

Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia

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Abstract

Environmental problems have occurred in the global scope, both developed and developing countries. Environmental problems are not only problems of developed countries or industrialized countries including Indonesia. Efforts to overcome environmental problems in developing countries have no other choice but to carry out development. Without the level of development, people will decline, and the environment will be increasingly damaged. Development must still be carried out without damaging the environment. This balance must be maintained in order to preserve the environment. Indonesia has been paying attention to environmental management since 1972. Settlement of environmental disputes through litigation does not produce many results. Dispute resolution through non-litigation channels assumes that dispute resolution through litigation results in very disappointing results. This study wants to conduct a study related to the implementation of Government Regulation No. 54 of 2000 concerning Service Providers for Environmental Dispute Resolution Services Outside the Court and find obstacles and solutions in resolving environmental disputes out of court. The implementation of Government Regulation No. 54 of 2000 at the central government level has established a service provider institution based on the Decree of the State Minister of the Environment Number 77 of 2003 concerning the Establishment of an Out-of-court Environmental Dispute Resolution Service Provider (LPJP2SLH) at the Ministry of the Environment, but its performance has not yet been felt.

Keywords: *Non Litigation; Dispute Settlement; Environment.*

Abstrak

Masalah lingkungan telah terjadi dalam lingkup global, regional maupun nasional baik negara maju maupun negara berkembang. Masalah lingkungan bukan hanya masalah negara maju atau negara industri namun juga pada negara berkembang termasuk Indonesia. Upaya mengatasi permasalahan lingkungan di negara berkembang tidak ada pilihan lain selain melakukan pembangunan. Pembangunan tetap harus dilakukan tanpa merusak lingkungan. Keseimbangan ini harus dijaga agar kelestarian lingkungan tetap terjaga. Indonesia telah memperhatikan pengelolaan lingkungan sejak tahun 1972. Penyelesaian sengketa lingkungan melalui litigasi tidak banyak membuahkan hasil. Penyelesaian sengketa melalui jalur non-litigasi didasarkan pada asumsi bahwa penyelesaian sengketa melalui jalur litigasi memberikan hasil yang sangat mengecewakan. Penelitian ini ingin melakukan kajian mendalam Peraturan Pemerintah Nomor 54 Tahun 2000 tentang Penyelenggara Jasa Penyelesaian Sengketa Lingkungan Hidup di Luar Pengadilan, serta mencari kendala dan solusi penyelesaian sengketa lingkungan hidup di luar pengadilan. Pelaksanaan Peraturan Pemerintah Nomor 54 Tahun 2000 di tingkat pemerintah pusat telah membentuk lembaga penyedia layanan berdasarkan Keputusan Menteri Negara Lingkungan Hidup Nomor 77

Tahun 2003 tentang Pembentukan Layanan Penyelesaian Sengketa Lingkungan Di Luar Pengadilan Penyelenggara (LPJP2SLH) di Kementerian Lingkungan Hidup, namun kerjanya belum optimal.

Kata Kunci: Non Litigasi; Penyelesaian Sengketa; Lingkungan



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A. INTRODUCTION

Development in a country is always synonymous with economic development. An aspect that can be improved in a development is the aspect of natural resources or the environment.¹ Efforts for economic growth require large investments, especially in the industrial sector. Indonesia's Long-Term Development Plan 2005 – 2025 states that the structure of the economy is strengthened by placing the industrial sector as the driving force behind agricultural activities in a broad sense and mining that produces efficient, modern and sustainable products and services which applies best practices and good governance, in order to achieve strong economic resilience.

The spirit of economic development often forgets the consequences that arise in the use of natural resources. So, what happens then is that the rate of damage due to development is faster than the ability of the environment itself to recover, coupled with the increasing population of the population which will further increase the pressure on the environment.

Environmental problems have occurred in the global, regional and national scope, both developed and developing countries. Environmental problems are not only problems of developed countries or industrialized countries including Indonesia. Efforts to overcome environmental problems in developing countries have no other choice but to carry out development. Without development people's standard of living will decline and the environment will be increasingly damaged. Development must still be carried out without damaging and polluting the environment.² This balance must be maintained in order to preserve the environment.

