

Legal Study on Alternative Use of Environmental Dispute Settlement with Mediation Ngerong River Pollution in Gempol Pasuruan, Indonesia

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Abstract

Dispute resolution outside the court is popularly known as alternative dispute resolution (ADR) for the Indonesian people, which has been the philosophy of the Indonesian nation since time immemorial; only the name does not use the word "dispute resolution" outside the court. Furthermore, in the settlement of environmental disputes in Article 32 of the UUPLH, as referred to in Article 31, the services of third parties, both those who do not have decision-making authority and those who do have decision-making authority, can be used to help resolve environmental disputes. The existence of the word "... can ... to help ..." in the formulation of Article 31 UUPLH, The pattern of settlement of environmental disputes in the provisions of the UUPLH appears to be a correction of the error in the Tripartisan Team system according to Law Number 4 of 1982 concerning the Basic Provisions for Environmental Management (UULH). Several alternative forms of environmental dispute resolution discussed above are further regulated by regulations, such as Law No. 30 of 1999 concerning arbitration and alternative dispute resolution and Government Regulation No. 54 of 2000 concerning institutions providing services for environmental dispute resolution outside the court. The agreement was accepted by the disputing parties (PT Sorini Corp and the affected Gempol residents). This proves the effectiveness of the APS procedure in resolving disputes related to the environment. In addition to saving costs, settlement through the mediation process also takes place in a short time and results in an agreement that the disputing parties will receive. The advantages mentioned above show the advantages of the APS process, which is better than dispute resolution through the courts, which may take a very long time and may not be accepted gracefully by both parties to the dispute.

Keywords: Dispute Resolution, Arbitration, Environment, Law

Introduction

Settlement of disputes outside the court is a response to dissatisfaction with the settlement of environmental disputes through a confrontational and complicated "litigation process" or (in court) extrajudicial settlement of disputes, which is a comprehensive settlement of environmental conflicts in Indonesia out of court. ADR is a conceptual understanding that accentuates environmental dispute resolution mechanisms through negotiation, conciliation, mediation, fact-finding, and arbitration. In the literature, there are also forms of the combination called "hybrid," such as mediation with abbreviated arbitration (med-arb).

Dispute settlement outside the court has the main advantage of producing a decision that can be accepted by and satisfy all parties (high level of acceptance). This advantage explains that dispute resolution through ADR can produce a decision that is considered "fair" by and for the conflicting parties. Because if one of the parties feels aggrieved, he will not want to accept the agreement produced through the ADR process and continue the dispute resolution with the court. This is the reference that the result of ADR is a fair agreement for the disputing parties.

Out-of-court dispute resolution (ADR) for the Indonesian people has been the philosophy of the Indonesian nation since time immemorial, and only the name does not use the word "dispute resolution" outside the court. The resolution of this dispute is the philosophy of the ancestors of the Indonesian nation that has developed amid society.

For example, the people of inter-regional conflicts prefer to settle in the form of "deliberations." This deliberation was brought to the fore by the founding fathers by including it in the 1945 Constitution.

Settlement of environmental disputes where alternative settlements are found outside the court environment, according to the Basic Law on the Environment, is called the settlement of environmental disputes out of court. Based on Article 31 of the UUPH, the settlement of environmental disputes outside the court is held to reach an agreement on the form and amount of compensation and/or specific actions to ensure that there will be no occurrence or recurrence of negative impacts on the environment (Hardjosoemantri, 1999).

Furthermore, Article 32 of the UUPH states that in the settlement of environmental disputes outside the court, as referred to in Article 31, the services of third parties, both those who do not have decision-making authority and those who do have decision-making authority, can be used to help resolve environmental disputes. The existence of the word "... can ... to help ..." in the formulation of Article 31 of the UUPH, the pattern of settlement of environmental disputes in the provisions of the UUPH appears to be a correction of the error in the Tripartisan Team system according to Law Number 4 of 1982 concerning the provisions of the Basic Provisions for Environmental Management (UULH). In article 20 (a.2) of the UULH and its explanation, it can be concluded that the formation of tripartite is "mandatory/must." This means that if the three parties do not reach an agreement, then it will be reached by the district court. In fact, the formation of the tri-parties and the settlement of the agreement have experienced difficulties and have caused an unsatisfactory process of resolving environmental disputes.

Several alternative forms of environmental dispute resolution discussed above are further regulated by regulations, such as Law No. 30 of 1999 concerning arbitration and alternative dispute resolution and Government Regulation No. 54 of 2000 concerning institutions providing services for environmental dispute resolution outside the court.

Dispute resolution through alternative dispute resolution has the benefit of avoiding the accumulation of cases in the Supreme Court (Achmad Sentosa). This can be proven by the increasing use of APS as a dispute resolution method; for example, the dispute between Karangrejo, Bangkok, and Kawung villages, Gempol sub-District, Pasuruan Regency, with PT Sorini Corp, regarding environmental pollution conducted by PT Sorini Corp.

