

# HOW CAN ENVIRONMENTAL DISPUTE RESOLUTION BE RESOLVED WITHOUT GOING TO COURT

**L. Elly A.M Pandiangan, Nanin Koeswidi, Nort Retiana Silitonga**

*Faculty of Law Universitas Kristen Indonesia, Jakarta, Indonesia*

*[elly.pandiangan@uki.ac.id](mailto:elly.pandiangan@uki.ac.id)*

Received 03-06-2021; Revised 16-06-2021; Accepted 16-06-2021

<https://doi.org/10.25216/jhp.10.2.2021.245-254>

## **Abstract**

To protect environmental pollution and/or damage, the government has issued legislation on environmental protection and management supplemented by Ministerial Regulations. Environmental pollution and/or damage can occur due to natural factors and human actions that result in losses to the country and/or society. Environmental polluters and/or destroyers can be prosecuted in court. Before environmental disputes are transferred to court, environmental disputes are first resolved through mediation conducted by a mediator and settled out of court (non-litigation) in accordance with applicable laws. Mediators or the role of third-party services are free and neutral /impartial.

**Keywords:** Environment, Environmental Pollution, Environmental Disputes, Legal protection, Law enforcement

## **Introduction**

Public environmental legal awareness is still lacking, and there is a misperception that every environmental case must always be reported and ended with a court decision. Environmental law enforcement can be assessed based on the substance of statutory regulations, law enforcement officials, and the awareness of the people affected by the regulation (law). Weak legal instruments (laws and regulations) can predictably affect the effectiveness of environmental law enforcement.

One of the aspects related to civilization in environmental law is the responsibility for compensation. Compensation in the environment is a part of matters related to responsibility regarding the emergence of environmental pollution and damage by one's actions (environmental responsibility). Environmental responsibility is a series of obligations of a person or party to assume responsibility for sufferers whose rights have been violated to a good and healthy environment. The Law on Environmental Protection and Management stipulates that environmental responsibility includes both the issue of compensation to individuals (private compensation) and the cost of environmental restoration (public compensation). Thus the nature of environmental responsibility can be private and public, in the sense that if a polluter has fulfilled his responsibilities to an individual, it does not mean that it is finished and no longer in terms of environmental restoration or vice versa.

### **Research methods**

This research uses a normative legal research methodology. Normative legal research methods are based on library materials or secondary data. Peter Mahmud Marzuki argues that normative legal research is a process to find the rule of law, legal principles, and legal doctrines to answer legal issues at hand. This type of research is often conceptualized as what is written in statutory regulations or law is conceptualized as a rule or norm, which is a benchmark for human behavior that is deemed appropriate.<sup>1</sup>

### **Analysis**

Article 28H of the 1945 Constitution (UUD 1945) mandates that every person has the right to live in physical and mental prosperity, have a place to live and have a good and healthy living environment, and have the right to obtain health services.<sup>2</sup>

Law Number 32 of 2009 (UU No.32 of 2009) concerning Environmental Protection and Management<sup>3</sup> states: 'The living environment is a spatial unit with all objects, forces, conditions, and all

---

<sup>1</sup> Amiruddin dan H. Zainal Asikin, (2006), *Pengantar Metode Penelitian Hukum*, Jakarta:PT. Raja Grafindo Persada, p. 118

<sup>2</sup> UUD Negara Republik Indonesia Tahun 1945

<sup>3</sup> UU Nomor 32 Tahun 2009 *tentang Perlindungan dan Pengelolaan lingkungan hidup*

living things, including humans and their behavior that affects nature, the continuity of life, and the welfare of humans and other living things (Article 1 point 1). Environmental pollution is the inclusion of living things, substances, energy, and/or other components into the environment by human activities so that they exceed the stipulated environmental quality standards (Article 1 point 14). The criteria for environmental damage are the size or limit of changes in the physical, chemical, and/or biological characteristics of the environment that can be tolerated by the environment in order to be able to preserve its function (Article 1 point 15).

Article 1365 of the Civil Code (KUHPerdata) states that every act that violates the law and brings harm to others requires the person who caused the loss due to his/her mistake to compensate for the loss.<sup>4</sup> Civil law in environmental management is one of the aspects of environmental law enforcement to protect victims of environmental pollution and/or destruction in the sense that the aggrieved party can be an individual or a community.