Development besides being able to lead to a better life also carries risks because it can cause pollution and damage to the environment. To minimize the occurrence of pollution and damage, it is necessary to strive for a balance between development and environmental sustainability. Increasing economic activity through the industrialization sector must not damage other sectors, for example the construction of power plants must not damage agricultural land. The concept of harmony between development and environmental sustainability is often called environmentally sound development or better known as sustainable development. The concept is a new paradigm that will be developed by the

¹ Faizal Reza and Tri Widodo, "The Impact of Education on Economic Growth in Indonesia," *Journal of Indonesian Economy and Business* 28, no. 1 (2013): 1–15, <https://doi.org/10.22146/jieb.6228>.

² Muhammad Fahrudin, "Penegakan Hukum Lingkungan Di Indonesia Dalam Perspektif Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Veritas: Jurnal Program Pascasarjana Ilmu Hukum* 5, no. 2 (2019): 81–98, <https://doi.org/10.34005/veritas.v5i2.489>.

Minister of Environment and Forestry, Siti Nurbaya in period achievement of the main economic targets within 20 years leadership as stated on November 3, 2014 at the Ministry of Environment and Forestry.³

Indonesia has started paying attention to environmental management since 1972. The Indonesian government participated in the First World Environment Conference which was held in Stockholm, Sweden in June 1972. The Indonesian government at that time did not know a special institution that handled environmental problems. The Stockholm Conference began to seek to involve all governments in the world in the environmental assessment and planning process, to unite the opinions and concerns of developed and developing countries to save the earth, to promote community participation and to develop development that takes into account the environment. In connection with this, the Stockholm Conference reviewed the conventional development patterns that have tended to damage the earth which are closely related to the problems of poverty, economic growth rates, population pressures in developing countries, excessive consumption patterns in developed countries, and imbalances in the international economic system.⁴

The 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1) states that "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to obtain health services". Then Article 65 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management emphasizes by stipulating that "Everyone has the right to a good and healthy environment as part of human rights". These rights are recognized by the constitution and laws and place the right of everyone to a good and healthy environment as part of the rights recognized and protected by law.⁵

The emergence of environmental dispute cases shows the increasing public awareness of their rights to a clean and healthy environment, as well as the importance of preserving environmental functions. Environmental disputes that occur usually involve the community and the company/industry.⁶

The settlement of environmental disputes through litigation has not yielded much results. Settlement of disputes through non-litigation channels is based on the assumption that the resolution of environmental disputes through litigation results in very disappointing victims of environmental pollution. Courts as an environmental dispute settlement institution on the litigation route in dealing with environmental disputes have so far relied more on formal legal provisions and lacked the ability to make legal breakthroughs. The biggest obstacle in resolving environmental disputes in the litigation route is in the evidentiary

³ Sutoyo, "Paradigma Perlindungan Lingkungan Hidup," *ADIL: Jurnal Hukum* 4, no. 1 (2013): 192–206, <https://doi.org/10.33476/ajl.v4i1.33>.

⁴ Handri Wirastuti Sawitri Wasi and Rahadi Bintoro, "Sengketa Lingkungan Dan Penyelesaiannya," *Dinamika Hukum* 10, no. 2 (2010), <http://dx.doi.org/10.20884/1.jdh.2010.10.2.149>.

⁵ Cahya Palsari, "Kajian Pengantar Ilmu Hukum: Tujuan Dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental Dalam Pemjatuhan Putusan Pengadilan," *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 940–50, <http://dx.doi.org/10.23887/jatayu.v4i3.43191>.

⁶ Nina Herlina, "Permasalahan Lingkungan Hidup Dan Penegakan Hukum Lingkungan Di Indonesia," *Jurnal Ilmiah Gakuh Justisi* 3, no. 2 (2015): 1–15, <http://dx.doi.org/10.25157/jigi.v3i2.93>.

process to convince judges of acts of environmental pollution.⁷ In addition, dispute resolution through litigation tends to take a long time and relatively large costs. This is due to the slow dispute resolution process, expensive court fees, the court is considered less responsive in resolving cases, the problem of proving in court so that decisions are often unable to resolve problems and the accumulation of cases at the Supreme Court level is not resolved.⁸ This shows that the poor process of resolving disputes through litigation causes the disputing parties to prefer to resolve them through non-litigation channels.

