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Sustainable Development-Based Environmental Dispute Resolution Through Alternative Dispute Resolution in Indonesia

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Abstract. *Environmental problems are part and responsibility of all human beings who feel they want to live on this earth. Over time, the dynamics of community activities such as exploration, construction and exploitation activities in all fields, including industrial development, algiculture business (agriculture, plantations and fisheries), property and so on are growing very rapidly. The occurrence of disputes or conflicts that can be resolved one of them by means of out-of-court settlement using ADR (Alternative Dispute Resolution) or alternative dispute resolution (APS) or by means of Negotiation, Conciliation, Mediation, and Arbitration. The research method used is Normative Juridical research where the legal research method is carried out by examining library materials or secondary materials only. The purpose of this writing is expected to provide a view of how case studies occur in resolving environmental disputes through alternative channels or out of court. The results of this study indicate that environmental disputes can be resolved through non-litigation efforts where the Government must be consistent with sustainable development programs to prevent environmental disputes, where in the process and achievement of development there must be a balance between economic, social and ecosystem preservation and protection.*

Keywords*: Dispute, Out of Court, Environment*

1. INTRODUCTION

The existence of environmental problems is no longer a problem that should be faced only by individuals or environmental activists or policy makers in several countries. However, it has become a problem and part of the responsibility of all human beings who feel that they want to live on this earth. The phenomenon of pollution and environmental damage is the work of human hands themselves which basically must be responsible for what has been done in recent times. Various kinds of pollution, environmental damage that bring about natural disasters that occur almost all over the world, including our country Indonesia.

Environmental pollution is a reality and a global threat. Environmental pollution knows no boundaries as Aaron Scwabach stated:

"Environmental threats are global, not national. Environmental systems are not restrained by national boundaries. When a polluter in one country dumps chlorofluorocarbons into the atmosphere, the consequent damage to the ozone layer affects the whole world, not just the inhabitants of the polluter's country. When a species becomes extinct, it is lost to the world, not just to the country or countries in which it once lived."

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James Gustave and Peter M. Haas have identified a number of environmental problems that are a global threat to the entire world today. The ten problems are acid rain and air pollution on a regional scale, depletion of the ozone layer by chlorofluorocarbons (CFCs) and other chemical substances emitted by the agricultural industry, global warming and climate change as a result of increasing greenhouse gases in the atmosphere, deforestation, especially in the tropics, soil degradation in relation to erosion, soil compaction/hardening and other factors, freshwater pollution and food scarcity, threats to the marine environment that include overfishing, destruction of marine habitats, and marine pollution, damage to biodiversity and ecosystem support through the loss of species and ecosystems, and excessive production of nitrogen substances and fertilization activities (use of chemical fertilizers).

Environmental pollution and damage cannot be separated from the development carried out by humans to build a better life. Increasing economic activities through the industrialization sector, the agribusiness sector (agriculture, plantations and fisheries), property, and construction must run with environmentally sound development or what is now known as sustainable development.

In this case, sustainable development must ensure a good quality of life for the present and future generations through the preservation of the carrying capacity of the ecosystem. This means that in the process of achieving development and ecosystem protection, there must be a balance between economic, social, conservation and ecosystem protection interests so that future generations have the same ability to get a quality of life.

So from the entire scope of the environment in Indonesia, including land, water, air which is a container where we live, live and breathe, which gives birth to the current and future generations of Indonesian people who are healthy and dynamic. Over time, the dynamics of community activities such as exploration, construction and exploitation activities in all fields, including industrial development, algiculture business (agriculture, plantations and fisheries), property and so on which are growing very rapidly. Then it has a side effect that results in the land we live in, the water we use for daily life and the air we breathe. These side effects have given rise to environmental cases that occur in the community.

Environmental cases do not only occur between business actors and the community, but also occur between fellow business actors in terms of business interaction with the environment and resources, between business actors and the government as well and even, between fellow communities themselves can cause disputes.

Basically, this is a dynamic socio-environmental aspect, whose settlement mechanism is included in dispute resolution institutions. There are two ways of dispute resolution, namely through the court and out of court. Litigation is a settlement that occurs between parties in court. Meanwhile, the pattern of settlement outside the court uses ADR (alternatve dispute resolution) or alternative dispute resolution (APS).

Therefore, the background of this article will focus more on resolving environmental disputes through non-litigation channels. This article aims to analyze more deeply what environmental disputes actually are, find out what are the forms of out-of-court environmental dispute resolution and delve into how case studies occur in environmental dispute resolution through alternative or out-of-court channels.

