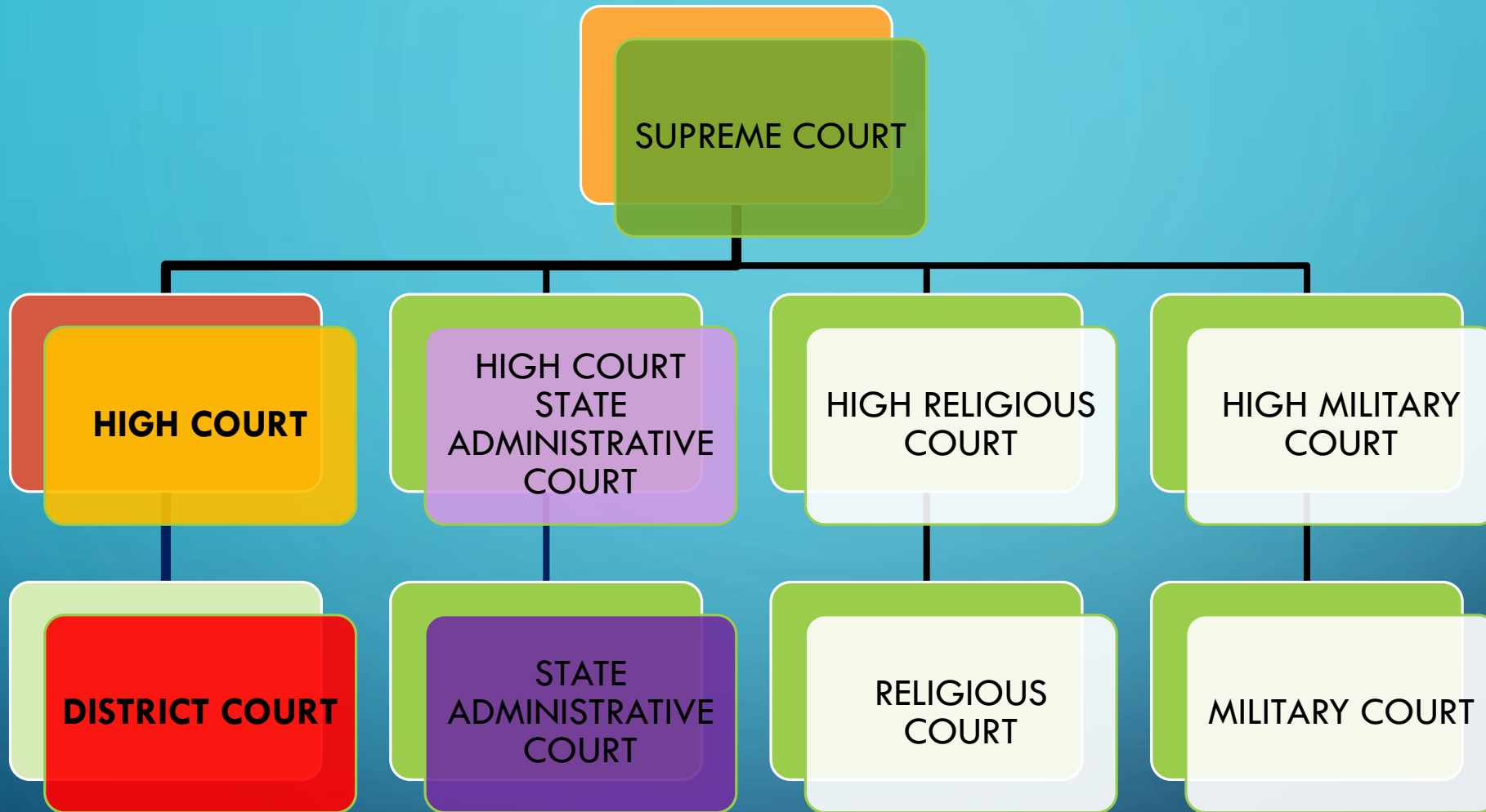
BAMBANG H. MULYONO

THE DISTRICT COURT OF JEMBER, INDONESIA

# OUTLINE

- **Indonesia Court System**
- **Certified Environmental Judges**
- **Court Procedure Rules on Environmental Cases**
- **Public Participation in the Environmental Law Enforcement**
- **Conclusion**

