

Environmental Dispute Resolution Through Alternative Dispute Resolution

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Abstract. Environmental disputes can be resolved in more profitable ways for the parties, the government, and the general public. Civil disputes related to the environment can be resolved using alternative dispute resolution outside the court. Disputes outside the court can be settled with various profits or advantages compared to those resolved through the courts. This paper focuses on dispute resolution out of court on disputes related to the environment. The compensation claim is aimed at making the defendant restore the damaged environment. The plaintiff received adequate compensation for their losses due to environmental damage. Parties outside the court can resolve civil disputes due to environmental damage without involving the court.

Keywords: Civil Disputes; Environment; Mediation; Negotiation; Indonesia

1 Introduction

Law Number 32 of the Year 2009 mandates that Indonesia's development pattern in the context of environmental management is sustainable development. Sustainable development is a conscious and planned effort that integrates environmental, social, and economic aspects into a development strategy to ensure the integrity of the environment and the safety, capabilities, welfare, and quality of life of present and future generations. The characteristics of sustainable development are: (1) providing the possibility for survival by preserving the functions and capabilities of the ecosystem that supports it, either directly or indirectly; (2) utilizing abundant natural resources or management technology capable of producing them sustainably; (3) provide opportunities for other sectors and activities to develop together in different regions and periods on an ongoing basis; (4) enhance and preserve the ability and function of ecosystems to supply

natural resources and protect and support life continuously; (5) using procedures and procedures that take into account the preservation of ecosystem functions and capabilities to support livelihoods both now and in the future[1]. The essence of sustainable development can be seen as one of the indicators of sustainable development is minimizing environmental damage due to development.

In the sustainable development scheme, environmental issues are an essential dimension that needs to be considered. The development carried out so far still does not consider its environmental impact. The environmental dimension is crucial and is the foundation of sustainable development, where the environment, nature, and everything in it are a barrier so that all social and economic development goals should not interfere with preserving environmental functions to support current and future life.[2] Sustainable development has three main objectives, namely: (1) economically viable or dynamic economic development; (2) socially politically acceptable and culturally sensitive or development that is socially politically acceptable and sensitive to cultural aspects; (3) environmentally friendly. The three development goals formulate three conflicts that may occur in practice. First, development conflicts arise due to the clash of social and ecological goals. Second, resource conflicts arise due to the clash of economic and ecological goals. Third, conflict over the use and control of ownership (property) arises due to the clash of economic and social goals. Sustainable development is at the centre of the conflict triangle. [3] Under certain conditions, sustainable development can cause problems in the environment. This will become a dispute in the future if sustainable development does not heed/forget about environmental issues.

No country does not do development for its country. Development is a process of change towards something better. Conditions that are better than the original state are the goals of the implementation of development. The development should also pay attention to essential things supporting each process. The problem arises if some aspects feel disadvantaged in implementing development. [4] The environmental impact increases with the increasing implementation of development. [5] The essence of development is how to make the future life better than today. However, it cannot be denied that development will always be in contact with the environment. [6] It is undeniable that development has a close relationship with the environment. It can be said that development that provides benefits is a development that, in the process, pays attention to the concept of environmental sustainability. If the development carried out ignores the concept, then the development risk that arises is a negative impact due to development.

Optimal utilization of natural resources is expected to realize sustainable development to increase economic growth, create prosperity and income distribution, and maintain or preserve natural resources or the environment. [7] Human utilization of natural resources by humans must be done wisely so as not to damage the environment so that, in the end, humans will also be harmed. [8] The problem of natural resources and the environment has developed into an environmental crisis that severely impacts human life and development sustainability. [9]

Environmental problems are becoming problems that are getting faster, especially higher development. Environmental problems occur nationally and internationally, and no country is immune to environmental problems. This means that every country must have its environmental problems. For Indonesia, environmental problems are a disturbance to the order of human life between significant population growth, increased use of natural resources, and increased use of technology, as reflected in the industrialization process. [10] The estuary of all environmental

problems is a development carried out without paying attention to environmental balance factors, which will cause environmental damage and pollution. [11] Indonesia has environmental problems resulting from development without paying attention to the environment.