2. RESEARCH METHODS

The research method used is normative juridical research where the legal research method is carried out by researching literature materials or secondary materials. Then the approach to writing articles used is a legislative approach, namely a doctrinal approach whose materials are used as literature from various libraries, as well as electronic literature searches using internet media.

The types of legal materials used include primary legal materials and secondary legal materials, namely:

a. Primary legal materials are legal products that bind the citizens of the country, namely, scientific sources which include:
    1) Law Number 32 of 2009 concerning Environmental Protection and Management *Juncto* Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law
    2) Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
    3) Government Regulation No. 54 of 2000 concerning Institutions Providing Out-of-Court Environmental Dispute Resolution Services.
b. Secondary legal materials, are legal materials that are closely related to primary law, namely, scientific sources which include:
    1) Scientific books that discuss the settlement of environmental disputes.
    2) Research results related to the writing of this article.
    3) Various papers, results, magazines, scientific journals related to the writing of this article.
    4) Court decisions related to this writing.

3. RESULTS AND DISCUSSION

Environmental Disputes

Disputes in English are called disputes or conflicts. Experts differ on the meaning of dispute and conflict. Some experts consider dispute and conflict to be the same, others distinguish between the two. Conflict is often said to be broader than dispute because it involves more people, deeper because it reaches out to what is behind the issue which includes questions about value, recognizing concerns and needs; and more systemic because it reaches more than one interaction or claim.

According to W. Felsteiner, R. Abel, and A. Sarat, the birth or emergence of a dispute includes three steps, namely naming, blaming, and claiming. Naming is a step to identify facts in the form of losses experienced. Blaming is a step to identify that the source of the loss is due to the fault of another party, be it by an individual or a legal entity. The last claim occurs when compensation is demanded from a person or legal entity who is believed to be the party responsible for the losses that occurred. In the end, a claim turns into a dispute when part or all of the claim submitted is rejected.

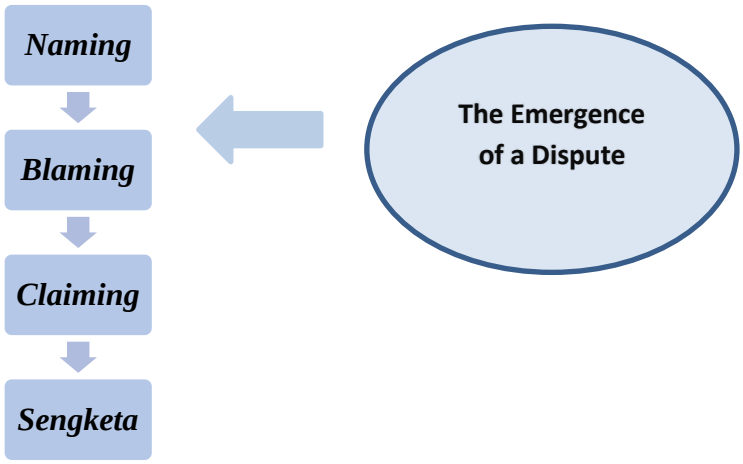

Figure 1. The Emergence of a Dispute

Suparto Wijoyo stated that environmental disputes are species of the genus of disputes that contain conflicts and conflicts in the environmental field. Environmental disputes can be formulated in a broad sense and a narrow meaning. In a broad sense, an environmental dispute is a conflict of interest between two or more parties that arises in connection with the use of natural resources. The use of natural resources, in addition to providing benefits to one group of people, can also cause losses to other groups. Often the

benefits of an activity that utilizes natural resources are seen in a macro way, while the risks or negative impacts of the activity are felt by a small group of people.

Environmental disputes are actually not limited to disputes arising from environmental pollution or destruction events, but also include disputes that occur due to government policy plans in the field of land use and allocation, utilization of forest products, logging activities, power plant development plans, reservoir construction plans, high-voltage aerial pipeline construction plans, with Thus, the context of the environment covers a relatively broad context. The definition of environmental disputes in a narrow sense is environmental disputes according to the provisions of Article 1 point 25 of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH).

Article 1 point 25 of the UUPPLH

"Disputes between two or more parties arising from activities that have the potential and/or have had an impact on the environment". The focus of environmental disputes according to Article 1 point 25 of the UUPPLH and Article 1 point 19 of the UUPLH is still on activities, not including government policies or programs related to environmental problems.

Based on Article 1 point 25 of the UUPPLH as amended in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, environmental disputes contain the following elements:

a. Environmental disputes involve two or more parties in dispute; and
b. These disputes arise from activities that have the potential and/or have had an impact on the environment.