# INDONESIA COURT SYSTEM



# RIGHTS OF A GOOD & HEALTHY ENVIRONMENT

(ARTICLE 28 H OF THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA)



Implementation in the court system

- Individual dispute
- ENGO Legal standing
- Class action
- Citizen law suit
- *Anti-SLAPP Suit*

# THE SUPREME COURT INITIATIVE FOR PUBLIC TO PARTICIPATE IN THE COURT PROCEEDINGS

- Access to information of environmental cases
- Public Complaints desk
- Online monitoring system

( [www.pn-jember.go.id/layanan-pengadilan/jadwal-sidang.html](http://www.pn-jember.go.id/layanan-pengadilan/jadwal-sidang.html) )

- Court Decision Directory

( <http://putusan.mahkamahagung.go.id> )

- Strengthening of the Supervisor Board

(the Supreme Court regulation No. 7, 8 & 9)



# INITIATIVE OF THE SUPREME COURT TO STRENGTHENING THE ENVIRONMENTAL JUDGES



# PUBLIC PARTICIPATION

- **Administrative law Enforcement**



- **Second line Enforcement**
- **Administrative sanction**
- **Administrative Dispute**

- **Criminal Complaint**



- **Environmental Crime case**

- **Civil Enforcement**



- **Environmental Civil case**



# IMPLEMENTATION OF ANTI SLAPP

## ARTICLE 66 EPMA:

“Everyone is fighting for the rights to a good and healthy environment can not be prosecuted in criminally or civilly sued”

- Guideline book of Environmental Case Procedures
- Indubio pro Natura principle
- Judicial Activism

(article 5 of Judicial Authority Act: “*Judge shall explore, and understand the legal values and sense of justice in society*”)



# Gemulo Wellspring Case

**WILLY**

**VS**

**RUDY**

- **PLAINTIFF**
- **OWNER OF CORPORATION AND THE LAND WHERE THE RAYDJA RESORT HOTEL WILL BUILD**

- **Defendant**
- **Farmer & Coordinator of Water consumers of Gemulo wellspring.**

# ARGUMENTATION OF PLAINTIFF

- **As owner of the land he had right to build The Raydja resort hotel**
- **The Plaintiff had license from local government to build luxury hotel resort & spa**
- **The Defendant has disturbing to workers and demolition to security post and material of fence.**
- **The Defendant has sent complaint to state institutions to derail the construction.**
- **Therefore he sue the defendant to compensate his loss.**

# ARGUMENTATION OF DEFENDANT

- **Base on spatial planning, Gemulo wellspring is conservation area which must be protected within a radius of 200 meters.**
- **Distance between the Raydja resort hotel and Gemulo wellspring is 150 meters.**
- **The Plaintiff do not have license to build hotel in conservation area (does not meet the requirements of the environmental licensing based on EPMA & Gov.Regulation 27/2012 )**
- **The defendant suffered losses, due to the construction of the Raydja hotel.**