Development activities supported by advanced technology have brought human behavior to change the environment beyond the limits of its carrying capacity. [12] This is what triggers the occurrence of environmental problems, and it is necessary to look at the contributing factors. The factors that cause environmental problems are generally due to technological factors, population growth, economic motives, and values. [13] Environmental problems often occur in Indonesia and have not been resolved. This environmental problem will worsen when extreme weather hits because it has a significant impact, such as overflowing rivers and landslides. Environmental problems, intentionally or unintentionally, are caused by human activities that do not pay attention to environmental sustainability. These problems will be more noticeable when caused by large-scale activities such as mining or industrial pollution. [14] Environmental pollution or destruction in the business sector results from applying modern technology engineered by humans that is too exploitative without paying attention to the balance with the natural environment. This is done solely for business actors to generate the maximum material profit, considering that the capital invested by business actors is also considerable. [15] It is vulnerable to environmental damage from the results of activities carried out by business actors. Strong awareness is needed for small, medium, and extensive business actors to maintain environmental sustainability in carrying out their activities.

Environmental cases occur not only between business actors and the community but also between business actors in business interactions that have access to the environment and resources, between the business actors and the government/policy managers, and between the community and the government. Even among the communities, there can be disputes regarding the environment, for example, the seizure or control of water bodies in the village, burning garbage causing neighbours "noise". [16]. Environmental problems occur on a small, medium, or large scale. An environmental dispute is a conflict of interest between two or more parties concerning using natural resources. Environmental disputes are disputes that arise as a result of the existence or suspicion of environmental impacts. [17] Environmental problems that do not have a significant impact can be resolved through non-litigation or out-of-court. Resolving environmental disputes using alternative dispute resolutions is the best solution to avoid accumulating environmental cases in court.

Article 84 of Law Number 32 of the Year 2009 states that environmental disputes can be resolved through or out of court. [18] Provisions for the settlement of environmental disputes are intended to protect the civil rights of the disputing parties. The choice of environmental dispute resolution is carried out voluntarily by the disputing parties. Settlement of environmental disputes out of court is carried out to reach an agreement on the form and amount of compensation; recovery action due to pollution and destruction; specific actions to ensure that pollution and destruction will not be repeated; and actions to prevent adverse environmental impacts.

Compensation is only imposed on environmental civil disputes. For example, losses arising from land damage, deforestation and forest fires, pollution, etc. [19] Settlement of civil disputes both through non-litigation and litigation channels may not be carried out simultaneously

(simultaneously).[20], this means that the selection of dispute resolution through a court institution is carried out if the settlement out of court is not successful by one of the parties or by the parties concerned. A lawsuit through the court can only be taken if the effort to resolve the dispute outside the chosen court is declared unsuccessful by one of the parties. Provisions regarding lawsuits to the court are carried out if efforts to resolve disputes outside the court are unsuccessful to prevent the occurrence of different decisions regarding an environmental dispute to ensure legal certainty.

2 Method

The method used in this paper is a descriptive research method. This research was conducted using a literature study with a conceptual approach and a statutory approach. The conceptual approach in this paper is the concept of environmental dispute resolution using alternative dispute resolution. The approach to legislation in this research is to use existing laws in Indonesia relating to settling environmental disputes. The data analysis technique used in this study is a qualitative analysis technique.

3 Result and Discussion

Normatively, the legal provisions regarding the environment in Indonesia can be seen in (1) Law Number 11 of The Year 2020 concerning Job Creation; (2) Law Number 32 of The Year 2009 concerning Environmental Protection and Management; (3) Government Regulation Number 22 of the Year 2021 concerning The Implementation of Environmental Protection and Management; (4) Government Regulation Number 23 of the Year 2021 concerning The Implementation of Forestry; and (5) Government Regulation Number 24 of the Year 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in The Forestry Sector. The rule of law regarding the environment in Indonesia is complete, and it is only a matter of practice in the community whether or not it is following the existing legal rules. Violation of the rule of law will destroy the environment in Indonesia. Existing regulations aim to prevent environmental damage and resolve environmental disputes to realize order, security, justice, and welfare in society.

Environmental disputes often occur in environmental management, which are civil matters between two or more parties. This occurs due to the existence or suspicion of environmental pollution and destruction. In the event of an environmental dispute, the disputing parties may choose to resolve their dispute through or out of court. In principle, this is an effort to encourage the improvement and prioritization of deliberation in resolving any environmental disputes between the parties relating to losses incurred by one party due to the actions of the other party. The principle of prioritizing the settlement of environmental disputes is through a deliberation agreement.

