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ENVIRONMENTAL CONFLICT RESOLUTION UNDER INDONESIAN ENVIRONMENTAL MANAGEMENT ACTS: A LEGAL REVIEW.

Achmad Romsan
Sriwijaya University, Palembang, Indonesia.
Hanim Kamaruddin
Suzanna Mohamed Isa.
Faculty of Law
Universiti Kebangsaan Malaysia

ABSTRACT

Between 1982 up to 2009 the Government of Indonesian had replaced the content of the EMAs several times, however the provisions in relations to conflict settlement by using litigation and non-litigation have been expressly provided for in the second EMA of 1997 and the third EMA of 2009. The District Courts are the main judicial mechanism commonly used as alternative for conflict resolution. The political dominance makes the Courts are helpless in maintaining its independence. As a result many judicial verdicts are not keen in interpreting the people's environmental rights in Indonesia. Hence, for environmental litigation cases, the utilization of mechanism outside the court room is encouraged even if there are some disadvantages and weaknesses in exercising such practice. The objectives of this paper will firstly analyze the effectiveness of the existing conflict resolution mechanisms as regulated by the EMAs in relation to environmental cases in Indonesia. Secondly, reviewing to the 2004 Law No. 4 on the Judicial Power (*Kekuasaan Kehakiman*) is to seek the establishment of Environmental Court as a possible new instrument to address environmental conflicts. Thirdly, in view of that, this paper will review practices of the environmental courts in many countries in respond to the environmental rights protection. Mostly data collected from the primary data, such as legislation, and regulations, the judicial verdicts and secondary data obtained journals on line. The writing is critical and analytical. Hence, this paper finds that the District Court is not a sole mechanism that may solve environmental conflict in Indonesia and that a new environmental judicial mechanism can be established to address issues pertaining to environmental conflicts.

Keywords: environmental rights, environmental conflicts. Indonesian EMA, environmental court

INTRODUCTION

Between 1982 up to 2009 the Government of Indonesian had replaced the content of the Environmental Management Acts (EMAs) several times. Yet, the provisions in relations to conflict settlement by using litigation and non-litigation have been expressly provided for in the second EMA of 1997 and the third EMA of 2009. Conflict resolution in environmental matters had not been regulated in the first EMA of 1982 No. 4 on the Basic Provisions on Environmental Management.[1] Many environmental cases during the enactment of the 1982 Law No. 4 were submitted to the District Courts[2] albeit after the enactment of the 1997 Law No. 32 on the Environmental Management[3] and the 2009 Law No. 32 on the Protection of and the Environmental Management[4] which provide litigation and non-litigation mechanisms. This writing aims to analyze the extent of conflict resolution mechanisms provided for in the Environmental Management Acts in handing the environmental cases and the weakness of the Court verdicts in interpreting environmental rights. Prior coming to that discussion the writer will discuss about the development of Alternative Dispute Resolution in Indonesia, then continued with the legal analysis on the EMAs and possibility of establishing environmental court in Indonesia by making comparative study to the experiences of other countries which had already created environmental courts and finally the paper ends with conclusion and recommendation.

THE BIRTH OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDONESIA

Conflict resolution mechanism outside the Court room was introduced to Indonesia in 1997s as the economic crisis which led to the political crisis that affected the Suharto's administration. This situation affected to the replacement of the 1982 Law no. 4 on Basic Provisions of Environmental Management to the 1997 Law No. 23 on the Environmental Management and also to the 2009 Law No. 32 on the Protection of and the Management of the Environment.[5] Although mechanism of dispute resolution had been provided for in the EMAs[6] but socialization of this mechanism had been started in 1998. Since then the training on the Alternative Dispute Resolution (ADR) to which the author involved had been arranged to the government officials, and academia.[7]

Legally speaking, the utilization of mediation or arbitration as mechanisms for dispute resolution for environmental conflict resolution is a good solution for both party likewise community and industry who involve in the conflict. But the 2009 Law No. 32 on the Protection of and the Environmental Management[8] has stated that the lawsuit through the Court may be taken only if the settlement effort to solve the

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1 State Gazette 1982 No.12.

