



RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD

Sabela Gayo ¹,

¹ Faculty of Law, Bhayangkara Jakarta Raya University, Indonesia, Email:sabela.gayo@gmail.com

ARTICLE INFO

Keywords:

Mediation , Environmental , Policy

Date received : 07 Januari 2022

Revision date : 21 Januari 2022

Date received : 25 March 2022

ABSTRACT

Dispute the Environment is a dispute between two or more parties that posed the presence or suspected presence of contamination and / or destruction of the environment. Dispute settlement environment in the outer court was held to reach an agreement regarding the form and amount of compensation and/or for specific actions to ensure the will not the occurrence or recurrence of a negative impact on the environment. In the settlement of disputes environment outside the court can use the services of a third party, both of which do not have the authority to take decisions and who has the authority to take decisions, to help resolve disputes environment. Mediation is one form of dispute resolution environment outside the court. In order to resolve the dispute the environment outside the court, then the mechanism is the use of Alternative Dispute resolution as stipulated in Law No. 30 of 1999 on Arbitration and Alternative Dispute resolution. The mediation can also be used to resolve environmental disputes in Court that the mechanism is based on the PERMA No. 1, 2008 on the Procedure of Mediation in the Court.

INTRODUCTION

Good environment and healthy is the rights of every citizen of Indonesia, as mandated in Article 28H of the Undang - Undang dasar negara Republik Indonesia Tahun 1945. The quality of the environment that decrease has threatened the life of humans and other living creatures that need to be done for environmental protection and management of the earnest and consistent by all stakeholders. In the utilization of natural resources by businesses, often cause a negative impact to the environment, such as pollution of the environment and ultimately detrimental to society. When people feel harmed while businesses are not responsible for

the claims of society, then it came to pass what is called environmental disputes.

Dispute the environment is a dispute involving two or more parties that posed the presence or alleged presence of the prevention or environmental action. Environmental disputes ("disputes environment") is a "species" of the "genus" of the dispute that generate conflict or controversy in the field of the environment which literally means " dispute conflict or conflict; a conflict of claims or rights; Statement of Rights, claims, or demands on oneside, filled with claims or accusations to the contrary in the" Terminology "other dispute resolution" reference English language was diverse : "settlement of disputes",

"conflict management", the Settlement of the Conflict", "conflict intervention". It is stipulated in Article 1 number 25 of the LAW No. 32 Year 2009 on Environmental Protection and Management.

Related to dispute the environment, Law No.32 Year 2009 On Environmental Protection and Management (UUPPLH) stipulates that parties who are harmed as a result of environmental pollution can file a claim, which settlement of the ruling can be done through the litigation (through the courts) and non-litigation (out of court). Real peace institute (mediation) is already known and long done in the practice of the events in Court, but the mechanism is not utilized by the trial Judge before considering a private, so that a peaceful settlement in court less so popular or not known to the public, especially for seekers of justice.

Environmental disputes requires the completion of the juridical to protect the interests of victims of pollution-the destruction of the environment at the same time save the environment through a legal approach. However in UUPPLH article 84 paragraph (1) shall also about the settlement of the environment outside the court, namely through the methods of ADR (Alternative Dispute Resolution), where this method is an action dispute resolution environment which is considered faster and more efficient compared with the dispute resolution environment through the courts. If seen from the provisions of Article 84 of the LAW of PPLH the, then philosophically lawmakers put the settlement of disputes through the line outside the court (out of court settlement) as the primary option and more of settlement outside the court to be a prerequisite for the parties to resolve the dispute in court through the filing of a lawsuit.

METHOD

The type of research used is normative legal research, by using two approaches, namely a conceptual approach (conceptual approach), and the approach of legislation (statute approach). The analysis technique used against the legal material that has been collected to solve the problems raised in this research is done with descriptive technique and interpretation in qualitative.

RESULTS AND DISCUSSION

A. Alternative Dispute Resolution Environment With The Concept Of Mediation

In principle Dispute the environment can be categorized into three, namely disputes relating to the protection of the environment; disputes relating to the utilization of natural resources; and the dispute that arose due to pollution or environmental destruction. UU PPLH on Article 84 and Article 85 of set 2 mechanisms finishing of smoke dispute the environment is through the settlement of disputes through the court and out of court. The availability of the mechanism of settlement of disputes through the court and out of court then UU PPLH follow the pattern of the enforcement of the law as delivered by Keit Hawkins, namely the compliance Model (Pentaaatan) is filing a lawsuit to the court and prosecution of criminal and conciliatory style (reconcile), namely the mechanism of Mediation.