Indonesia has regulations in Government Regulation Number 54 of the Year 2000 concerning Service Providers of Environmental Dispute Settlement Services Outside The Court. This rule was born because of the mandate contained in Article 33 of Law Number 23 of the Year 1997

concerning Environmental Management. The government and the community may establish an independent and impartial environmental dispute settlement service provider institution whose implementation is regulated by a Government Regulation. Environmental dispute resolution service providers, from now on referred to as service provider institutions, are independent and impartial institutions whose task is to provide services to the disputing parties to utilize environmental dispute resolution options by providing a neutral third party in the context of dispute resolution either through arbitrator or mediator or another third party.[21] An out-of-court environmental settlement service provider is an institution that is expected to be able to facilitate the implementation of the dispute resolution option mechanism using the principles of openness, neutrality, and professionalism.[22]

3.1 Portraits of Environmental Disputes in Indonesia and Their Resolutions

In general, environmental disputes can be categorized into three, namely[23]: (1) disputes related to environmental protection efforts generally occur between parties with an interest or obligation to protect the environment and natural resources and parties who wish to utilize natural resources to fulfill economic interests; (2) disputes relating to the use of natural resources generally occur because there are parties who feel that their access to these resources is blocked, and (3) disputes due to pollution or environmental destruction generally occur between the polluter/destroyer and the party who is the victim of the pollution/destruction.

Several cases that have occurred and are still happening in Indonesia are related to the environment. The Indonesian Legal Aid Foundation, YLBHI, and Legal Aid or *LBH* will handle Environmental Cases in 2021. There are 37 active cases related to the environment that are still being handled by Legal Aid or *LBH* offices throughout Indonesia. The environmental case in question is divided into destruction and pollution. For destruction, for example, stockpiling reservoirs to build property, mining karst areas, dredging coastal areas and reclamation, and using coal as the company's energy source. Then, the granting of wrong building permits, mining of coal and other minerals, mining of natural materials for infrastructure development, and piling up waste wood near settlements.

Meanwhile, the reported pollution cases are air pollution from company production machines, conversion of mangrove areas to palm oil, poor waste management, and direct waste disposal into rivers or pipes. Then, use fertilizers and pesticides that pollute rivers, exploit wildlife, create water barriers and canals, and destroy water sources. [24] Environmental cases will continue to roll from year to year. Indonesia will continue to experience environmental cases if the existing legal rules are still violated and not balanced with good environmental behavior.

In 2019, there was an environmental dispute between the community and the company. Toxic mud was found buried in the ground of a housing project in Darawolong Village, Purwasari District, Karawang Regency. The toxic mud causes an unpleasant and pungent odor. On the sidelines of the ground, it can see greenish and black mud that smells bad[25]. This case was resolved by criminal prosecution, namely by applying Article 104 of Law Number 32 of the Year 2009 concerning Environmental Protection and Management. [26] Losses that occur can be resolved by alternative dispute resolution between companies and the affected surrounding

communities. Settlement of compensation is carried out by resolving civil disputes and immediately restoring the polluted environment.

Coastal communities living around the Bekasi and Karawang regencies, West Java, have in recent weeks been the most disadvantaged by the oil and gas explosion incident belonging to PT Pertamina Hulu Energi Offshore North West Java (PHE ONWJ) in Karawang waters, 12th July 2019. This incident made them unable to carry out fishing activities. Pertamina must restore damaged beaches and seas and ensure fishermen and marine communities can return to the sea[27]. Pertamina established a complaint and health post for the affected communities. The compensation process to the community and the losses suffered are replaced by the Committee, which contains Pertamina and the local government[28].

Disputes that occur in Indonesia are resolved using court and out-of-court channels. Settlement through court and out-of-court has both advantages and disadvantages. Environmental disputes resolved in court will get legal certainty and follow the rules of environmental law in Indonesia. The court does not guarantee that environmental disputes brought in court will always win. The court decides and examines following the existing legal rules. If the evidence submitted is considered insufficient, it could be that the plaintiff or the affected community will lose in court. Disputes brought to the court must first be done out of court. If the dispute resolution outside the court does not reach an agreement, then it can only be submitted to the court. Settlement of disputes out of court does not apply to environmental crimes. Therefore, environmental crimes must still be resolved through the courts, not outside the courts.

Dispute resolution out of court is generally a civil dispute that does not have a broad impact, while dispute resolution through the court is generally a case that has a broad impact on the environment. Settlement of environmental disputes through the court, or called litigation, is an effort to prosecute perpetrators of environmental violations/crimes for cases of destruction and pollution as well as the environmental damage that has a broad impact on the environment and the general public. The damage is generally challenging and requires state intervention to resolve the case.

