

# The method of settling environmental conflicts in Indonesia: alternative dispute resolution

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**Abstract.** Rapid progress poses significant dangers to environmental contamination and harm, leading to disruptions in the conservation of the local ecosystem. Damage to the environment and pollution represent a collective responsibility shouldered by society, with the government accountable for all expenses related to restoring the impacted environment. The issues concerning those responsible for environmental harm can be addressed through judicial means or alternative dispute resolution methods. The questions to consider are: First, how is the resolution of environmental conflicts handled outside of court when viewed from a civil law perspective? Second, what challenges exist in resolving disputes outside of the judiciary in Indonesia? The approach taken for this research is normative in nature. The findings indicate that settling disputes outside of court aims to achieve a compensation agreement that mitigates further negative impacts on the environment. Common challenges encountered in out-of-court dispute resolution include differing viewpoints between the party that has suffered harm and the party responsible, as well as the complexities associated with enforcing administrative law that can lead to the withdrawal of business permits, prompting the need to address cases of environmental damage through legal channels.

## 1 Introduction

Indonesia is rich in natural resources, which must be utilized and preserved in order to become a source of wealth, sustainability and economic improvement for the people and the Indonesian nation itself. However, in the development of Indonesia's abundant natural resources, the quality and quantity are increasingly decreasing due to the development of science and technology that is not used according to its portion [1]. Science and technology are expected to be a means of developing and preserving nature, but in reality, they are destructive tools due to undirected exploitation and the increasing number of industrial developments in order to meet the standard of human needs [2]. Basically, humans and the universe have a relationship with each other. Humans are believed to be the owner and part and taker of all the benefits possessed by this universe [3].

The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) states that it is obligatory that all natural resources on this earth be used as much as possible for the welfare of the people. So, we can conclude that one form of people's prosperity is found in

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the implementation of sustainable development, one of which is by utilizing natural resources while maintaining harmony and balance. Sustainable development with environmentally sound principles, it is hoped that the carrying capacity of all development activities will be maintained and balanced and the results can be enjoyed by the Indonesian people from generation to generation [4].

Undirected management of natural resources will have a very crucial impact, namely causing pollution and damage to the environment. Today, environmental problems are born because of the carelessness and arbitrariness of human actions in the management of natural resources. Problems in the management of natural resources, in other words, are included in the realm of environmental law which in recent years has become a very strategic and endless concern both nationally and internationally, because in other words it is a very urgent force to regulate human life in relation to the needs of natural resources, but still maintain the sustainability of the natural resources themselves [5].

Indonesia's positive law, regulating related to the environment, is contained in Law Number 4 of 1982 concerning Basic Environmental Provisions, updated by Law Number 23 of 1997 concerning Environmental Management, then renewed again by Law Number 32 of 2009 Regarding Environmental Protection and Management, followed by Government Regulation of the Republic of Indonesia Number 22 of 2021 concerning Implementation of Environmental Protection and Management. This legislation is an umbrella law related to the environmental sector in Indonesia which aims to protect the environment and natural resources contained in the motherland of Indonesia from environmental damage.

Environmental destruction is a human action that can cause changes either directly or indirectly to the physical, chemical, and biological environment so that it can cause damage to the environment [6]. From year to year, development in Indonesia is growing very rapidly, this has a very significant impact on the environment. Massive development occurs due to a very large increase in population and the availability of limited natural resources, so that it has an impact on increasing the use of natural resources which is large enough to meet needs. In other words, with the existing phenomena, it can be concluded that the current environmental problems are mostly due to the impact of development [7].

Environmental damage, resulting in losses to local communities. Various environmental problems that have an impact on the loss of the surrounding community. In solving these environmental pollution problems, one can take the legal route that has been determined in Indonesian positive law. This is intended to prevent arbitrariness for all parties involved in other words to prevent abuse of authority from all parties concerned. In practice, the settlement of environmental disputes can be reached through the courts or known as litigation and through out-of-court channels or known as non-litigation.

Environmental disputes are disputes that occur between two or more parties that arise from the consequences of actions or activities that have an impact on the environment. Settlement of environmental disputes through non-litigation or out of court aims to obtain mutual agreement as contained in Law Number 32 of 2009 concerning Environmental Protection and Management, hereinafter referred to as UUPPLH Article 85 states that the settlement of environmental disputes out of court is held to reach an agreement in the form and amount of compensation, and or certain actions, in order to ensure that there will be no occurrence or recurrence that is detrimental to the environment. As for other parties involved in this out of court dispute resolution, such as mediators or arbitrators from the Indonesian National Arbitration Board (BANI), their involvement is expected to mediate or find a way of peace for the disputing parties.