If there is pollution and / or environmental damage by human actions that impact the loss of the state and society, it will lead to environmental disputes. Law Number 32 Year 2009 Article 1 point 2 states that “environmental disputes are disputes between two or more parties that arise from activities that have potential and/or have an impact on the environment.” According to Takdi Rahmadi: Disputes are situations and conditions in which people experience factual disputes as well as disputes that exist in their perceptions only.<sup>5</sup>

The state of Indonesia is a state of law, and everyone has the right to legal protection. According to Sutjipto: Legal protection is providing protection to human rights that have been harmed by others, and this protection is given to the community so that they can enjoy all the rights provided by the law.<sup>6</sup> According to CST Kansil: Legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both physically and mentally, from harassment and various threats from any

---

<sup>4</sup> KUHPerdata

<sup>5</sup> Takdir Rahmadi. 2017. *Mediasi Penyelesaian Sengketa Melalui Pendekatan Muafakat*. Jakarta. Penerbit: PT. Raja Grafindo Persada. p. 1.

<sup>6</sup> Satjipto Raharjo, *Ilmu Hukum Bandung*: PT. Citra Aditya Bakti, 2000, p. 54

party<sup>7</sup>. Fitzgerald explained that the theory of legal protection integrates and coordinates various interests in society because, in traffic, the protection of certain interests can only be done by limiting the various interests of other parties. The interest of law is to take care of human rights and interests so that the law has the highest authority to determine which human interests are regulated and protected. According to Sutjipto: Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community, which are a community agreement to regulate behavioral relationships between community members and between individuals and the government that represent the interests of the community.<sup>8</sup>

In terms of the core concept and meaning of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and implementing and realizing principles, as well as attitudes of action as a series of final-stage value descriptions to create, maintain, maintain social peace. According to Sukanto: A conception that has a philosophical basis that requires further explanation so that it looks more concrete. Law enforcement is an effort to carry out the process of enforcing or functioning of legal norms in a real way to guide behavior in legal relations or environmental management in public and state life. Law enforcement is an effort to bring the ideas of justice, legal certainty, and social benefits into reality. Law enforcement is essentially a process of embodying ideas. Satjipto argues: Law enforcement is not a definite act, namely applying a definite action, applying the law to an analogous event, and drawing a straight line between two points. Soekanto argues: Law enforcement is an activity to harmonize the relationship of values that are defined in established and manifest values, attitudes, and actions as a series of final-stage value descriptions to create, maintain and sustain the environment. According to Shant: Concrete law enforcement, namely the enactment of positive law in practice that must be adhered to provide justice in a case, namely deciding in concreto law in guaranteeing and maintaining compliance with material law by using procedural methods stipulated

---

<sup>7</sup> C.S.T Kansil. *Pengantar ilmu hukum dan tata hukum Indonesia*. Jakarta: Balai Pustaka. 1989, p.40

<sup>8</sup> Satjipto Raharjo, *Ilmu Hukum*. Bandung: Penerbit PT. Citra Aditya Bakti. 2000, p. 54

by formal law.<sup>9</sup> In principle, law enforcement must be able to provide benefits or utility for the community, and society also expects law enforcement to achieve justice. It cannot be denied that what is considered useful (sociologically) is not necessarily fair and vice versa, what is considered fair (philosophically) is not necessarily useful for society. In such conditions, the community only wants legal certainty.<sup>10</sup> In law enforcement, three essential elements need to be considered by law enforcement officials, including Law enforcement institutions, work culture, and regulations.

Article 1365 of the Civil Code (KUHPerduta) is in line with Law No.32 (UU No. 32), which is present in the enforcement of Environmental Law in Indonesia to carry out civil procedures regulated in Chapter XIII Articles 84 to Article 92. Civil aspects in Chapter XIII Articles 84 to 92 contain environmental dispute resolution, which can be pursued through court mechanisms (litigation) and outside court mechanisms (non-litigation):

### **1. Settlement by Court (Litigation)**

Stages of Environmental Dispute Resolution through Courts:

1. Source of complaints;
2. Verification of environmental disputes
3. Collecting evidence
4. Calculation of environmental losses
5. Preparation of lawsuits;
6. Settlement of disputes through the Procedural Law Trial;
7. Appeal Level at the High Court / Supreme Court Level;
8. Reconsideration

Civil environmental disputes are settled through courts if environmental dispute resolution outside the court is deadlocked or an agreement is not reached.