The term mediation is pretty much popularized by academics and practitioners to uncover clearly the meaning of mediation in a variety of scientific literature through research and academic studies. Practitioners are also quite a lot of applying mediation in the practice of dispute resolution, however, the term mediation is not easily defined in a complete and thorough, because the scope is quite broad. Mediation does not provide a model that can be described in this and is distinguished from the decision-making.

In a practice known 2 types of mediation, namely in the court and outside the court. Mediation outside the court are handled by the mediator, private sector, individuals, or an institution independent alternative dispute resolution known as the National Mediation Center (PMN). Mediation within the court is set by PERMA No. 1 Year of 2008, which obliges gone through the process of mediation before the examination of the principal civil case with the mediator consists of the judges of the district Courts do not handle the case. The meaning of Mediation according to J Folberg and A. Taylor : " *the process by which the participants, together with the assistance of a neutral persons,*

systematically isolate dispute in order to develop options, consider alternative, and reach consensual settlement that will accomodate their needs.

For the etymology and terminology experts say that the term mediation comes from the latin "mediare" which means being in the middle. This meaning refers to the role of the displayed third party as a mediator in their duty to mediate and resolve the dispute between the parties. "In the middle" means the mediator should be at the position of the neutral and impartial in resolving disputes. He should be able to keep the interest of the parties to the dispute in a fair and equal, so that the cultivate trust (trust) of the parties to the dispute.

The creation of a model of mediation for the settlement of disputes environment that is more effective is one form of the use of law as a control and a certainty for the community in creating balance and harmony between development to reach the level of well-being and prosperity with the utilization of natural resources so that the law can be directed to achieve a sustainable development of environmentally friendly so that the realization of a sustainable development. Mediation as an alternative dispute resolution environment in addition to beneficial for environment, also in line with the development of the law in a global level that require the settlement of any disputes in a quick and low cost. The mediation of environmental disputes in accordance with nor with the laws that live and thrive in the local level, namely indigenous communities in Indonesia, which has the mechanism of settlement of disputes through negotiations to reach an agreement. The mediation also very bermanfaat for the offender as an entrepreneur because of the time used during the process of settlement of disputes fairly short, easy and low cost. The mediation process does not result in a decision, but rather resulted in an agreement between the parties that the substance is defined themselves by their dispute. Thus the amount of compensation, the types, forms and mechanisms of administration in sengeka environment formulated by the parties.

Meaning settlement of the dispute by using the lemnaga mediation is an end to the dispute between the parties in musyawara. Pihak injured party is given the compensation that the type and magnitude based on the agreement of the parties. To reach an agreement is essentially the good faith of the parties. The principle of mediation is no party feel to win and feel defeated. The Ending of the mediation is not a decision that should be implemented, but rather an agreement that is based on etikad both the parties. And the most important thing is to keep the good relationship of the parties after the mediation.

Alternative mediation as one of the choice of dispute settlement means that entrepreneurs who have destructive to the environment to provide compensation to the affected communities and rehabilitate the environment has been damaged. Thus the good relations between the community and entrepreneurs to stay awake.

Empirical facts show that penyelesaian environmental disputes in Indonesia seem more effective if resolved in mediation. Where in the settlement of such disputes resolved through through the medium of mediation and the rest resolved through court. The use of the institution of mediation as the primary choice to solve the dispute of environment is expected to change the pattern of thinking of the parties to resolve a dispute amicably, quick and cheap cost of the judiciary which have been the foundation of the main to solve the dispute however is still far from the principle of quick, simple, and cheap cost In these conditions, the law placed not only as a tool to maintain order in the society but the law is also used to help the process of community change.

Basic principles (basic principle) is the cornerstone of the philosophy of in spite of the mediation activities. The principles or philosophy of this is the work that must be executed by the mediator, the mediation does not come out from the direction of the philosophy that melatarbekalangi the birth of the institution mediasi¹⁰. David Spencer and Michael Brogan refers to the view Ruth Carlton about the five basic principles of meditation. The five principles is known

as the five basic philosophy of mediation. The fifth principle is; the principle of secrecy (confidentiality), the principle of voluntary (volunteer) the principle of empowerment (empowerment), the principle of neutrality (neutrality), and the principle of a unique solution (a unique solution).

