

## PROTECTION OF VICTIMS (COMMUNITY) IN ENVIRONMENTAL DISPUTE SETTLEMENT

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The victim of a crime is the party who is harmed in an event of violation and crime that can cause material and immaterial losses. In principle, the law is obliged to guarantee the fulfillment of the rights of victims, including compensation in the form of rehabilitation, compensation and restitution. At the VII UN Congress in Milan which discussed the problem of victims of crime, which included both victims of violence against people and victims of abuse of power, economic and political power, organized crime, discrimination and exploitation, and paid special attention especially to vulnerable groups of the population. such as children and ethnic minorities and advocating the rights of victims should be seen as an integral part of the overall criminal justice system.[1] Environmental protection and management requires the development of a system integrated in the form of a national policy on environmental protection and management which must be implemented in a consistent manner from the center to the regions.[2]

Protection of victims against environmental violations and crimes is still not maximized. This can be seen for the first time that an act of detention was carried out (in 2020) against one of the main directors of a company whose company polluted the environment after 2009, Law 32/2009 on Environmental Protection and Management came into effect. [3] This raises questions about the seriousness of the government in dealing with environmental problems, both criminal aspects (deterrence) and environmental restoration aspects, including no less important loss of affected communities which also require serious attention from the government as well as criminals. The formulation of the problem in this article is how the aspects of victim protection in the settlement of environmental disputes are based on the current laws and regulations.

In Chapter XIII on Law 32/2009 concerning Settlement of Disputes, Part Two concerning Settlement of Environmental Disputes Outside the Court, Article 85 states:

- (1). *Settlement of environmental disputes out of court is carried out to reach an agreement on:*
  - a. *the form and amount of compensation;*
  - b. *recovery action due to pollution and/or destruction;*
  - c. *certain actions to ensure that pollution and/or destruction will not be repeated; and/or*
  - d. *actions to prevent negative impacts on the environment life.*

- (2). *Settlement of disputes out of court does not apply to environmental crimes as regulated in this Law.*
- (3). *In the settlement of environmental disputes out of court, the services of a mediator and/or arbitrator can be used to help resolve environmental disputes.[4]*

Article 86 reads :

- (1). *The community can form an environmental dispute resolution service provider institution that is free and impartial*
- (2). *The government and local governments can facilitate the establishment of an independent and impartial environmental dispute settlement service provider institution.*
- (3). *Further provisions regarding institutions providing environmental dispute resolution services are regulated by a Government Regulation.[4]*

Dispute resolution arrangements, especially outside the court, basically involve the parties plus a third party, namely mediators and/or arbitrators, but in my opinion, in the case of out-of-court dispute resolution involving corporations and non-governmental organizations or in direct contact with affected community members, it should be able to supervised and under government assistance as an external supervisory element. The role of the government is needed to ensure that the implementation of the resulting provisions can be implemented and can be accounted for based on a study of the environment in the short and long term even though there is already a mediator/arbitrator there.

In resolving disputes using arbitration institutions whose decisions are binding on the parties (Arbitration Award) based on Law 30/1999, the parties agree to the clause of Pactum de Compromittendo, namely a compromise between the parties to override the court's authority to examine and decide cases. The parties must first make an agreement in writing to resolve the dispute using an arbitration institution. The arbitration award is a decision that is final, has permanent legal force and is binding on the disputing parties. Although it is final, the arbitral award may be annulled in accordance with the provisions of Article 70[4], namely the letter/document submitted during the examination after the award is recognized as false; there are documents that are decisive and hidden by one of the parties; decisions are taken from the results of deception. Although in principle the legal force of arbitration decisions in the settlement of environmental disputes is final and has binding legal force (after 30 days from being read out and registered with the District Court), however, I note that there has been no active participation from the government in supervising the implementation of the arbitration up to the execution of the award so as to ensure the implementation of the decision and assistance, especially to the community as victims and opponents. with justice. The role of the government is needed not only as a policy maker in the environmental field,

but also to supervise if an imbalance of interests is found which according to expert judgment will have a broad impact, especially environmental losses and victims.. Furthermore, the author needs to add that apart from mediation[5] and arbitration, in the settlement of disputes outside the environmental courts, it is necessary to add the Alternative Dispute Resolution (ADR) which in Law 30/1999 also regulates it. Alternative dispute resolution is a form of dispute resolution outside the court based on an agreement (consensus) made by the disputing parties, either without or without the assistance of neutral third parties. In Article 1 point 10,[4] alternative dispute resolution is a dispute resolution institution or difference of opinion through a procedure agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation or expert judgment. Dispute resolution through ADR also has several advantages including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial, confidential decisions, flexibility in determining the terms of problem solving, saving time and costs, high possibility to implement agreements. and maintenance of working relationships.