### **2. Settlement Out of Court (Non-Litigation)**

Environmental dispute resolution outside the court with the stages, as follows:

1. Analyzing the source of the complaint
2. Verifying Environmental Disputes

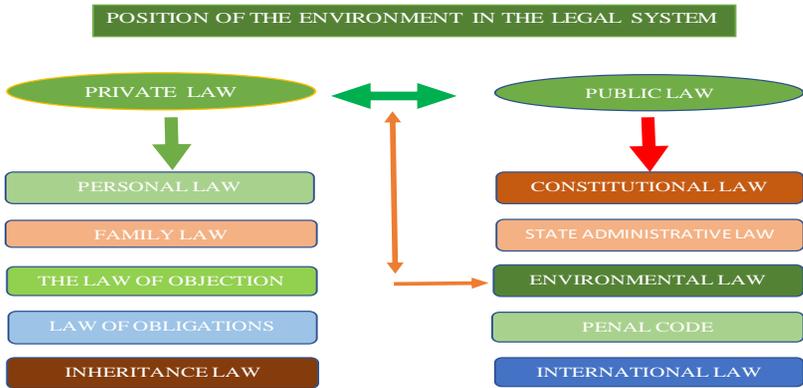
---

<sup>9</sup> Dellyana Shant.1988, *Konsep Penegakan Hukum*, Penerbit Liberty, Yogyakarta : p. 33

<sup>10</sup> Elita Rahmi. (2018). *Penegakan Hukum dan Fatwa Haram MUI Terhadap Kebakaran Hutan dan Laban di Indonesia*. Fakultas Hukum Universitas Jambi.

3. Clarifying the Result of Verification of Environmental Disputes
4. Calculating the environmental loss
5. Determining of Environmental Dispute Resolution Options
6. Settlement through Negotiation / Facilitation / Mediation and / or Arbitration;
- and
7. Environmental Dispute Resolution Agreement.

The position of environmental law in the legal system is as illustrated in the figure :



Source: Fadhli, Moh., Mukhlis., Luthfi, Mustafa

Law enforcement is a reaction to an event that is not appropriate or contrary to the law. However, it does not have to be repressive. Applying and defending the law is the act of realizing legal principles and principles in a concrete event with the following meanings: First, the law can be enforced through preventive measures in the form of invitations that generate incentives to obey or not violate the law. Second, law enforcement is not only carried out by law enforcement officials but also the community or people in charge of a business or activity (both for themselves and for others) are elements of law enforcement. Third, sanctions in law enforcement are not only in the form of punishment. Fourth, obeying the law or implementing the law properly is a form of the law enforcement because obedience

implies defending the law. Based on the Regulation of the Minister of Environment Number 4 of 2013 (Peraturan Menteri Lingkungan Hidup No. 4 Tahun 2013),<sup>11</sup> there are 5 (five) steps in Environmental Dispute Resolution, which are:

### **1) Verification of Environmental Disputes**

In the Environmental Dispute Resolution mechanism, the Verification stage is carried out in three stages: Preparation, Implementation, Data analysis, and report preparation. The verification stage is carried out to obtain confidence in the truth of the dispute. In the clarification stage in the form of a Verification Team with the assignment of Echelon II Officials - Central Government and Heads of Local Government Agencies where the Verification Team consists of:

1. Officials/employees whose duties and functions are in Environmental Dispute Resolution at Central Government Agencies.
2. Officials/employees whose duties and functions are in Environmental Dispute Resolution in Regional Government Agencies.
3. Relevant agencies as needed
4. Laboratory Staff

### **2) Clarification of Environmental Disputes**

Furthermore, the verification results will be clarified, namely the approval of the results of the verification or the rejection of the results of the verification. If there is rejection, then further verification can be carried out one time.

### **3) Calculation of Environmental Losses**

Suppose the results of the verification have been approved. In that case, a calculation of the environmental losses will be carried out based on the Regulation of the Minister of the Environment Number 7 of 2014 (Peraturan Menteri Lingkungan Hidup No. 7 Tahun 2014), namely.<sup>12</sup>

---

<sup>11</sup> Peraturan Menteri Lingkungan Hidup No. 4 Tahun 2013 tentang Pedoman Penyelesaian Sengketa Lingkungan Hidup

<sup>12</sup> Peraturan Menteri Lingkungan Hidup No. 7 Tahun 2014 tentang Kerugian Lingkungan Hidup Akibat Pencemaran dan/atau Kerusakan Lingkungan Hidup

1. Losses due to failure to carry out the obligation to treat wastewater and/or emissions and/or waste of hazardous and toxic materials
2. Losses, due to 'replacement costs for verification of environmental disputes and costs of monitoring the implementation of certain actions.
3. Compensation for the cost of countermeasures for pollution and/or loss of the environment and restoration of the environment
4. Biosystem loss
5. Losses to society due to pollution and/or losses to the environment.