The success of the settlement of environmental disputes through non-litigation channels can be strengthened by data from the Java Ecoregion Development Control Center which compiles that Settlement of environmental disputes Throughout 2015-2016 there were 19 cases handled through lawsuits to court (litigation) and 64 cases were handled out of court. (non-litigation).

Indonesia regulates the settlement of environmental disputes out of court for the first time in Article 20 of Law Number 4 of 1982 concerning Basic Provisions for Environmental Management. Then it was reformulated better in Articles 31 - 33 of Law 23 of 1997 concerning Environmental Management until the last in Articles 85 - 86 of Law Number 32 of 2009 concerning Environmental Protection and Management. Article 85 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management states that the settlement of environmental disputes out of court is carried out to reach an agreement on one or more of the following four matters:

- a. Agreement on the form and amount of compensation;
- b. Agreement on remedial action due to pollution and/or destruction;
- c. Agreement on certain actions to ensure that pollution and/or destruction will not be repeated; as well as
- d. Agreement on actions to prevent negative impacts on the environment.

Article 85 paragraph (3) stipulates that in the settlement of environmental disputes out of court, the services of a mediator and/or arbitrator can be used. The disputing parties can choose between the two types of services. Article 86 of Law Number 32 of 2009 concerning Environmental Protection and Management states that the community can form an environmental dispute resolution service provider institution that is free and impartial. Government Regulation No. 54 of 2000 facilitates the establishment of such service provider institutions by both the central government and local governments using arbitrators or mediators or other third parties. Provisions regarding mediators and arbitrators in Law Number 32 of 2009 concerning Protection and Management Environment is not clear. Specifically, regarding arbitrators and environmental arbitrations because they are not specifically regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution generally applies.⁹ If referring to Law Number 30 of 1999 concerning Arbitration

⁷ Yanti Friskawati, "Kendala Penyelesaian Sengketa Lingkungan Hidup Di Luar Pengadilan," *Bina Hukum Lingkungan* 1, no. 1 (2016): 1–13, <https://doi.org/10.24970/bhl.v1i1.13>.

⁸ Wasi and Bintoro, "Sengketa Lingkungan Dan Penyelesaiannya."

⁹ Fahrudin, "Penegakan Hukum Lingkungan Di Indonesia Dalam Perspektif Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup."

and Alternative Dispute Resolution, the choice of arbitration route must be agreed in writing by the parties to the dispute or after the dispute occurs.

Observing The Act for The Settlement of Pollution Disputes of 1970 in Japan already has a similar institution out-of-court Environmental Dispute Settlement Service Provider Institution established by the Japanese government named the Environmental Dispute Coordination Commission at the national level and The Environmental Dispute Council at the regional level. The function of these two institutions is to assist the settlement of environmental disputes through conciliation, mediation and arbitration. Since the institution was formed until now, the role of the institution, especially mediation in the settlement of environmental disputes, has been substantially effective and satisfying. 230 cases involving air pollution, water pollution, ground surface pollution, landslides, noise, vibration and odor, 219 cases were resolved.¹⁰ In contrast to Indonesia, after about 22 (twenty-two) years after the issuance of Government Regulation No. 54 of 2000 concerning Institutions for Environmental Dispute Settlement Services Outside the Court, no performance has been heard from these institutions.

Observing that the community or environmental dispute parties prefer to use dispute resolution through non-litigation channels such as mediation, the institution established by Government Regulation Number 54 of 2000 concerning Institutions for Environmental Dispute Settlement Services Outside the Court should be able to accommodate and assist in the settlement process. environmental disputes effectively.

B. METHOD

The research method used by the author is normative juridical. normative juridical research methods are Legal research is made through library research which is the main material to be analyzed by making a search for regulations and literature that has a relationship and is related to the problem at hand researched.¹¹ Library materials that can be used in writing this journal are in the form of primary law as well as secondary legal material that outlines the discussion of primary legal material. By using a descriptive analysis technique that answers problems through analysis of legal materials and legislation.