2 As it is regulated by the 2004 Law No. 4 on the Judicial Power, State Gazette 2004 No. 8.

3 State Gazette 1997 No. 68

4 State Gazette 2009 No. 140

5 The Environmental Management Acts are abbreviated as EMA(s)

6 The 1997 Law No. 23 (State Gazette 1997 No. 68) and the 2009 Law No. 32 (State Gazette 2009 No. 140)

7 ADR course had been fused into curriculum of Law Laboratory of Faculty of Law, Sriwijaya University since 1998, and since then the author became the instructor until 2010.

8 Previously the utilization of mediation had been regulated in Article 30 of the 1997 Law No. 23, State Gazette 1997 No. 68 and Article 84 (1-2) of the 2009 Law No. 32, State Gazette 2009 No. 140.

dispute had been claimed not succeed by one party or by the parties to the dispute. Under this provision, the outside court mechanism (mediation and arbitration)[10] may only be conducted so far it is related to the form of and the amount of compensation environmental restoration due to pollution and or environmental degradation, certain action to assure that the pollution or the environmental degradation will not occur in the future, and also the action to prevent the negative impacts on the environment.[11] The community may establish the environmental dispute resolution service provider which is free and impartial whilst the Government and the regional government may facilitate the creation of this kind service provider.[12]

THE EFFECTIVENESS OF THE ENVIRONMENTAL MANAGEMENT ACTS IN RESOLVING ENVIRONMENTAL MATTERS.

1. The 1982 Law No. 4 On Basic Provisions Of Environmental Management[13]

The Indonesian EMAs[14] are not panacea that can heal all the legal environmental problems but rather the Government of Indonesia's political intention toward the environment.[15]The first EMA of 1982 No.4[16] was a symbol of environmental awareness in Indonesia and was a political commitment of the GOI toward the protection of natural environment to achieve the sustainable development.[17] From the beginning of the enactment of the 1982 Law No. 4, the Indonesian scholars argued about the effectiveness of this Act in solving the environmental pollution and environmental degradation.[18] Since the EMA 1982 were designed as Basic Provisions therefore many articles contained in the Act need further implementing regulations.[19]

One of the many shortcomings of existing articles in the 1982 EMA was that it did not provide mechanism for conflict resolution. Consequently, many environmental cases were submitted to the District Courts. Lack of judges' understanding concerning what is environmental law causes in many judge verdicts are not really based on environmental law. For example: in the *Cendrawasi Bird* case (1984) the judge of the Sorong Papua District Court punished the defendant "dr.PS" for four years and

9 Article 84 (3) (State Gazette 2009 No. 140).
10 Article 85 (3) (State Gazette 2009 No. 140).
11 Article 85 (State Gazette 2009 No. 140).
12 Article 86 (1-2) (State Gazette 2009 No. 140).
13 State Gazette 1982 No.12.
14 The 1982 Law No. 4, the 1997 Law No. 23 and the 2009 Law No. 32.
15 In the preamble of those Acts reflect the political situation at that time.
16 State Gazette 1982 No.12.
17 Point (b) the Preamble of the 1982 EMA No. 4 State Gazette 1982 No 12.
18 Untung Sri Hardjanto, "Efektivitas Undang-Undang No. 4 Tahun 1982 dalam Menanggulangi Pencemaran dan Kerusakan Lingkungan Hidup", makalah sebagai bahas diskusi Jurusan HTN, Fakultas Hukum Universitas Diponegoro, Februari 1994 (unpublished paper)
19 For example: the obligation of everyone to maintain and to prevent and to control the environmental degradation and pollution, the Government's outline and policies in encouraging the environmental conservation and the environmental carrying capacity to support the sustainable development, the authority of the Government to regulate and to control the natural resources which is utilized for the welfare of the people, the environmental impact assessment, and so forth. At least, there are 11 articles of 24 articles need further implementing regulations to make them more effectively implemented.

six months and fined twenty million *Rupias*. The defendant was found guilty that he "deliberately persuaded or encouraged though a gift, agreement, or used the power or influence to commit act to destruct the environment". For that the defendant had violated Article 22 para (2), Article 1 point (8) of the 1982 Law No. 4 on the Basic Provisions of Environmental Management, and Article 55 para (1) of the Penal Code, and Article 1 of the 1931 Wild Animal Protection Ordinance (State Gazette 1931, no. 134).