Dispute resolution through non-litigation or known as Alternative Dispute Resolution (ADR) is recommended [8]. There are several advantages of non-litigation dispute resolution, namely: *First*, prioritizing voluntary nature in the settlement process, *Second*, the mechanism is fast, *Third*, non-judicial decisions are obtained, *Fourth*, control by managers

who are considered to understand the needs of the company, institution or organization, *Fifth*, the process takes place in a closed manner, *Sixth*, saves time, *Seventh*, saves costs, *Eighth*, the working relationship between the disputing parties is more protected and maintained, *Ninth*, focuses more on solutions, *Tenth*, the agreement obtained is more durable, even tends to last forever [9].

Industrial companies in Indonesia today, many use environmental dispute resolution through non-litigation channels in resolving disputes that occur between them, such as the cooperation agreement between the financier and the community where there is environmental pollution. From this background, the author is interested in digging deeper into the process of resolving environmental disputes in Indonesia through out-of-court dispute resolution.

## 2 Research Methods

This research employs a normative method to examine different relevant laws, regulations, and literature pertaining to environmental progress and the resolution of environmental conflicts, with a particular focus on resolving disputes without going to court.

## 3 Discussion

### 3.1 Solution Process Dispute Outside Environment Court Reviewed from Aspect Law Civil

Damage environment and pollution environment be one reason birth dispute environment. According to UUPPLH Article 1, it states: that pollution environment is enter or inclusion creature life, matter, energy or other elements of the environment life caused because activity human who exceeds the rate that has been determined, while the damage of environment life according to UUPPLH is the changes that occur by direct nor no direct gto nature by physical, chemical and biological environment life that crosses standard boundaries damage environment life that alone.

Effort in solution dispute environment by civil taken with replace losses caused by activities industry. In law civil replace loss this set in Article 1365 1865 of the Civil Code, states: that each deed violate law, which brings others, oblige people who because wrong cause loss to others, obliges people who because of wrong cause loss that, for replace loss that, and Article 1865 of the Civil Code, states that: that goods who submitted events where is it base something right, required prove events that, better goods who submit events to use rebuttal the rights of others, are required prove events. From the statement, it can be concluded that for the parties involved in dispute must could prove losses suffered and reprisals or rebuttal to what is alleged.

Resolution of environmental conflicts outside the judicial system is outlined in Article 85 and Article 86 of Law Number 32 of 2009, which pertains to Environmental Protection and Management. This resolution seeks to achieve a consensual agreement on the type and extent of compensation, entered into willingly by the involved parties. It is essential to address environmental conflicts with care and promote the creation of resolution bodies that are unbiased, competent, and operate independently. The procedure utilizes methods for Alternative Dispute Resolution outlined in Law Number 30 of 1999, which pertains to Arbitration and Alternative Dispute Resolution. This method takes place outside the courtroom and involves strategies like discussions, bargaining, mediation, conciliation, or expert evaluation.

Consultation, as a more personal settlement method between parties or commonly referred to as a client with a consultant, in which the consultant provides opinions and advice on the needs of the client, but the consultant. In other words, the consultant is only limited to providing legal opinions, then the decision on the way out will be decided by the court. Negotiation as a method of settlement by discussing problems between the disputing parties to find a way out. Mediation, as a settlement method in which the mediator provides facilities as a communicator and negotiator between the two disputing parties to find common ground for dispute resolution. The existence of a mediator as a mediator who must be in a neutral position that does not side with anyone [10].

Dispute settlement out of court can be distinguished between amicable dispute resolution and adversary dispute resolution. Amicable settlement is more commonly referred to as consensus settlement, whereas in an adversarial context, it is termed dispute resolution with the help of external parties. In a non-confrontational approach to resolving disputes, neither side takes the lead in making decisions. The engagement of outside parties in the resolution process aims to facilitate an agreement between the conflicting parties. The methods of amicable resolution include negotiation, mediation, and conciliation. Negotiation involves the parties interacting directly without any external involvement. Conversely, mediation and conciliation are methods where outside parties play a role in the resolution process. The key distinction between mediation and conciliation is whether the third party actively encourages the parties to come to an agreement. When viewed from the nature of peaceful dispute resolution, this settlement is an ideal thing considering that justice arises from the parties. Adversarial dispute resolution is resolved through a dispute resolution agency. There are two forms of dispute resolution institutions. The first is a dispute resolution institution provided by the state which is called the "court". The second is a dispute resolution institution provided by non-state or private parties called Arbitration [11].