The first principle of mediation is confidentiality or confidentiality. Confidentiality means that only the parties and the mediator who attended the mediation process, while the other party is not allowed to attend the mediation process. All matters discussed in the mediation process only the parties know. It becomes the attraction for entrepreneurs who don't want the problems they face published in the mass media. Conversely, if the dispute is brought to the process of litigation or court, then in a law court hearings are open to the public because of the openness that is the command of the provisions of the act.

The second principle, suarela (volunteer) Principle initiative the choice of dispute resolution through mediation is subject to the agreement of the parties. It can be seen from the nature of the binding force of the agreement on the results of the mediation is based powers agreement under Article 1338 of the civil Code. Thus in principle the choice of mediation is subject to the will or free choice of the parties to the dispute. Mediation could not be implemented if one of the parties that want it. Understanding voluntary in the mediation process is also addressed in the settlement agreement thus there is no compulsion for the parties to resolve their disputes by way of mediation.

To see a comparison with the ruling of the court the decision of which is final and binding, connected with the theory of *res adjudicata pro veritate habetur*, means against a verdict can not be asked remedies of appeal and cassation. Thus the decision is binding on the parties and must be obeyed by the parties. As a consequence a more simple way, then mediation is often considered cheaper and not much time if compared with the process of litigation or litigants in court. Based on the explanation above, it is clear that mediation is one of the efforts to settle the dispute, which has a huge benefit in resolving disputes environment. This

mediation will really feel the benefits if the implementation of the mediation is successful, even if mediation fails and there has been no settlement of the dispute mediation before progress can narrow down the issues and disputes. In addition due to the presence of theoretical views, the reason for the strength of mediation is one of the factors that support the parties to conduct the mediation. The power of mediation favored by the parties to the dispute is the cost of a lighter and a short time. In other words, mediation is a dispute resolution effective, brief and affordable. And it is more value for mediation.

B. Mediation As the preferred Dispute resolution Environment

The purpose of the absence of settlement of disputes outside the courts is to protect the civil rights of the parties to the dispute with the fast and efficient way. Things where considering the settlement of disputes through the litigation tends to take a long time and cost relatively little. This is due to the dispute resolution process is slow, the cost of proceedings in court is expensive, the court considered less responsive in the settlement. case, so that the decision is often not able to resolve the issue and the buildup of the case at the Supreme Court that is not resolved.

Some efforts to settle environmental disputes has been done through the courts and the result is a lot of disappointing, because the decision is not satisfactory, take the cost of the large and takes a long time to See the slowness of the judiciary to resolve problems that arise , it can be understood when the criticism addressed to the slowness of the judicial institutions of this. Lawrence S quoted T.M Lutfi Yasid say that binary trial might be beyond the value of or the results of the victory. The same thing was stated by Tony Mc Adam that " that ligation web may be actually be doing damage to the nation's economy". Still related to the weakness of the judiciary in the resolution of the dispute, Achmad Ali stated, that a chronic disease that has long been held by the Supreme Court of the Republic of Indonesia is the pe-numpukan tens of thousands of the appeal docket. The issue of the buildup of the case in the Supreme Court is caused

by the mechanism of the judicial process in Indonesia, especially with regard to the authority of the Supreme Court."

Based on the arguments above, then the choice of mediation is the main option in the settlement of disputes, as it is considered more effective. According to Moore, is a process of negotiations through mediation, is said to be ideal, because it meets the 3 (three) terms of satisfaction. First to the satisfaction of *substantif*, namely the satisfaction associated with the particular satisfaction of the parties to the dispute, for example the fulfillment of the indemnity in the form of money or give you the satisfaction because the negotiation process can be completed in a timely manner. The satisfaction of the procedural.

Dispute settlement environment in the outer court was held to reach an agreement regarding the form and amount of compensation and/or for specific actions to ensure the will not the occurrence or recurrence of a negative impact on the environment. In the settlement of disputes environment outside of the court can be facilitated through the services of a third party, both of which do not have the authority to take decisions and who has the authority to take decisions, to help resolve the dispute of the environment, such as Government and/ or society. The community in this case can be formed agency services provider dispute resolution environment which is free and impartial.