It is noted here that Article 22 of the 1982 EMA deals with environmental crime.[20] The word "deliberately" (*sengaja*) as formulated in the content of article above is difficult to prove for the environmental degradation, the depletion of environmental quality will not occur instantly.[21] In the *Buyat* case, the bay marine environment was found to be polluted by mercury eight years later (2004) after the first dumping of mine waste activities of the Newmont Corporation in 1996.[22] Whilst in the *Way Seputi* River case, the quality of the river was polluted only less than a week.[23] A part of that, many parameters and factors supporting the occurrence of such pollution that lead to the depletion of environmental quality such as food supply, climate, hatch date, body size, reproductive output and so forth.[24] There is no such additional evident to support that by catching for 163 of the *Cendrawasi* Birds would have directly or indirectly affected the physical characteristic of the environment or the living environment, which eventually make the environment become less function or not in function to support the sustainable development.

The utilization of Article 22 above should have been supported by scientific evident that the number of the *Cendrawasi* birds population has decreased. Article 22 (environmental crimes) of the 1982 EMA may be utilized as *ultimum rimedium* only after all legal remedies are exhausted. From environmental law point of view the two cases above indicated that "dr. PS" had not comply with term of license issued by the Minister of Agriculture which authorized him to catch only particular birds, whilst the *Cendrawasi* birds were not include in the license. Whilst in the second cases, PT. Newmont Minahasa Raya had not comply as well to term of license or at least had not acted in accordance with the disposal permit (*surat izin*) issued by the Minister of Industry or the Minister of Environment. Since "License" issues is included in the

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[20] Article 22 of the 1982 EMA formulated as follows: "Anyone who *deliberately* commits acts that cause environmental damage or environmental pollution as regulated in this law or other laws punishable by imprisonment for ten years and or a fine of Rp. 100.000.000,- (one hundred million rupiah) (State Gazette 1982 No. 12).

[21] M.T. Zen, (1981), *Menuju Kelestarian Lingkungan Hidup*, Cetakan ke-tiga, Jakarta: Penerbit PT. Gramedia.

[22] The Buyat bay is small bay located on the south coast of Minahasa Peninsula island of Indonesia. PT. Newmont *Minahasa Raya*, the subsidiary company of Newmont Mining Corporation had used the bay as the tailing (mine waste) dumping ground for its gold mining activities from 1996. In 2004 local people in the area complained several unusual health problems which further suspected Newmont's for breaching the mining waste regulation to have contaminated the area with hazardous materials (Retrieved: www.minesandcommunities.org/article.php?a=1344).

[23] Walhi Lampung, 22 August 2000.

[24] E.G. Cooch, D.B. Lank, R.F. Rockwell and F. Cooke, (1991) Long-Term Decline in Body Size in a Snow Goose Population: Evidence of environmental degradation?, *Journal of Animal Ecology*, 60, 483-496; F. Cooke, T.D. William, E.G. Cooch, R.L. Jefferies, and F. Cooke, (1993) Environmental Degradation, food limitation, and reproductive output: Juvenile survival in lesser snow geese, *Journal of Animal Ecology*, 62, 766-777.

area of administrative law, therefore administrative sanction imposed in those two cases above are in form of "notice", "warning" and the last one is the permit revocation if the company or the permit holder still do not obey. Similar cases which were submitted to the District Courts such as: PT. Inti Indo Rayon Pulp and Paper case which polluted the Asahan River in North Sumatra (1989).[25] The Sarana Surya Sakti case (1991), the Muara Jaya case (1991), the Singosari SUTET case (1994), the Sari Morawa case (1996), the Ciujung River (West Java) case (1995). The cases above deal with the defendants were accused to violate Article 20 dealing with the compensation for environmental damage and environmental restoration.[26] Under these cases the Courts' verdict refused to grant claim submitted by the community since the 1982 Law No. 4 did not recognized the representative action.