In resolving disputes through arbitration, justice for the disputing parties comes from the arbitrator. Settlement through arbitration results in a decision. The benefit of opting for arbitration lies in the inherent flexibility and agreement involved. Here, arbitration is characterized by its informal nature yet strict framework. The resolution of conflicts can remain private, preventing involvement from anyone other than the parties in dispute and the arbitrators. Resolving issues via arbitration is a process that minimizes government influence and leads to a conclusive verdict that is unique, even though judicial options are available in cases of annulment or refusal to enforce the arbitral decision. Consequently, arbitration is frequently regarded as a quicker alternative compared to resolution through multiple levels of courts.

Arbitration methods and processes are quite complex. Disputes cannot be assessed or resolved without a written arbitration agreement, as specified in Article 9 (1) of the Arbitration Law. This article states that if the involved parties decide to use arbitration for resolving a dispute after it has arisen, their agreement must be documented in writing and signed by all parties involved. Dispute resolution through arbitration can take place on either an ad hoc basis or through an institutional/permanent approach. In ad hoc arbitration, a specific arbitration panel is created to address the dispute, and it is disbanded right after the resolution process is completed. In contrast, when arbitration is conducted through an institution, the resolution is managed by a designated arbitration body or organization formed by selected parties. In this form of arbitration, there are established rules, a list of arbitrators, and recognized qualifications necessary for resolving conflicts. The dispute resolution mechanism is carried out with the following steps [12]:

- a. Civil disputes or differences of opinion can be resolved by the parties involved through alternative means that prioritize good faith, without the need to follow the trial process in court.
- b. The dispute settlement by the alternative means mentioned above is carried out directly

by the parties within a maximum grace period of 14 days, and the result is recorded in the form of a written agreement.

- c. If the dispute or difference of opinion in question cannot be resolved, then with the written agreement of the parties, a solution can be found with the help of an advisor and a mediator.
- d. If within no more than 14 days the parties, assisted by one or more expert advisors or mediators, are unable to reach an agreement or if the mediator is unable to bring the two parties together, then they may contact the arbitration institution or alternative dispute resolution institution to appoint a mediator.
- e. Once a mediator has been appointed by an arbitration institution or an alternative dispute resolution institution, the mediation process must commence within 7 days at the latest.
- f. The process of resolving disputes or differences of opinion through a mediator must be kept confidential, and a written agreement binding on all parties must be reached within a maximum of 30 days.
- g. A written agreement to resolve disputes or differences of opinion is final and binding on all parties to be implemented in good faith, and must be registered with the District Court within a maximum of 30 days after signing.
- h. The implementation of the agreement to resolve disputes or differences of opinion must be completed within no more than 30 days after being registered. If an attempt at a peaceful settlement is unsuccessful, the parties involved may, by written agreement, file a settlement process through an arbitration institution or ad-hoc arbitration.

### 3.2 Obstacles, Solution Outside Dispute Courts in Indonesia

1. The implementation of a sincere agreement or arbitration award as the output of environmental dispute resolution outside the court is highly dependent on the good faith of the parties, this is one form of weakness in the settlement of environmental disputes outside the court [13]. The provisions of Article 6 paragraph (8) of Law Number 3 of 1999 only stipulate that "the agreement to settle disputes or differences of opinion as referred to in paragraph (7) must be completed within 30 (thirty) days of registration", the provisions in Law Number 32 of 2009, as well as the Government Number 54 of 2000 have not provided any arrangements if one of the parties does not have good faith to implement the written agreement that has been made by the parties. Nevertheless, the submission of such an application can cause new problems because it will automatically affect the execution period which is getting delayed so that there is no law regulating this matter. This problem can be overcome by giving an order for execution from the District Court along with the registration of a written agreement on the arbitration decision to the District Court so that the state court can directly apply coercion without having to submit a procedure for submitting an execution request by one party which will again take time.
2. There are no clear boundaries regarding decency and public order as one of the things that must be assessed by the Head of the District Court to grant or reject the application for execution of the arbitration award as regulated in the provisions of Article 62 of Law Number 30 of 1999. Problems arise because of the authority of the Head of the District Court to issue an execution order based on an assessment of decency and public order as regulated in Article 62. In relation to the magnitude of the influence of the interpretation of public order and morality on the acceptance or failure of the application for the execution of an arbitral award, in order to better guarantee legal certainty, it is necessary to have clear restrictions related to this in the legislation. The absence of restrictions on public order and morality is a big gap that becomes a weakness and can easily be misused by parties who do not have good faith to deny the arbitration award [14].