3.2 Use of Alternative Dispute Resolution in Environmental Dispute Resolution in Indonesia

The concept of environmental law enforcement in the Environmental Protection and Management Act consists of administrative, civil, and criminal law enforcement. The concepts of administrative law enforcement are (1) Government coercion given by the Governor/Regent/Mayor; (2) The imposition of forced money; (3) Revocation of business license (closure of the company) by the official issuing the license; and (4) Implementation of a mandatory environmental audit by the State Minister for The Environment. The concept of environmental dispute resolution is in the form of (1) Settlement of disputes outside the court using negotiation; (2) Mediation, facilitation, deliberation, and arbitration; and (3) Settlement of disputes in court through civil lawsuits. The concept of criminal law enforcement is in the form of (1) Material crime, (2) Formal crime, (3) Corporate crime, (4) Disciplinary action, and (5) Environmental crimes[29]. Environmental dispute resolution needs to be done carefully and wisely. Completing environmental disputes that occur in a community is not the final goal. The final goal is the realization of the complete welfare of the community concerned[30]. Therefore,

the settlement of environmental disputes is chosen by looking at the virtues in the choice of dispute resolution to provide benefits to the environment and society.

People do not like environmental law enforcement through civil instruments in Indonesia because of the protracted civil process in court. Almost all civil cases are ultimately sent to the highest court for cassation because the losing parties are constantly dissatisfied. There is a tendency for people to deliberately procrastinate by always using all legal remedies, even if there is no reason to continue to review them. Even after a decision on the cassation, it is still often challenging to implement the decision [31]. An environmental case can be done by using alternative dispute resolution. The best solution to overcome the deadlock in settling environmental disputes and realizing the benefits for the parties is to use alternative dispute resolution outside the court.

Disputes related to environmental protection efforts generally occur between parties who wish to utilize natural resources to fulfill economic interests on the one hand and parties with an interest or obligation to protect the environment and natural resources on the other. Disputes related to the use of natural resources generally occur because there are parties who feel that their access to these resources is blocked, while disputes due to pollution or environmental destruction generally occur between the polluter/destroyer and the party who is the victim of the pollution or destruction[32]. The negative impact of environmental damage will be disputed as long as parties are harmed and there is environmental damage.

Several efforts to resolve environmental disputes have been carried out through the courts, and the results have been disappointing due to unsatisfactory decisions, high costs, and taking a long time. Seeing the slowness of the judiciary in resolving the problems that arise, it is understandable when criticism is directed at the slowness of this judicial institution[33]. Many environmental cases fail in court because of law enforcement's low ability, integrity, and morale. It is no secret that many judicial processes are full of collusion, corruption, and nepotism, so cases tend to fail in court or be won by economically capable parties[34]. The accumulation of cases in the courts also hinders the speedy resolution of environmental cases. Settlement of disputes in court will also require considerable costs in the trial process.

Settlement of environmental disputes out of court can be done through several approaches, including prevention, conflict management, conflict resolution, conflict resolution settlement, and alternative dispute resolution (ADR)[35]. This confirms that alternative dispute resolution is one of the approaches taken to resolve environmental disputes out of court.

Dispute settlement out of court can distinguish between peaceful and adversarial dispute resolution. Peaceful dispute resolution is better known as a settlement by deliberation and consensus. Meanwhile, adversarial dispute resolution is better known as dispute resolution by third parties not involved in the dispute[36]. In environmental disputes, adversarial dispute resolution can be done by arbitration, conciliation, and mediation, while peacefully it can be done by negotiation.

Arbitration is a way of resolving environmental disputes outside the court by using an arbitrator as a neutral or impartial third party. An arbitrator is a third party whose duty is to reconcile the two disputing parties. The applicant is the party affected or suffers a loss, and the respondent is the party who violates, pollutes, or damages the environment. Dispute resolution using

arbitration is based on an arbitration agreement in the form of a *pactum compromitendo* or a deed of compromise. The result of the arbitration process is an arbitration award made by the arbitrator and agreed by both parties to the dispute.

Mediation is a way of resolving environmental disputes by using a mediator as a party to reconcile the two disputing parties. The mediator is a neutral third party tasked with assisting the parties to reach an agreement point for resolving disputes. The result of the agreement from mediation is in the form of a peace deed.