2. The 1997 Law No. 23 On Environmental Management[27]

The increased awareness of citizens and also environmental organizations to use the EMA as legal process to prevent, restore, or compensate environmental related damaged over the decade in Indonesia has been characterized with many environmental cases brought to the District Courts. This situation reflected in the rapid development in sectors of industries, palm estates, logging and intensive exploitation of natural resources. The inability of the 1982 Law No. 4 on the EMA to accommodate the people's demand to decent environment has forced the Government of Indonesia replaced the 1982 Law No. 4 to the 1997 Law No. 23 on the Environmental Management.[28]

There are lot of progression attained by the new EMA of 1997 No. 23 compared to the earlier law, such as the new law is no longer "Basic Provisions" and also many provisions in articles and chapters have been emphasized, such as the provisions on the rights of, the obligation of and the role of communities in environmental management, and so forth. In term of conflict resolution, the agreement between or among the parties is pre-condition before they bring their case for litigation or non-litigation.[29] On the contrary, submitting cases to the Court may only be conducted after the disputants failed to reach the agreement over the disputed matters.[30] There is no statement in the EMA of 1997 No. 23 which refer to mediation or arbitration or others dispute settlement mechanism included in the definition of the outside court mechanism. Consequently during the period of 1997 up to the enactment of the 2009

25 WALHI (2007-01-13). "Snow Ball of Struggle to Stop Negative Impacts of Pulp and Paper Industry in Indonesia" (http:/ / www. eng. walhi. or. id/ kampanye/ hutan/ konversi/ 070113_pulp_paper_ind_li/)

26 The weakness of Article 20 is that it does not regulate the procedure for submitting the complain and claiming compensation and formulating of research team to fix the form of and the amount of loss and procedure for compensation will be set by legislation (State Gazette 1982 No. 12)

27 State Gazette 1997 No. 68.

28 State Gazette 1997 No. 68.

29 Article 30 (State Gazette 1997 No. 68)

30 Article 30 (3) (State Gazette 1997 No. 68) There is some similarity between this requirement with the practice in Australia where mediation is a part of justice system, where the judge always advices the disputants to solve their problem through mediation, and if the result of the mediation does not satisfy the disputants, then they may submit their case to the court (Achmad Romsan, (2008) *Teknik Penyelesaian Sengketa Diluar Pengadilan: Negosiasi, Mediasi dan Arbitrase*, Diterbitkan oleh Bagian Hukum Internasional Fakultas Hukum, Universitas Sriwijaya)

Law No. 32[31] most of the environmental disputes were submitted to the District Courts.[32] Many mass media in Indonesia, such as *Kompas*, the daily Indonesian news paper on 27 February 1993 questioned the effectiveness of Court in settling environmental cases as said by Emil Salim (ex- Indonesian Minister for Environment) that:

> Bitter experience obtained from the river pollution case settlement through Court mechanism in Sidoarjo, which foundered due to problems of evidence. It should not happen in other cases of Ciujung River pollution. As in the Sidoarjo River cases, the first evidence submitted to the District Court based on the laboratory test that the river had not polluted. In contrast, the second evidences, based on the laboratory test that submitted to the District Court declared that the river had been polluted. Under this situation, the problem centered whether or not the company was guilty or innocence, but rather on how to provide more accurate, standard, objective, and more scientific evidence through laboratory tested that become standard for all parties to the dispute.[33]

From the case above, one has to aware that many factors hamper the environmental law enforcement as Santosa (1995) identified: Lack of simplicity of legal instruments, inadequate legal peripheral, technical skill of legal enforcers are very limited, there is no culture of openness, lack of common perception among the government officials, and the morale, the integrity, and the courage of law enforcers.[34] Among the many environmental cases during the promulgation of the 1997 Law No. 23[35] only the *Kali Tapak* Pollution cases (2003) mediation had been utilized as required by Article 30 of the 1997 EMA No. 23. Though at the end, there is no commitment of the company to comply what had been agreed upon the processes of mediation.[36] Many people commented that the *Kali Tapak* Mediation was not real mediation but rather quasi mediation.

The question is why in many environmental disputes during the enactment of the 1997 EMA no. 32 the District Courts were the main judicial mechanism commonly used as alternative for conflict resolution instead of mediation or arbitration. It seems that the Indonesians are litigious society as Americans.[37] This kind of dispute

[31] State Gazette 1997 No. 68.

[32] There are at least ten cases occurred during the period of 1997 to 2009. Those cases are The Eksponen 66 vs. APHI (1998), The Babon River case (1998), the Laguna Mandiri (1998), the Walhi vs. PT. Pakerin (1998), the Banger River case (1999), the Kalimantan Peat Land case (1999) the Way Seputi River case (2000), The Pekanbaru Smog case (2000), Walhi vs. PT. Freeport case (2001), the Transgenic Cotton case (2001).