3. The terms of appointment of arbitrators or mediators or other third parties are regulated in Article 12 paragraph (1) of Law Number 30 of 1999 and Article 12 paragraph (2) of Government Regulation Number 54 of 2000 which is still unclear on the *ratio legis*, where Article 60 In arbitration, third parties have the authority to make decisions that are final, have permanent legal force and are binding on the parties. The problem is determining the criteria for having experience and actively mastering the environmental field for at least 15 (fifteen) years for arbitrators and 5 (five) years for mediators, it is not clear where to calculate and whether it takes place continuously or not [15]. Such criteria should be regulated in more detail so as to provide legal certainty, especially if third parties have a major role in resolving environmental disputes outside the court.
4. There is a legal loophole in the provisions of Article 84 paragraph (3) of Law Number 23 of 2009 and Article 3 of Government Regulation Number 54 of 2000 as well as conflicts between these provisions and the provisions of Article 3 and Article 11 of Law Number 30 of 1999. In this case in the agreement of the parties to resolve environmental disputes outside the court which is engaged in an arbitration agreement, the right of the parties to re-submit the dispute to the judicial institution. First, in the provisions of the regulation, there are no clear parameters in terms of how an attempt to resolve a dispute in an environment outside the court is not successful, it can cause problems if one party already knows the indications that it will lose. Second, the provisions of Government Regulation Number 54 of 2000 which legalize the re-submission of environmental disputes before the court will increasingly provide an opening for one of the parties if they have bad intentions. If the parties have chosen to settle the dispute through an out-of-court process, then the parties will no longer be able to choose a settlement through the courts [16]. Therefore, the revision of the laws and regulations related to the settlement of disputes outside the court by making adjustments between the laws and regulations which are important things to be implemented, in order to eliminate conflicts between laws and regulations that lead to weak legal certainty.
5. The provisions regarding the cancellation or invalidity of the appointment of mediators or other third parties in Article 22 of Government Regulation Number 54 of 2000 are not clear on the juridical implications. The partiality of the mediator in the dispute resolution process may result in the appointment of the mediator or third party being invalid or null and void. Things that need to be emphasized in these provisions are regarding the invalidity or invalidity of the appointment of a mediator or third party, null and void or can be canceled [16]. Can be canceled has the implication that dispute resolution that has been taken by the parties is still considered to have occurred if the parties do not cancel it, while null and void has implications for dispute resolution that has been taken is considered to have never existed.

## 4 Conclusion

- a. The resolution of environmental conflicts outside of court can be facilitated through Alternative Dispute Resolution as outlined in Law Number 30 of 1999 that addresses Arbitration and Alternative Dispute Resolution. Alternative Dispute Resolution is a system for resolving disagreements or differing views based on a process that both parties agree upon, which includes settling issues outside the courtroom through methods such as consulting, negotiating, mediating, conciliating, or seeking expert opinions. The purpose of resolving environmental disputes outside the courts 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.

- b. Obstacles that occur in the settlement of disputes outside the court include:
1. The implementation of the arbitration award or written agreement as an output of dispute resolution outside the court is highly dependent on the good faith of the parties.
  2. There are no clear boundaries regarding decency or public order as one of the things that must be assessed by the Head of the District Court to grant or reject the request for execution of the arbitral award.
  3. The requirements for the appointment of arbitrators or mediators or other third parties as regulated in Article 12 paragraph (1) of Law Number 30 of 1999 and Article 12 paragraph (2) of Government Regulation Number 54 of 2000 are still unclear on the legislative ratio.
  4. There is a legal loophole in the provisions of Article 84 paragraph 3 of Law Number 30 of 2009 and Article 3 of Government Regulation Number 54 of 2000.
  5. The provisions regarding the cancellation or invalidity of the appointment of a mediator or other third party in Article 22 of Government Regulation Number 54 of 2000 are not clear on the juridical implications.

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