The authors attempt to minimize the issue in this scenario:

1. Is the dispute resolution process through mediation in the case of river pollution by PT Sorini Corp in accordance with the applicable laws in Indonesia?
2. Do Gempol residents' dispute resolution through alternative dispute resolution with the mediation process have advantages over settlement through the courts?

The authors' expertise in alternative dispute resolution mechanisms in Indonesia will be expanded as a result of this study. On a scholarly level, this study is expected to assist in enhancing legal education.

Discussion

This incident occurred in 2004 in the villages of Karangrejo, Bangkok, and Kawung, Gempol Sub-District, Pasuruan Regency, East Java. The investigation started after it was revealed that PT Sorini Corp dumped rubbish into the Ngerong River in East Java's Gempol sub-district, exceeding the quality standard level. As a result, the water quality of the Ngerong River worsened, resulting in a bad smell noticed by inhabitants living near the river, in addition to other consequences. The pollution of the Ngerong River's water is also poisoning the wells of households in the surrounding region.

People took action in response to environmental pollution in the Ngerong River by closing the PT Sorini Corp garbage canal, which residents felt was the source of the pollution. Residents obstruct the PT Sorini Waste Disposal Installation using river stones and cement. The community felt highly disadvantaged as a result of PT Sorini's wastewater disposal, which had a significant influence on the water quality of the Ngerong River, wells, and the inhabitants' agricultural land. This lawsuit was settled peacefully via an alternative dispute resolution and mediation procedure. PT Sorini Corp and the residents reached an agreement via mediation.

Settlement of disputes out of court or using Alternative Dispute Resolution (ADR/APS) is regulated in Indonesian legal instruments, namely:

1. Article 30 paragraph (1) of Law No.23 of 1997 concerning Environmental Management.
2. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
3. PP No. 54 of 2000 concerning service providers for environmental dispute resolution outside the court.

The three legal instruments mentioned above are the legal basis for resolving environmental disputes out of court. The settlement of environmental disputes through ADR has been increasing in Indonesia. This is, of course,

related to the advantages of ADR dispute resolution rather than the courts. According to Achmad Sentosa, the APS implemented in Indonesia is almost the same as that applied in America and is also motivated by similar needs, namely as follows:

- To reduce the accumulation of cases in court (court congestion). The large number of cases that are brought to court causes the court process to be often lengthy and time-consuming. This kind of process is expensive and often gives unsatisfactory results.
- To increase community involvement and community autonomy in a case settlement process.
- To facilitate and expand access to justice (access to justice).
- To provide an opportunity for the achievement of dispute resolution that results in a decision that can be accepted by and satisfies all parties (high level of acceptance).

Examining the background of the emergence of environmental dispute resolution outside the court carefully as in America as described above, Indonesia also needs to apply it in civil cases and socialize it more to the community. This is intended to reduce the accumulation of cases in the Indonesian Supreme Court.

After the enactment of Law No. 23 of 1997 concerning Environmental Management (UUPLH) in Indonesia, the settlement of environmental disputes has an "option" to resolve environmental disputes. As described in the Introduction, prior to the enactment of UUPLH, or in Law No. 4 of 1982 (UULH), the party in dispute was not given a choice in resolving environmental disputes. However, with the enactment of the UUPLH, people who are in dispute in the environmental field can choose or determine their choice in taking dispute resolution; this is following what is stipulated in Article 30 paragraph (1) of Law No. 23 of 1997 (UUPLH) "Environmental disputes can be settled in court or outside of court, depending on what the disputing parties want.

Based on article 30 of the UUPLH above, it is explained that the Gempol Pasuruan community and PT Sorini Corp have the right to resolve their disputes out of court. In addition, the dispute is also classified as an environmental dispute as described in Article 1 a.2 of PP No. 54 of 2000 concerning service providers for environmental dispute resolution outside the court: "Environmental disputes are disputes between two or more parties caused by the presence or suspicion of environmental pollution and/or destruction." Moreover, dispute resolution through the appointment of a mediator to resolve the dispute has been agreed upon by both parties and follows what is stipulated in Article 15 PP No. 54 of 2000.

Following Article 15 of PP No. 54 of 2000, namely, members of service providers who can be appointed as mediators or other third parties by the parties must meet the following requirements: The parties agreed that the disputing parties: do not have blood or marriage relations up to the second degree with one of the disputing parties; do not have a working relationship with one of the disputing parties; have no financial interest or other interest in the agreement of the parties; have no interest in the negotiation process or the outcome;

Based on article 1 paragraph (2) of PP No. 54 of 2000 and article 30 of the UUPLH, what PT Sorini Corp and the Gempol residents have done to resolve their environmental disputes follows the applicable laws in Indonesia. Following Article 4 of PP No. 54 of 2000, "The parties are free to determine the service provider institution that assists in the settlement of environmental disputes" (Hamzah, 2005). In this case, PT Sorini Corp and Gempol residents chose to resolve their environmental dispute through a mediator, as regulated in Article 6 of PP No. 4 of 2000: "Service providers provide environmental dispute resolution services using the assistance of arbitrators or mediators or third parties or others," meaning that the use of a mediator in the settlement of this dispute indicates that the mediation procedure is carried out. The Mediation Procedure is the settlement of environmental disputes by mediating with the assistance of a neutral third party. Following Article 8 of PP No. 54 of 2000, service providers established by the government:

- Service provider institutions can be formed by the central government and/or local governments.
- The institution that provides services and is set up by the central government is chosen by the Minister and is housed in the agency that is in charge of controlling the effects on the environment.
- The Governor/Regent/Mayor determines the service provider institution established by the regional government. It is housed in the agency that is in charge of controlling how the area affects the environment.