[33] Free translation by the author from Indonesia to English.

[34] Mahjudi Djoko Mardjanto, (2005)"Evaluasi Penyelesaian Sengketa Lingkungan Hidup (Studi Kasus Kali Tapak Kota Semarang), Master Thesis in Environmental Science, Graduate Study Programs, University of Diponegoro, Semarang.

[35] State Gazette 1997 No. 68.

[36] Mahjudi Djoko Mardjanto, (2005)"Evaluasi Penyelesaian Sengketa Lingkungan Hidup (Studi Kasus Kali Tapak Kota Semarang), University of Diponegoro, Semarang.

[37] M. Jagannadha Rao, "Need for more ADR centers and training for lawyers and personnel", in P.C. Rao & William Sheffield, (2007) *Alternative Dispute Resolution: What it is and how it works,* The International Center for Alternative Dispute Resolution, Universal Law Publishing Co. Pvt. Ltd. Pp 103-107.

resolution mechanism had been clearly regulated in the EMA of 1997 and in Article 4 Para 6 of the 1999 Law No. 30 on Arbitration and Alternative Disputes Resolution.[38] In Indonesia, the utilization of mediation mechanism is not yet widely known and used for it had been started in 1998 during many internal conflicts hampered Indonesia.[39] Even though arbitration has jurisdiction over the environmental disputes settlement, but mediation is more effective in solving environmental dispute[40] as in the case of The Hudson River Settlement in the United States.[41] The settelment concluded a 17-year legal battle between and among three environmental groups, four public agencies, and five electric utility companies over the use of the Hudson River for power production. The central issue in dispute was the accumulative effects on aquatic life of the power plants along the Hudson River. The final agrement included, among other provisions, the elimination of plants to construct Storm King, endowment of a reasearch program on the aquatic life in the Hudson River, and a provision the utilities will not have to construct proposed cooling towers that would have cost $ 500 million to build and $180 million annually to operate.'[42]

3. The 2009 Law N0. 32 On The Protection Of And The Management Of The Environment[43]

Eleven years after the fall of Suharto regime by the Student Powers in 1998, it is apparent that the 1997 Law No. 23 on Environmental Management had been impotent in protecting environment. There are at least four factors affecting the replacement of this law to the 2009 Law No. 32 on the Protection of and the Management of the Environment, likewise: high demand of the regional government to have an autonomous government from the central government including in the field of environmental management and environmental protection, the increasingly declined of environmental quality has threaten the survival of human's life and other living things and global warming that affected climate change in Indonesia.[44] Compared t its former EMAs, the 2009 Law No. 32 has brought new hope for every Indonesian It took 27 years after the 1972 Stockholm Declaration, eventually the Government Indonesia legally recognized the notion of environmental human rights through t 2009 Law No. 32 on the Protection of and the Management of the Environment.[45] Ma

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38 State Gazette 1999 No. 3872.

39 Achmad Romsan, (2008) *Teknik Penyelesaian Sengketa Diluar Pengadilan: Negosi Mediasi dan Arbitrase*, Diterbitkan oleh Bagian Hukum Internasional Fakultas Hukum, Universi Sriwijaya.

40 Talbot. Allan R., (2004) *Settling Things: Six Case Studies in Environmental Mediatio* Published by the Conservation Foundation and the Ford Foundation, 2nd printing.

41 Allan R. Talbot, (2004) *Settling Things: Six Case Studies in Environmental Mediation* Published by the Conservation Foundation and the Ford Foundation, 2nd printing.

42 There are five other environmental cases solved through mediation such as Interstate 90, Hydro Power Swan Lake, Portage Island, The Eau Claire Dump and the Port Townsend Terminal (Allan R. Talbot, (2004) *Settling Things: Six Case Studies in Environmental Mediation*, Published by the Conservation Foundation and the Ford Foundation, 2nd printing).

43 State Gazette 2009 No. 140

44 Point (c), (d), and (e) of the Preamble of the 2009 Law No. 32 on the Protection of and the Management of the Environment (State Gazette 2009 No. 140).

45 Para. (a) of the Preamble of and of Article 3 Para (g) of the 2009 Law No. 32 on the Protection of and the Management of the Environment, State Gazette 2009 No. 140.

questions one may ask in regard with the implementation of Article 3 (g) and how to do with the 1999 Law No. 39 on Human Rights? Can environmental rights violator be processed or trialed through Human Rights Court? How is the compensation for the victims? These questions remained unanswered.