By calculating the environmental loss by the Environmental Pollution and/or Damage Expertise Division will conduct an Environmental evaluation, the Directorate General of Environmental Law Enforcement and Forestry will appoint Echelon II Officials (Regional Environmental Agency). The basis for the appointment is evidence of having conducted research, and the appointed official has experience. Then the results of the calculation of losses by the expert will: be used as an initial assessment, in Environmental Dispute Resolution (outside the court or in court), may experience changes in the Environmental Dispute Resolution process which are influenced by technical and non-technical factors, namely:

1. Technical factors include the duration of time or the occurrence of environmental pollution and/or damage, the volume of pollutants that exceed environmental quality standards, land area and distribution of pollution, and/or environmental damage and/or damaged land status.
2. Non-technical factors, namely: inflation and/or government policies.

#### **4) Implementation of Environmental Dispute Resolution outside the court**

After the calculation of environmental losses is carried out, then negotiations are carried out between the disputing parties or their representatives outside the court with or without using a third party.

## 5) Agreement

After negotiating between the disputing parties, and if the disputing parties agree with calculating the amount of compensation, an agreement will be made in writing.

## Conclusions and suggestions

Environmental polluters and/or destroyers can be prosecuted in court. Before a dispute is transferred to the court, it must first be resolved through mediation by a mediator and settled out of court (non-litigation) in accordance with applicable laws. Environmental dispute resolution outside the court does not apply to environmental crime.

Environmental dispute settlement outside the court is carried out in several stages, namely: 1. Analysis of the source of complaints, 2. Verification of Environmental Disputes, 3. Clarification of the Results of Environmental Dispute Verification, 4. Calculation of Environmental Losses, 5. Determination of Options for Environmental Dispute Resolution, 6. Settlement through Negotiation /Mediation/Arbitration/ Conciliation and 7. Environmental Dispute Resolution Agreements. Dispute settlement outside the court is more efficient and faster so that compensation to the community/state and environmental restoration can be resolved immediately.

The government and law enforcers should be more optimal in carrying out environmental supervision to create a good and healthy environment and fulfill the rights of citizens who are affected by environmental pollution and/or damage.

Suppose the settlement of environmental disputes outside the court experiences a deadlock and there is no agreement/cannot be completed. In that case, the environmental dispute will only be brought to court (legal standing). In subsequent studies, the researcher suggests examining the causes of environmental disputes to be resolved in court.

## References

### Books

- N.H.T. Siahaan, *Hukum Lingkungan*, Pancuran Alam, Jakarta, 2009
- Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada, Jakarta 2010
- Amiruddin dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta 2006
- Fadhli, Moh., Mukhlis., Luthfi, Mustafa. *Hukum dan Kebijakan Lingkungan*, UB Press, Malang, 2016.
- Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, PT. Raja Grafindo Persada, Jakarta 2017
- Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung 2000
- C.S.T Kansil. *Pengantar ilmu hukum dan tata hukum Indonesia*. Balai Pustaka, Jakarta 1989
- Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti. Bandung 2000
- Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* PT Raja Grafindo Persada, Jakarta 2010
- Satjipto Raharjo, *Sosiologi Hukum: Perkembangan Metode Dan Pilihan Masalah*, Sinar Grafika , Yogyakarta 2002
- Dellyana Shant, *Konsep Penegakan Hukum*, Liberty, Yogyakarta 1988

### Legislation

- UUD Negara Republik Indonesia Tahun 1945
- UU Nomor 32 Tahun 2009 *Tentang Perlindungan dan Pengelolaan lingkungan hidup*
- Kitab Undang-undang Hukum Perdata
- Peraturan Menteri Lingkungan Hidup RI Nomor 4 Tahun 2013 *Tentang Pedoman Penyelesaian Sengketa Lingkungan Hidup*
- Peraturan Menteri Lingkungan Hidup RI Nomor 7 Tahun 2014 *Tentang Kerugian Lingkungan Hidup Akibat Pencemaran dan/atau Kerusakan Lingkungan Hidup*

### Journal

- Siti Sundari Rangkuti, *Penegakan Hukum Lingkungan Administratif di Indonesia*, Pro Justitia Tahun ke XVII Nomor 1, Januari 1999
- Elita Rahmi, *Penegakan Hukum dan Fatwa Haram MUI Terhadap Kebakaran Hutan dan Laban di Indonesia*. Fakultas Hukum Universitas Jambi, 2018