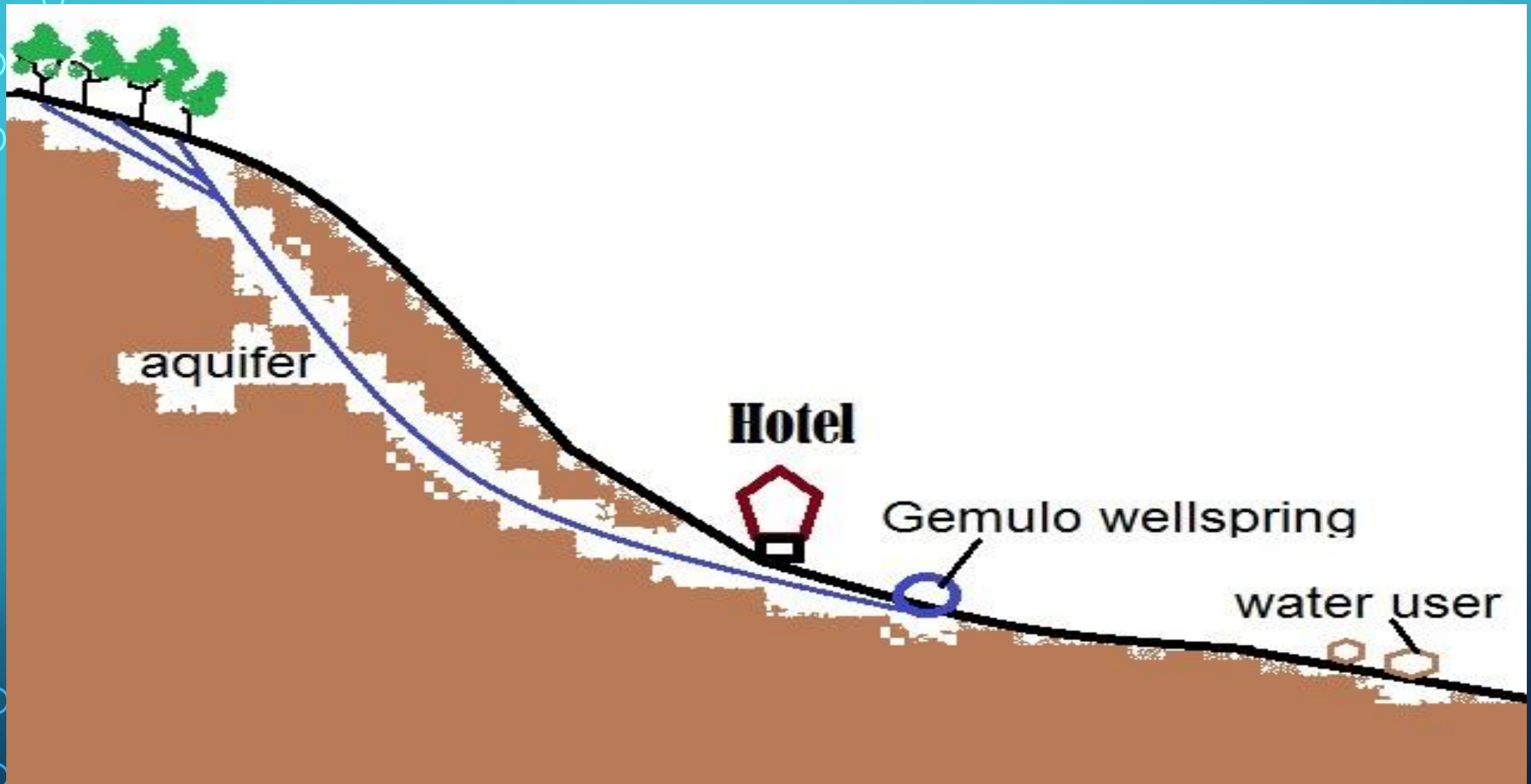
# LOCAL GOVERNMENT

- The local government give a license to build The Raydja Resort hotel, because increasing Government revenue from tourism sector
- The license is not consider to environment licenses.