C. RESULT AND DISCUSSION

1. Dispute Resolution Service Provider Environment outside the Court

Human life is always developing as the population grows so that it is always faced with conflicts that characterize life, starting from the problems that accompany every activity in human life. The larger the population in a society, the more likely there will be problems. The variety of problems that cause conflict, of course, cannot always be resolved in the shortest time with the results of problem solving that are acceptable for

¹⁰ Komala Sridewi Lestari and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Lingkungan Hidup Diluar Pengadilan (Non Litigasi) Melalui Jalur Negosiasi (Studi Kasus Tumpah Nya Minyak Di Laut Karawang)," *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (2022): 651–60, <http://dx.doi.org/10.31604/justitia.v9i2.651-660>.

¹¹ Palsari, "Kajian Pengantar Ilmu Hukum: Tujuan Dan Fungsi Ilmu Hukum Sebagai Dasar FUndamentar Dalam Pemjatuhan Putusan Pengadilan."

the disputing parties and often lead to disputes. Dispute resolution is a process undertaken by the parties without the assistance of other parties who have no interest in the dispute. According to Cochrane's theory, it is the community itself that controls social relations, meaning that basically the community itself is active in discovering, choosing, and discovering its own laws.

Environmental problems are getting worse day by day, it is proven that the solution is not in favor of restoring the initial environmental conditions, but is left without a sustainable solution.¹² Environmental disputes are the "species" of the "genus" of disputes that contain conflicts and controversies in the environmental field. Environmental disputes are basically disputes that arise as a result of the existence or suspicion of environmental impacts. Henry Campbell Black more clearly defines a dispute in a legal context as follows:

“Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of rights, claim, or demand on one side, met by contrary claims or allegations on the others. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.”

The basic principle of the settlement of environmental disputes outside the court is that the parties are consciously and voluntarily willing to settle disputes amicably (win-win solution), a third party acting as a facilitator / mediator / arbitrator is approved by the parties and is neutral, respectively. Each party does not hold on to its position and does not have excessive suspicion, the terms or forms of demands must be rational. Several experts in Indonesia also stated that out of court dispute resolution is an effective alternative to environmental dispute resolution because it does not take a long time, so that the injured party can immediately obtain compensation and the polluter can take certain actions. In order to resolve environmental disputes out of court, the mechanism uses Alternative Dispute Resolution as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR). Alternative Dispute Resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment.¹³

Environmental disputes that occur caused by environmental pollution and destruction are important to be handled properly and seriously and encourage the establishment of environmental dispute resolution institutions that are free and impartial as well as professional and independent, both government agencies, provincial, district and city governments, as well as institutions formed by the community.¹⁴ Dispute settlement out of court is held to reach an agreement on the form and amount of

¹² Edy Lisdiyono, “Penyelesaian Sengketa Lingkungan Hidup Haruslah Berdasarkan Tanggung Jawab Mutlak Atau Unsur Kesalahan,” *Jurnal Spektrum Hukum* 11, no. 2 (2014): 67–76, <https://doi.org/10.35973/sh.v11i2.620>.

¹³ Agnes Grace Arionang, “Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup,” *Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 3, no. 1 (2021): 1–12, <https://doi.org/10.14710/crepido.3.1.1-12>.

¹⁴ La Ode Angga, “Alternatif Penyelesaian Sengketa Lingkungan Hidup Di Luar Pengadilan (Non Litigasi),” *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no. 2 (2018): 264, <http://dx.doi.org/10.29303/ius.v6i2.548>.

compensation and/or regarding certain actions to ensure that there will be no occurrence or recurrence of negative impacts on the environment.¹⁵

The result of the settlement of environmental disputes out of court is an agreement. Drafting an agreement in principle is the end of a series of mediation. Government Regulation No. 54/2000 on Environmental Dispute Settlement Service Providers Outside the Court does not explain the meaning or definition of an agreement. The Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts contains a definition of a peace agreement, which is a document that contains the conditions agreed upon by the parties to end a dispute which is the result of peace efforts with the help of a mediator or more.