There is a precautionary article as provided for in Article 2 states that the protection of and the management of the environment is carried out based on principles "state responsibility, conservation and sustainability, integrity, precautionary, justice, eco-region, bio diversity, polluter paid, public participatory, local wisdom, good governance, and regional autonomy".[46] These 12 principles manifested in the scope of the protection of and the environmental management which include: "planning, utilization, control, maintenance, monitor, law enforcement. [47] Although the 2009 Law No. 32 attempts to completely and precisely regulate about the environmental protection and environmental management, but still there are 31 articles of 127 articles that may require further implementing legislations, government regulations and ministerial regulations.[48] This fact also might affect the enforcement of and the effectiveness of the 2009 Law No. 32.

In Indonesia, there are at least four factors affecting law enforcement as Surjono Soekamto identified in his book, [49] such as the text of or the wording of the article is not clear or need further implementing regulations or the title is not clear or ambiguous, the behavior of law enforcers do not obey the law, bad or lack of law facilities or law apparatuses, society and the culture that are inconsistent with the aims of the law. In other words, law enforcement in Indonesia is problematic since these four factors are interrelated to one another. For example in the Lapindo volcano mudflows case which happened in 2004 in Porong, Sidoarjo, East Java was due to the failure during the drilling activities conducted by PT Lapindo.[50] The verdict of the Jakarta District Court declared that the volcano mudflows which had drawn 10.000 houses and 50.000 people were displaced was not human error but natural disaster.[51] This case is the example reflecting the factors above where the Judge did not very sharp in interpreting environmental rights as regulated in the EMA of 1997 No. 23 on Environmental Management. Whereas the experts had examined that the mudflows were due to the failure during the drilling activities conducted but the Judge disregard the report.[52] Actually not only environmental rights of the people had been violated by PT. Lapindo, but also human rights of the people surrounding the disaster area had been violated as well. The Government was considered by many people to be so slow

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[46] State Gazette 2009 No. 140.

[47] Article 4 Gazette 2009 No 140

[48] Within 31 articles that require further implementing regulations, Article 65 (4) which deals with the right of everyone to participate in the environmental protection and in the environmental management must be based on regulation. As far as the author is concerned, regulation on public participation has not enacted yet.

[49] More precisely Soerjono Soekamto had identified factors affecting law enforcement in Indonesia, for instant the law itself, law enforcers, law facilities and law apparatuses, society and culture (Soerjono Soekamto, (1983) *Faktor-Faktor yang Mempengaruhi Penegakan Hukum,* Penerbit CV. Rajawali).

[50] Friends of the Earth International, "A Background paper prepared for Friends of the Earth International and Friends of the Earth Europe", June 15, 2007.

[51] Retrieved:http://www.majalahtrust.com/hukum/hukum/1598.php

[52] Friends of the Earth International, "A Background paper prepared for Friends of the Earth International and Friends of the Earth Europe", June 15, 2007.

in addressing the Lapindo mud disaster. Was it because the owner of PT. Lapindo was a member of SBY cabinet? [53]

In the 1999 Law No. 39 on Human rights[54] states in Article 9 para (3) that "Everyone has the rights to a good and healthy environment" whilst in the paragraph (a) of the Preamble of 2009 Law No. 32 on the Protection of and the Management of the Environment states "a good and healthy environment is human rights of the Indonesian citizen as amended by Article 28 H of the 1945 Indonesian Constitution". This provision is repeated in Article 3 deals with the objectives of environmental protection and environmental management are, among other, to assure the fulfillment of and the protection of the rights over the environment as part of human rights.[55] There is a strong link between environmental rights and human rights that PT. Lapindo violated but the problem is how to make that link into reality.