Environmental disputes involve two or more parties who are in dispute. Two or more parties who are in dispute are the subject of legal disputes over environmental disputes. This dispute between two or more parties must be caused by an activity that has the potential and/or has had an impact on the environment. Thus, the subject of environmental disputes is the party whose environment is affected by the activity, both potential (potentially affected and factual (already affected) and the party whose activity has an impact on the environment, both potential (potentially impacted) and factual (already impacted).

Dispute resolution is the most important aspect of a legal system or legal system. Parties involved in environmental disputes have a number of options for dispute resolution

mechanisms that can be applied, from informal, interest-based negotiations, to formal dispute resolution mechanisms, and trial type arbitration proceedings.

Alternative Forms of Environmental Settlement Outside the Court (Non-Litigation)

Previously, for ordinary people, the term "dispute resolution" was often associated with speaking in government-appointed forums, such as the Court. In fact, the term dispute resolution is not only related or resolved through the Court, but can also be resolved by the Court. There are many practices of resolving cases, or making peaceful efforts for those who dispute without having to go through the courts. For example, through the intervention of the family, or other parties, and those who have a dispute can accept each other's settlement efforts. Such settlement patterns are usually due to the presence of a mediator, whose presence is neutral to the disputing parties.

The purpose of regulating out-of-court dispute resolution is to protect the civil rights of the parties to the dispute quickly and efficiently. This is considering that dispute resolution through litigation tends to take a long time and relatively costly. This is due to the slow dispute resolution process, expensive court fees, courts are considered less responsive in resolving cases, so that decisions are often not able to resolve problems and the accumulation of cases at the Supreme Court level that are not resolved.

The second goal is to seek agreement on the form and amount of compensation or to determine certain actions that must be taken by polluters to ensure that such acts do not occur again in the future. Dispute resolution outside of court can be done by using the services of a third party, both those who have and do not have the authority to make decisions.

Based on Government Regulation No. 54 of 2000 concerning Out-of-Court Environmental Dispute Resolution Service Providers, the settlement of environmental disputes outside the court can be facilitated through the services of a third party, both those who have decision-making authority, to help resolve environmental disputes, such as the government and/or the community. The government and the community in this case can form an institution that provides environmental dispute resolution services that are free and impartial.

Actually, the establishment of the concept of litigation outside the court (ADR) does not solely arise from dissatisfaction with the court institution. However, it should also be associated with the culture of the behavior of the people of a nation or ethnology, tending to seek a peaceful solution to conflicts. For certain communities, if there is a conflict

between individuals, then those who suffer losses and consequences of the conflict are not only the people who are at odds, but all members of the community as part of the gemenschatt society, experience the impact of the conflict.

Therefore, a settlement pattern is sought that involves village elders in the community environment; so that the conflict is resolved by means of peace (reconsilitiation settlement). In the land of Batak, for example, it is known as the Customary Forestgun Forum which is tasked with resolving conflicts through deliberation and familialism. In Minangkabau, there is an institution of peace judges who function as mediators or conciliators, while in Java the concept of decision-making in village meetings is not based on the majority vote but is made by the whole present as a unit. In Java, where the majority and minority can limit their opinions, they can be in line with each other.

Dispute Resolution Through Alternative Dispute Resolution (ADR)

ADR or alternative dispute resolution is a set of procedures or mechanisms that function to provide an alternative or option of a way of resolving disputes through the form of APS/arbitration in order to obtain a final decision and bind the parties.

The characteristics or characteristics of the dispute resolution mechanism through ADR (Alternative Dispute Resolution) include:

a. Informality is not formal
b. Application of equity
c. Direct participation and communication between disputants.

Settlement of Environmental Disputes Outside the Court as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management, as amended in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law

Article 85:

a. Out-of-court settlement of environmental disputes is carried out in order to reach an agreement on:
    1) The form and amount of compensation.
    2) Remedial actions due to pollution and/or destruction.
    3) Certain measures to guarantee that there will be no recurrence of pollution and/or destruction and/or
    4) Actions to prevent negative impacts on the environment.

b. Out-of-court dispute resolution does not apply to environmental crimes as regulated in this Law.
c. In resolving environmental disputes out of court, the services of mediators and/or arbitrators can be used to help resolve environmental disputes.

Article 86 :

a. The community can form an institution that provides environmental dispute resolution services that are free and impartial.
b. The government and local governments can facilitate the establishment of environmental dispute resolution service providers that are free and impartial.
c. Further provisions regarding environmental dispute resolution service providers are in line with government regulations.

Basically, the ADR process is an informal process compared to the court process. In some cases, ADR procedures are not rigid, there is no need for a formal lawsuit, no need for long, wide documentation, or no need for proof. This informality is interesting and important to increase access to alternative dispute resolution for people who may be intimidated by participating in the formal system.