Environmental disputes are not only about disputes between the parties but disputes that are followed by claims. Disputes in a dispute contain and give rise to demands / lawsuits, namely requests from one party to another. Claims are the main thing in a dispute. Law Number 32 of 2009 concerning Environmental Protection and Management Article 1 paragraph (25) states that environmental disputes are disputes between two or more parties arising from activities that have the potential and/or have an impact on the environment.

In various cases which regarding environmental issues, the Corporation is the most dominant subject as the cause of the decline in environmental quality in a certain area or community environment. This is inseparable from corporate activities that exploit natural resources in large quantities as a factor of production to support operations which can directly or indirectly have an impact on the surrounding community. This of course can be a trigger for disputes between corporations and the community. If there is a dispute in the environmental field, the settlement process is regulated by Law Number 32 of 2009.¹⁶

Settlement of environmental disputes can be reached through the courts or outside court. A lawsuit through the court can only be taken if the chosen out-of-court settlement attempt is declared unsuccessful by one or the disputing parties. Based on these provisions, the settlement of environmental disputes can be taken through two channels, namely through the outside of the court (non-litigation) and the court (litigation).¹⁷ Settlement of civil disputes either through non-litigation or litigation channels may not be carried out simultaneously (simultaneously), meaning that the selection of dispute resolution through a court institution is carried out if the settlement through out of court is not successful by one of the parties or by the parties concerned.

Environmental disputes that occur caused by environmental pollution and destruction, it is important to be handled properly and seriously and encourage the establishment of environmental dispute resolution institutions that are free and impartial as well as professional and independent, both government agencies, provincial, district

¹⁵ Muzakkir Abubakar, "Hak Mengajukan Gugatan Dalam Sengketa Lingkungan Hidup," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (2019): 93–108, <https://doi.org/10.24815/kanun.v21i1.12766>.

¹⁶ Zainul Arifin et al., "Peran Perangkat Desa Terhadap Penyelesaian Sengketa Lingkungan Hidup Dalam Perspektif Green Constitution," *Lex Librum: Jurnal Ilmu Hukum* 6, no. 2 (2020): 158, <https://doi.org/10.46839/Iljih.v6i2.186>.

¹⁷ Abubakar, "Hak Mengajukan Gugatan Dalam Sengketa Lingkungan Hidup."

and city governments, as well as institutions that formed by society.¹⁸ Because if not handled properly and seriously with the existence of an environmental dispute settlement institution through out-of-court (non-litigation) approach, which are free and impartial as well as professional and independent, the environmental dispute will be prolonged and will cause negative excesses in environmental protection and management. In Indonesia, including the people who suffer losses in it.

Alternative Dispute Resolution concept approach as a way to resolve disputes which has long been known in various beliefs and cultures.¹⁹ Various facts have shown that basically mediation, conciliation, and negotiation are not foreign methods in an effort to resolve disputes in the community. It's just that the context of the approach and method is different from the local legal culture.

Minutes of pre-mediation are prepared as the basis for the mediation process. The minutes are a resume of the proposed dispute resolution containing matters agreed upon by the parties including the results of administrative and factual verification, the party bearing the costs in accordance with the implementation of Article 21 paragraph (2) letter g and Article 26 paragraph (1) of a Government Regulation Number 54 of 2000 concerning Institutions Providing Environmental Dispute Settlement Services outside the Court and the results of the caucus. The preparation of the pre-mediation minutes makes it easier for regions that have not yet formed an institution that provides services for the settlement of environmental disputes outside the court and as a basis for the Regional Environmental Agency to become the Secretariat for Settlement of Environmental Disputes outside the Court.

The implementation of service provider institutions established by the central government has been implemented through the Decree of the State Minister of the Environment Number 77 of 2003 concerning LPJP2SLH with 8 (eight) members as arbitrators or mediators with a term of office until 2008. However, this is not the case with service provider institutions that formed by the local government.