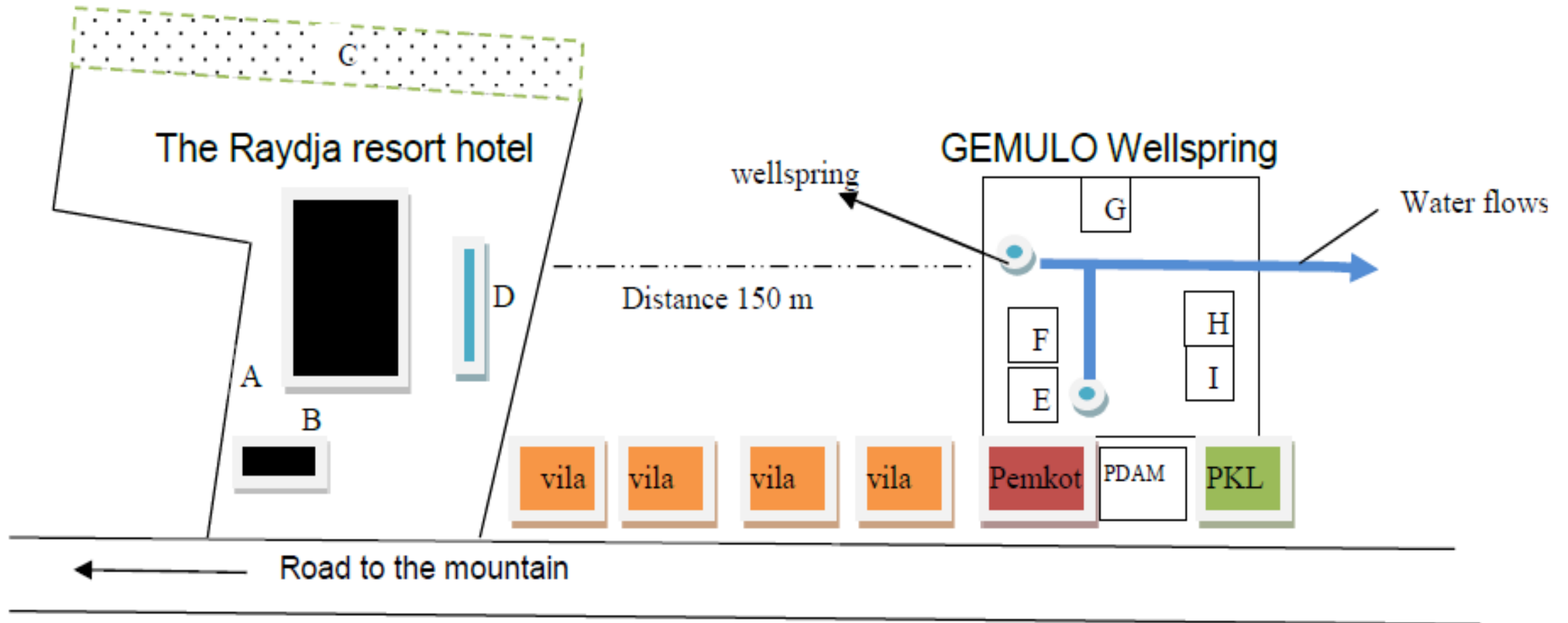


# LEGAL FACTS

- Distance the Raydja hotel and Gemulo wellspring is 150 meters.
- National and local regulation stipulates that the conservation area around Gemulo wellspring is 200 meters
- expert witness said that there are aquifer at a depth of 5 meters below the ground of the Raydja hotel, flowing towards Gemulo wellspring.
- The Raydja hotel had license from local government to build a hotel resort, but do not have environmental permits.



# SCHEME OF LOCATION





# COURT DECISION

- Rejected the claim of the Plaintiff
- Granted the Defendant countercharges
- Stop the construction of the Raydja hotel
- Punished the Plaintiff to pay compensation to the Defendant, IDR 2 millions.
  - *substitution theory*
  - *loss or lack of future benefits*

“Warisi anak cucumu dengan **mata air**, bukan **air mata**”

**Inherit your children and grandchildren with springs and not tears**

# CONCLUSION

- **Needs widespread of public awareness to bring out widespread of public participation.**
- **Needs Large Numbers of Certified Judges and Environmental Law Enforcer**
- **Procedural Law of Environmental cases is needed to meet the legal certainty**





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どうもありがとうございました

**Thank you**