The principle of dispute resolution through ADR is in the context of the application of justice from the parties through a third party, or negotiated between the parties to a dispute based on the principles of similarity in a particular case. The direct participation of the parties in resolving and designing dispute resolution or direct dialogue between the parties to the dispute is a characteristic of ADR. Broadly speaking, ADR mechanisms are categorized into four, namely negotiation, conciliation, mediation and arbitration. Forms of Environmental Dispute Resolution through Alternative Channels (Outside the Court (Non-Litigation)

Arbitration

Arbitration comes from the word arbitration (Latin) which means the power to resolve a case according to wisdom. According to Frank Elkoury, Arbitration is a process that is easily chosen by the parties voluntarily because they want the case to be decided by a neutral arbitrator according to their choice where their decision is based on the postulates in the case. The parties agreed from the beginning to accept the decision finally and bindingly.

Meanwhile, according to UUPPLH-1999, Arbitration is a way of resolving a civil case outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute. From some of the definitions conveyed above, there is basically a similarity that arbitration is a civil agreement in which the parties agree to settle disputes that occur between them that may arise later in the day decided by a third person, or the settlement of disputes by one or more referees appointed by the litigants by not settling through the court but deliberatively by appointing a third party, which is stated in one part of the contract.

Mediation

Mediation in English is called mediation is the settlement of disputes by mediation. The person who becomes a mediator is called a mediator. "Mediation is private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decission on the parties (Hendry Campbell Black).

In environmental dispute resolution, if the two parties cannot resolve the dispute they are facing on their own, they can use a neutral third party to help them reach an agreement or agreement. Mediation itself is regulated in article 6 paragraphs (3), (4) and (5) of Law No. 30 of 1999 concerning Arbitration and Alternative General Dispute Resolution.

In mediation, a mediator has 2 types of roles that are performed, namely first, the mediator plays a passive role. This means that the parties themselves are more active in resolving the problems they face so that the role of the mediator is only as a mediator, directing dispute resolution, and so on. Second, mediators play an active role. This means that the mediator can take various actions such as formulating and articulating common points of view to get a common view and provide understanding to both parties about dispute resolution. Thus, a mediator is expected to be able to resolve the problem because both parties to the dispute are waiting.

The mediation process required of the mediator is the ability to aspect the disputed interests and the ability to facilitate the process of achieving the problem. Mediation is actually a negotiation process between the parties to a dispute where the parties actively bargain to resolve the problem with the help of a mediator as a facilitator. Mediation is regulated in articles 85 and 86 of the 2009 Law as amended in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022

concerning Job Creation into Law, the resolution of environmental disputes through mediation is considered to be the best step considering that the decision on the results of mediation negotiations is responsive to the disputed issues in addition to looking at costs and time which is relatively at least.

Negotiation

Negotiation in general can be interpreted as an effort to resolve disputes by the parties without going through the courts. With the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation. Thus, negotiation is a consensus bargaining process in which the parties try to obtain or reach an agreement on matters that are disputed or have the potential to cause disputes.

The parties to the dispute face each other carefully in discussing the problems they face in a corporate and open manner. Although simple, negotiation is a fundamental skill that negotiators need. Negotiation, both transactional negitiation and dispute negotiation, is not just an intutive process, but a process that must be studied, requiring certain knowledge, strategies and skills.

Conciliation

According to the Great Indonesian Dictionary, conciliation is defined as an effort to bring together the wishes of the disputing parties to reach an agreement and resolve problems between the two parties through negotiations. Conciliation can also be used if mediation fails. The mediator in conciliation can change its function to a conciliator, and if an agreement is reached, then the conciliator turns into an arbitrator whose decision can be binding on both parties to the dispute.

4. CONCLUSIONS AND SUGGESTIONS

From the writing of this article, it can be concluded that the mechanism of environmental dispute resolution Alternative dispute resolution (APS) is dispute resolution outside the court in the form of negotiation, mediation, conciliation, arbitration and can even be resolved through service providers who specialize in providing environmental disputes.

The purpose of resolving environmental disputes outside the court is to: (1) determine the form and amount of compensation, (2) determine certain actions to prevent

environmental damage and/or pollution. (3) determine actions to prevent negative impacts on the environment.

The government must be consistent with the sustainable development program to prevent environmental disputes, where in the development process and achievements there must be a balance between economic, social and ecosystem conservation and protection. Thus, the creation of a clean and healthy environment will avoid or at least reduce the risk of environmental disputes between community members and business actors or those that occur between business actors.

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