The service provider institution established by the regional government is determined by the Governor/Regent/Mayor and is domiciled in the agency responsible for controlling the environmental impact of the area concerned. Many environmental disputes that arise are caused by conflicts that occur between business actors or industry or companies and the community, giving rise to a civil law relationship.

Economic and industrial development is undeniably the focus of countries in the world today. Besides bringing positive impacts such as increasing foreign exchange earnings, reducing unemployment and infrastructure development, it can also have a negative impact, namely industrial development will be directly proportional to increased exploitation of resources which can result in increased production waste.

Production waste should not be disposed of carelessly, this is to prevent environmental pollution. Companies in managing waste must pay attention to

¹⁸ Angga, "Alternatif Penyelesaian Sengketa Lingkungan Hidup Di Luar Pengadilan (Non Litigasi)."

¹⁹ Leo Nora Elly AM Pandiangan, Nanin Koeswidi, and Nort Retiana Silitonga, "How Can Environmental Dispute Resolution Be Resolved Without Going To Court," *JHP: Jurnal Hukum Dan Peradilan* 10, no. 2 (2021): 245–54, <http://dx.doi.org/10.25216/jhp.10.2.2021.245-254>.

environmental quality standards (water quality standards, soil quality standards and air quality standards) so that the waste that is disposed of is not harmful to the environment itself and the surrounding community. On the other hand, if the company does not pay attention to these quality standards, the waste released or disposed of can pollute the environment which is certainly very detrimental to the survival of the environmental ecosystem and society.

Settlement of environmental disputes through mediation is one of the alternative pathways for resolving environmental disputes outside the court because it is seen that there are several advantages that can be taken, for example the settlement process is low cost, requires relatively little time, the results received have a sense of justice for the parties involved. disputing parties.

Dusun Paras, Lawang District, Malang Regency, is an area that has done environmental dispute resolution outside the court, namely through mediation. Environmental Dispute Between PT. Molindo Raya Industrial with the Dusun Paras Community, Lawang District, Malang Regency shows that in the mechanism of environmental dispute resolution through mediation the parties to the dispute are Dusun Paras which represents the Paras Hamlet community as the aggrieved party with PT. Molindo Raya Industrial as the one responsible for disposing of waste in Bukit Bale, while the Camat Lawang as a mediator, in the mediation meeting resulted in 6 (six) agreements, namely, firstly PT Molindo Raya Industrial will always protect the environment from its activities, secondly the community participates in preserving the environment and reciprocal relations with PT Molindo Raya Industrial, third For the construction of Balai RW in Paras Hamlet, there is still the ability from PT Molindo Raya Industrial and in the process of helping in addition to the existence of non-governmental funds in Paras Hamlet, fourth All problems will be resolved amicably and at any time. currently all parties are required to create a peaceful situation, the five PT Molindo and the Paras Hamlet community together carry out reforestation on objects on land, especially critical areas, the sixth always involves the Village Government and BPD in solving problems. Obstacles faced at the mediation meeting included the lack of understanding of Dusun Paras on the problems that occurred in Paras Hamlet, the absence of alternative demands if the desired demands were not met at the time of the meeting and the absence of a neutral party to monitor the mediation meeting. Efforts made to overcome the obstacles were Dusun Paras trying to explain the desired demands and also the problems faced by the people of Dusun Paras.

Settlement of environmental disputes between the Paras Hamlet community and PT. Molindo Raya Industrial, which the author mentioned earlier, was resolved through mediation with the Lawang Sub-district Head as the mediator, proving that in Malang itself, the Out-of-court Environmental Dispute Resolution Service Provider in Malang Regency in accordance with Government Regulation No. 54 of 2000 has not been implemented.

So far, disputes that have arisen based on information from the Environmental Service stated that the implementation of environmental dispute resolution outside the

court is still being facilitated by the local Environmental Service as a neutral third party.²⁰ Even though the institution as referred to in Government Regulation No. 54/2000 has not been established yet, the option of resolving environmental disputes through non-litigation channels is still the main choice for the community.