THE ESTABLISHMENT OF ENVIRONMENTAL COURT IN INDONESIA

Environmental dispute is different compared with other legal dispute such as dispute in criminal law and civil law. In many cases, environmental conflict is a multi dimension conflict for it involves economy, politic, social, culture, and law. Although the utilization of the third party had been regulated for the first time in the 1997 Law No. 23[56] and then reintroduced in the 2009 Law No. 32[57] the disputants prefer to submit their case to district court instead of mediation or arbitration. At one side, submitting cases to the District Courts is expensive, time consuming, effort and funds but at the other side the victims of the environmental disaster are usually the community who have no resources and are always in the weaken position. Theoretically, the use of mediation is a precise way to cut the time consuming, efforts and funds above. The first mediation conducted in the Kali Tapak case (2003) but the result of mediation had caused public confidence in the efficacy of mediation declined. There is no commitment of the industry to pay compensation to the victims though it had been agreed upon the mediation process[58] and also the result reached during the mediation processes had been registered to the District Court based on Article 6 para. (7), the 1999 Law No. 30 on the Arbitration and Alternatives Dispute Resolution.[59] So as the break through, the establishment of a new court dealing with special environmental cases is a solution for Indonesian condition and this made it possible under the 2004 Law No. 4 on the Judicial Power.[60]

In many counties such as the United States, Australia, China, India, New Zealand and Thailand the environmental court had been established long time ago as a respond both from the government and the community to protect the environment. For example in the city of Indianapolis and Marion County, the environmental court had been created in May 1978 which exercises both criminal and civil jurisdiction over

53 Retrieved: http://www.majalahtrust.com/hukum/hukum/1598.php
54 State Gazette 1999 No. 165.
55 Point (g) Article 3 (State Gazette 1999 No. 165).
56 State Gazette 1997 No. 68.
57 State Gazette 2009 No. 140.
58 Mahjudi Djoko Mardjanto, (2005)"Evaluasi Penyelesaian Sengketa Lingkungan Hidup (Studi Kasus Kali Tapak Kota Semarang), University of Diponegoro, Semarang.
59 State Gazette 1999 No. 3872.
60 State Gazette 2004 No. 8.

all matters related to land use controls. Some factors contributed to the establishment of the court likewise a progressive city Committee, and community awareness of the housing situation. Actually the main reason was ineffective processing of municipal code violation.[61] Whilst in Australia the environmental court namely "The Land and Environmental Court" created under the Land and Environmental Court Act of 1979, located in New South Wales, is highly specialist environmental and planning court with a wide jurisdiction responsible interpreting and enforcing environmental law in the state of Australia. The Court has the same status as the Supreme Court of New South Wales.[62] In China, the establishment of environmental court is considered as the symbol of the strong commitment of the Government of China toward the environmental protection and also as the respond to the increasing appeals to participation into environmental protection.[63] After Australia and New Zealand, India has set up a full-fledged environmental court to deal with the environmental issues on October 2010. The court is namely "The National Green Tribunal" (NGT).[64] Thailand has opened a new division of civil court to handle environmental cases as problems of water pollution, air pollution, chemical, radiation and odor pollution caused by the Industrial sector. [65]

CONCLUDING REMARKS

Based on what had been explained above, the concluding remarks will be as follows:

1. The potency of the dispute Resolution mechanism as regulated in the 2009 Law No. 32 on the Protection of and the Management of the Environment is still questioned due to the lack of understanding of the disputed parties concerning the objectives of, the function of the mediation as alternative dispute resolution. Apart of that many important articles in the 2009 Law No. 32 need further implementing legislation, and regulations to make them effectively enforced.
2. Political dominance in a particular environmental case make the Judge is not really independent in making up the verdicts consequently the community's environmental rights is not fully protected by the law.
3. Mediation as alternative mechanism for dispute resolution is a solution but lacks of sanction to those committed not to comply the agreement make this mechanism useless.
4. Since environmental conflict involves many aspects, such as economy, politic, social, culture, and law, the utilization of environmental court as practiced in many countries would be worthwhile in solving environmental conflict between community and industry.
5. It is recommended to the Government of Indonesia to quickly establish a special tribunal or special, namely Environmental Tribunal under the State Courts.

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[61] David A. Jester, (1979) The Indianapolis Environmental Court, 17 *Urb. L. Ann.*

[62] Retrieved from:http://www.lawlink.nsw.gov.au/lec

[63] Li Zhiping, The Mission and Challenge of China's Environmental Court, retrieved from www.wilsoncenter.org/sites/default/files/li_zhiping_presentation.pdf

[64] http://news.oneindia.in/2010/10/20/india-launches-ngt.html

[65] http://www.cleanbiz.asia/story/thailand-opens-environmental-court

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