Several alternative forms of dispute resolution are:

- Negotiation, which in English means "negotiating" or "consulting." It can be interpreted as an effort to resolve the dispute between the parties without going through a court process to reach a mutual agreement based on more harmonious and creative cooperation. In Indonesia, it can be seen as a way for two parties to come to an agreement through negotiations. It can also be seen as a way for two parties to settle a dispute without violence.

- In Indonesian, conciliation means effort (a conciliator) to bring together the wishes of the disputing parties to reach an agreement and resolve the dispute. Keep in mind that a conciliator only plays a passive role.
- Mediation is the settlement of environmental disputes by mediating. According to Greenville-Wood, mediation is a dispute resolution process involving assistance from a neutral third party in negotiating and resolving a dispute.
- Fact-finding is the settlement of environmental disputes by using neutral and impartial parties in charge of collecting materials or information to be analyzed and evaluated to clarify the problems that cause disputes and recommend solutions for problem-solving.
- Arbitration, etymologically, is the settlement of environmental disputes by submitting them to a third party (neutral/arbitrator) with the authority to resolve or decide disputes. Arbitrators have an active role in resolving an environmental dispute.

The settlement of the dispute between PT Sorini Corp and Warga Gempol, Pasuruan through Mediation, resulted in an agreement as follows:

- The compensation of approximately IDR 20,000,000.00 to three villages around the river that have been contaminated by Ngerong river pollution.
- PT Sorini Corp will provide clean water through PDAM facilities to 120 families have been contaminated by river pollution.
- PT Sorini Corp is willing to clean up the residents' wells that have been contaminated by Ngerong river pollution.
- PT Sorini Corp will improve the performance of its Waste Water Management installation to comply with the quality standards of liquid waste so that wastewater no longer pollutes the Ngerong River in particular and the environment in general.
- PT Sorini Corp must adjust its production capacity to the performance of its WWTPs, and stop production temporarily until the WWTPs are functioning correctly.

The disputing parties accepted the agreement (PT Sorini Corp and the affected Gempol residents). This proves the effectiveness of the APS procedure in resolving disputes related to the environment. In addition to saving costs, settlement through the mediation process also takes place in a short time and results in an agreement that the disputing parties will receive.

The advantages mentioned above show the advantages of the APS process, which is better than dispute resolution through the courts, which may take a very long time and may not be accepted gracefully by both parties to the dispute.

Conclusion

There are too many obstacles that victims of environmental pollution and destruction must face. Legal protection for victims of environmental pollution is a protective manifestation of the right to a good and healthy (living) environment. Based on the case of PT Sorini Corp and the Gempol residents, it can be concluded that dispute resolution through ADR/out of court has many advantages over dispute resolution through the court.

These advantages are as follows:

- Achievements in the settlement of environmental disputes: juridical, economic, and technological that cause victims of environmental pollution and destruction are often reluctant to resolve environmental disputes through legal channels. Therefore, the ADR mechanism is beneficial for dispute resolution, resulting in decisions that can be accepted by and satisfy all parties (high level of acceptance). Settlement through the courts often yields unsatisfactory results for one of the defeated parties.
- Speeding up time in terms of resolving environmental disputes. The large number of cases brought to court (court congestion) causes the court process to be lengthy and time-consuming and reduces costs in the dispute resolution process. Resolving disputes through the courts usually costs a lot of money.
- Increase community involvement and autonomy in a case settlement process to facilitate and expand access to justice (access justice).

Based on the above, it is better if the use of ADR in certain civil cases is prioritized before entering the dispute resolution process through the courts. In this case, the active role of the court is highly expected to advise the disputing parties to resolve their cases through the ADR procedure first. In addition to dispute resolution in the environmental field, ADR can also be applied in other civil fields.

Suggestion

In developed countries, it turns out, they have prioritized legal means of mediation to resolve effective and efficient environmental disputes. This is reasonable, considering that mediation has comparative advantages compared to dispute resolution by arbitration and litigation. Therefore, dispute resolution through ADR/APS or dispute resolution outside the court must be prioritized, considering the benefits of going through the courts. At the same time, environmental dispute resolution through ADR has many benefits and advantages compared to dispute resolution through the courts. The government should make efforts to provide more third-party service providers. This is based on the importance of legal protection for victims of environmental pollution as a protective manifestation of the right to a good and healthy (living) environment.

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