2. Barriers to Non-Litigation Environmental Dispute Resolution

Article 85 of Law Number 32 Year 2009, dispute resolution environment can be done through the services of a mediator and or arbitrator. Meanwhile, Article 86 explains that service providers can be formed by the community facilitated by the government which is free and impartial, both by the government and/or the community. One example of media that is developing in the settlement of environmental disputes outside the court is through Alternative Disputes Resolution media which includes litigation, negotiation, mediation, consolidation, fact-finding, and arbitration processes. As a development of environmental law, the "Strict Principle" is used.

Liability" and "Principle of Reversed Evidence" in environmental law enforcement where the perpetrators of environmental pollution/destruction are responsible for their actions immediately at the time of environmental pollution/destruction without having to first prove the existence of an element of "fault". In addition, the burden of proof is placed on the perpetrator of environmental pollution/destruction (the defendant), he is obliged to prove that he cannot be blamed for the losses incurred. Errors are presumed to exist unless the defendant can prove otherwise.²¹

Constraints and solutions in the settlement of environmental disputes out of court include:

- a. The settlement process that cannot be carried out in one meeting. The settlement process carried out for several meetings will incur costs so that budget constraints become one of the obstacles in resolving environmental disputes. Although there are such obstacles, it does not mean that efforts to resolve environmental disputes have stopped but are still adjusted to the existing budget.
- b. Settlement of environmental disputes out of court often gets the influence of other parties who have certain interests (such as political interests). For example, there are parties who want to take advantage of the situation in order to attract sympathy from the community so as to increase the dispute between the community and business actors, even though often these parties cannot prove anything.
- c. The next obstacle is a natural obstacle. For example, in the process of supervision or verification in the field when it rains, the process must be postponed for another time.
- d. Although there have been many regulations issued by the government in environmental management, in their implementation there are still many obstacles to achieving the principles of dispute resolution, especially regarding the amount and form of compensation. Of the many regulations, it is not clear that the criteria,

²⁰ Tyas Fidelia and Nada Salsabila, "Penyelesaian Sengketa Lingkungan Hidup Perspektif Kearifan Lokal Indonesia," *Law Review* 19, no. 3 (2020): 291, <https://doi.org/10.19166/lr.v19i3.1809>.

²¹ Aritonang, "Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup."

procedures for calculating compensation in a comprehensive and aspirational manner, in order to avoid disagreements/differences in the views of the parties, require scientific and technological studies as well as the opinions of experts, to convince the parties of the actual situation. so that the parties can understand and not hold on to their position, there is no suspicion and make rational demands for deliberation in order to reach an agreement.

- e. The difficulty of enforcing administrative law in the context of environmental management, when faced with administrative decisions in the form of revocation of business licenses which will have a socio-economic impact, can lead to pressure from the community/Non-Governmental Organizations (NGOs) to file cases of pollution and destruction to court.
- f. The role of the Environmental Agency as an environmental impact control institution is still not optimal, because this role is still legally attached to sectoral agencies because there is no full authority to supervise and order to carry out environmental audits if it is suspected that an activity or business is carrying out irregularities in management. environment.

D. CONCLUSION

Non-litigation settlement of environmental disputes can be carried out using the mechanism using Alternative Dispute Resolution as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Government Regulation Number 54 of 2000 concerning Service Providers for Environmental Dispute Settlement Outside the Court is a technical regulation ordered by UUPH. In practice, this service provider institution has not been utilized properly as an environmental dispute resolution institution. Even at the Regency/City level, this institution has not yet been established.

Constraints faced in the settlement of environmental disputes through out-of-court channels include the settlement process that requires more than one meeting, often getting influence from other parties who have certain interests (such as political interests), as well as natural obstacles that do not can be avoided. The solution is to immediately establish a service provider institution in accordance with applicable regulations so that the settlement of environmental disputes outside the court has a place in its settlement and there is a need for socialization to the community who have the potential to become parties to environmental disputes so that they are not easily instigated by other parties so that when a dispute occurs it can directly file a complaint with the competent authority. In the dispute resolution deliberation process, the obstacle is the difference in views between the polluter and the claimant in which the polluter has a view based on rules and procedures while the community or the claimant ignores this, but based on the will and habits in the community so that the value of demands and abilities is very much different.

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