I noted that in the implementation of the provisions in Article 87 of Law 32/2009 concerning Environmental Protection and Management, no article was found that explained in detail the forms of compensation, compensation or restitution for criminal acts of environmental management violations that caused loss of lives. In the explanation of Article 87 paragraph (1):

*The provisions in this paragraph are the realization of the principle in environmental law called the polluter pays principle. In addition to being required to pay compensation, environmental polluters and/or destroyers may also be burdened by judges to take certain legal actions, for example orders to:*

- a. install or repair the waste treatment unit so that the waste complies with the specified environmental quality standards;*
- b. restore environmental functions; and/or*
- c. eliminate or destroy the causes of environmental pollution and/or destruction.*

In Articles 97 to 120 of Law 32/1999 Chapter XV concerning Criminal Provisions, it is regulated regarding individual and corporate criminal responsibility. However, the author still has not found extraordinary efforts by perpetrators of crimes against the environment for the affected victims. In Article 98 paragraph (2) and (3), Article 99 paragraph (2) and Article 112. Article 98 based on the author's summary, only the criminal provisions regarding any person who intentionally commits an act that results in exceeding the ambient air quality standard, quality standard water quality standards, sea water quality standards, or standard criteria for environmental damage and if it results in injury and/or harm to human

health, the person shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of Rp. .000,000,000.00 and a maximum of Rp. 12,000,000,000.00. If the act results in serious injury or death, the person shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 5,000,000,000.00 and a maximum of Rp. 15,000,000,000.00 . Article 99 explains the negligence/culpability of a criminal act as referred to in Article 98, if it results in an injury resulting in injury to a person and/or a danger to human health, the person shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a minimum fine of Rp. 2,000,000,000.00 and a maximum of Rp. 6,000,000,000.00 and if the act as referred to in paragraph (1) results in serious injury or death, the person shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 3 (three) years. 9 (nine) years and a minimum fine of Rp. 3,000,000,000.00 and a maximum of Rp. 9,000,000,000.00. The provisions in Article 112 regarding officials who intentionally do not supervise the compliance of the person in charge of business and/or activity to the laws and regulations and environmental permits as regulated in Articles 71 and 72 which result in environmental pollution and/or damage as well as loss of human life shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah). Several provisions underline that the emphasis on compensation for victims who are felt and received directly by the victim has not been explicitly stated in the article concerning compensation (compensation and restitution) to the victim (community).

The need for a victimization approach to minimize criminal disparities between victims and perpetrators of criminal acts[6], especially the environment. The community is faced with the choice of filing individual lawsuits and class action lawsuits by community groups as well as through environmental organizations as set out in PerMA 1/2002 concerning Group Representation Lawsuit Procedures, with the aim of clarifying the practice of group lawsuits.[7] In fact, the community as victims are still uncertain in making choices and prefer to accept the court's decision and are reluctant to conflict with large investors (companies) so that their rights as citizens who should have the same position in the eyes of the law are neglected. The government, through its legislators, should provide adequate protection and compensation for victims of environmental injustice/violations that have a direct impact on the community.

The need for regulation in clear legislation regarding the responsibilities of actors (individuals and corporations) in the choice of environmental dispute resolution, government participation in supervision

(non-litigation) including compensation for victims (community residents) affected.

**Refferences :**

- [1] Departement of International Economic and Social Affairs United Nation, "Seventh United Nations Congress On The Prevention of Crime and The Treatment of Offenders," Milan, 1985.
- [2] D. M. Risqi, "Penegakan Hukum Lingkungan," *J. Has. Penelit.*, vol. 6, no. 2, pp. 39–44, 2021.
- [3] PPID Kementerian Lingkungan Hidup dan Kehutanan, "PPID | Kementerian Lingkungan Hidup dan Kehutanan | Pertama Kali KLHK Tahan Direktur Utama Perusahaan Pencemar Lingkungan," *PPID Kementerian Lingkungan Hidup dan Kehutanan*, 2020. [http://ppid.menlhk.go.id/siaran\\_pers/browse/2306](http://ppid.menlhk.go.id/siaran_pers/browse/2306) (accessed May 28, 2022).
- [4] DPR RI, *Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*. Indonesia, 2009, p. 110.
- [5] F. C. Simeon and D. P. Wibowo, "Ideliasasi Sifat Alternatif Dalam Penyelesaian Sengketa Melalui Mediasi," *J. Huk. Bisnis Bonum Commune*, vol. 3, no. 28, pp. 253–265, 2020.
- [6] K. L. Kleden, "Pendekatan Viktimologi Meminimalisir Disparitas Pidana," *J. Huk. Magnum Opus*, vol. 2, no. 2, p. 206, 2019, doi: 10.30996/jhmo.v2i2.2611.
- [7] Balitbangdiklatkumdil Mahmakah Agung RI, "Class Action & Citizen Lawsuit," *Balitbangdiklatkumdil Mahmakah Agung RI*, 2019. [https://bldk.mahkamahagung.go.id/id/?option=com\\_content&view=article&id=268:class-action-a-citizen-lawsuit&catid=53&Itemid=56](https://bldk.mahkamahagung.go.id/id/?option=com_content&view=article&id=268:class-action-a-citizen-lawsuit&catid=53&Itemid=56) (accessed May 28, 2022).