However, the good intentions of Legislation for Environmental Management to overcome the problem of the weakness of the judicial system in Indonesia by providing the opportunity of setting the completion of the environment through non-litigation is not coupled with the institutional factors that enough. Remember it is not yet clear how the dispute settlement environment outside of court (non-litigation) through the third party services it can be solved. Factors of this institution has an important role related to the effectiveness of the enforcement and application of the law. According to Soerjono Soekanto, the factors that can affect the proper functioning of law in society or the effectiveness of enforcement and application of the

law is influenced by several factors : the factors of its own, the factor of law enforcement, the factor means and services and factors of society, namely the environment where the law is applied. The fourth factor is related to each other, because it is the essence of the law enforcement and also is a measure of the effectiveness of law enforcement.

The resolution of disputes outside the courts can be distinguished between the peaceful settlement of disputes and the dispute settlement adversarial. The peaceful settlement of disputes is more commonly known with the completion of the deliberation and consensus. While dispute settlement adversarial better known by the settlement of disputes by a third party that is not involved in the dispute any form is mediation. Dispute resolution environment through the mediation of an option of the parties and voluntary. The parties are also free to determine which agencies service providers who assist in the resolution of disputes environment. The institute service provider provides services for the settlement of disputes environment by using the help of a mediator or other third parties. If the parties have chosen the efforts of dispute resolution environment through mediation, lawsuit through the courts can only be achieved if the effort is expressed not succeed in writing by one of the parties to the dispute or one of the parties to the dispute withdraw from the negotiations.

Article 16 of the Regulation of the Minister of Environment of the Republic of Indonesia No. 04 of 2013 On Guidelines for the Settlement of Disputes of the Environment has been menjelaskan form finishing of smoke dispute including negotiation, mediation and arbitrase.

The advantages of the Process of Mediation is a mediation process is not regulated in detail in the legislation so that the parties have the flexibility in carrying out the mediation environment. The parties are not bound by the formalistic procedural law as well as in the law of civil procedure. Another advantage of mediation in the settlement of environmental disputes is, the principal can directly participate in the negotiations to seek a resolution of the issue without having to be represented by a

power law, respectively. Because the mediation procedure very freely and the parties do not have a background of education law or advocate may participate in the mediation process. The parties in the mediation process can use everyday language that they commonly use, and do not otherwise need to use technical terms juridical such as are commonly used by the advocate in the proceedings in the trial court.

The advantages of the next that the mediation process can discuss various aspects or sides of their disputes, not only jurisdiction, but also other aspects. The proof is the legal aspects of the most important in the process of proceedings in Court. Society as victims of pollution/destruction of the environment is very difficult to prove in scientific about the absence of losses, because in general they are a layman in bidang such. Sehingga statement about the absence of losses without the support of strong evidence, then the position of the plaintiff would be weak.

There are several factors that lead to such difficulties:

- a. The difficulty of getting access to information or data maintained by the government or corporate party;
- b. The government or the company was not documented data, for example related to the supervision, waste disposal;
- c. If the data can be accessed, there is an indication of the plaintiff (applicant information) have to pay dearly to get information/data/evidence is necessary; if you want to get evidence of his own, then the cost required is also quite high, for example the costs for laboratory tests.

While in the process of the mediation of environmental disputes can only aspects of evidence ruled out for the sake of other interests, for example for the maintenance of good relations between the community around the company with employers, so employers are willing to meet the demands of the society, although without the support of strong evidence. So here the consideration is not of the legal aspects but from the aspect of permanence of the relationship with

the community and the permanence of the business. Mediation is a dispute resolution process environment which is relatively inexpensive and time-consuming when compared to the process of litigants in court. The results of mediation in the form of the agreement is a settlement that is pursued by the parties themselves, so that the parties will not object to the results of his own and morally responsible to carry out the agreement

CONCLUSION

The concept of the media as the choice of dispute settlement known by the five basic Media archive. Working principles (confidentiality), the principle of voluntary (volunteer) the principle of empowerment (empowerment), the principle of neutrality (neutrality), and the principle of a unique solution (a unique solution).

Mediation as the preferred dispute resolution environment is a form of settlement based on etikad either of the parties, and not bound by the formalism of procedural law as well as in the law of civil procedure. Mediation as a dispute resolution institution environment in accordance with the concept of dispute resolution live in a society that is putting the dispute settlement musyawara consensus

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International Asia Of Law and Money Laundering

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