Negotiation is a way of resolving environmental disputes outside the court, carried out without intermediaries but through the disputing parties or their representatives. Settlement of disputes through negotiations, the parties conduct negotiations to discuss and reach an agreement on issues following each party's wishes.

In the case of environmental pollution using negotiation, the company accused of polluting feels that the compensation demands demanded by the community are unreasonable, unfair, or too fabricated, while the community feels that the compensation they are claiming is deservedly received. In the negotiation process, both parties maintain their will so that the negotiation process does not produce anything[37]. Therefore, in conducting negotiations, the negotiating skills of the parties are required to be good to reach an agreement that is beneficial for both parties.

Conciliation is the settlement of disputes out of court with the help of a conciliator. The conciliator is given the power by the parties to draft an agreement that the parties will agree upon. The conciliator will draw up and formulate a settlement for the parties. If the parties agree, it will be a resolution for both parties. If it has not been agreed, the conciliator will continue to try to formulate and offer back the right concept for resolving the dispute between the parties.

Settlement of environmental disputes through non-litigation, out-of-court, or alternative dispute resolution. Settlement of environmental disputes out of court is the settlement of environmental disputes that are resolved using mediation, conciliation, negotiation, and arbitration. In general, environmental disputes that are resolved using alternative dispute resolutions are minor environmental damage disputes whose impacts are not widespread and can still be resolved.

Another environmental problem that arises from the Electric Steam Power Plant of Batang or *PLTU* of Batang is the contamination of air pollution in the surrounding environment due to the use of coal as the primary fuel for the Electric Steam Power Plant of Batang or *PLTU* of Batang in generating electricity. The making of the most prominent Electric Steam Power Plant of Batang, or *PLTU* of Batang in Southeast Asia, has resulted in the government and the private sector as investors continuing to carry out project activities to generate profits regardless of the environment in the area. This event is illustrated by the selection of cheap fuel with the negative impact of the existing combustion products[38]. Dispute resolution between the community and investors in constructing the Electric Steam Power Plant of Batang or *PLTU* of Batang can be resolved with alternative dispute resolution, where the Regent of Batang can be a mediator.

The Electric Steam Power Plant, or *PLTU*, in Sepang Bay, Bengkulu, is considered to cause damage to the natural environment. This is because Electric Steam Power Plants or *PLTUs* are suspected of damaging the environment and causing pollution to the community. [39] This

dispute can be settled by conducting negotiations between Limited Company of Power Bengkulu as the manager of the Electric Steam Power Plant or *PLTU* project and the operating community. Negotiation is one way to deal with environmental disputes through out-of-court channels.

Based on the case examples in resolving environmental disputes through alternative dispute resolution in Indonesia, it is still relevant and creates peace and prosperity between the parties concerned because alternative dispute resolution will produce a mutual agreement without any loss to the parties. So that there is a balance in the status of the position of the disputing parties, as well as produce a mutual agreement (win-win solution) without recognizing the existence of win/lose as is done in court. However, they must maintain and manage the environment properly and follow applicable laws and regulations.

The environmental dispute resolution model through non-court institutions is an alternative, and this model is efficient, cheap, fast, and able to produce a better decision than the settlement through a court institution. [40] In addition, settling environmental disputes using alternative dispute resolutions is also very beneficial for business actors because the time used during the dispute resolution process is short, easy, and low-cost. The result resulted in an agreement between the parties whose substance was formulated by the disputing parties. An agreement based on the good ethics of the parties will maintain good relations between the parties after the dispute has been resolved.

4 Conclusion

Environmental disputes can occur at the local, national, and even international levels. Parties who do environmental damage are individuals (individuals in the community), legal entities, business actors (small, medium, or large), and small, medium, and prominent industrial players. For victims of environmental damage, it is clear that not only will the sustainable environment be damaged, but the surrounding community will also be affected if environmental damage occurs. Environmental disputes can occur in the administrative, civil, or criminal domains. Environmental disputes can be resolved through alternative dispute resolution, namely environmental disputes in the civil realm. The use of alternative dispute resolution in environmental cases can be carried out to produce peace and decisions mutually agreed upon by the parties. Settlement of environmental disputes can use the services of a neutral third party, either using arbitration, mediation, or conciliation. The use of third-party services depends on the needs of the disputing parties. In addition, the settlement of environmental disputes can also be carried out by the disputing parties themselves (negotiations). The advantage of using alternative dispute resolution in environmental disputes is that there is a decision or agreement that is a win-win solution for the parties (the party doing the damage and the affected party).

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