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Penulis : Rochmani, Wenny Megawati, Adi Suliantoro, Muhammet Ebuzer Ersoy

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Authors

Name	Rochmani Rochmani
ORCID iD	http://orcid.org/0000-0002-3248-2695
Affiliation	Universitas Stikubank
Country	Indonesia
Bio Statement	—

Principal contact for editorial correspondence.

Name	Wenny Megawati
ORCID iD	http://orcid.org/0009-0006-0993-6202
Affiliation	Universitas Stikubank
Country	Indonesia
Bio Statement	—
Name	Adi Suliantoro

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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

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Keywords	Effective; litigation, environment; non-litigation; settlement; dispute
Abstract	*Activities that cause pollution and/or environmental damage will affect environmental destruction. This can trigger environmental conflicts between initiators, corporations and communities. In environmental resolution, it can be done through litigation or non-litigation (outside the court). The purpose of this research is to study and analyze the model of effective environmental resolution that can support environmental desires. The research method used is normative legal research to find the law for an in-concocreto resolution. The model of environmental rescue resolution through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can make debts, environmental restoration, demands for compensation for polluted and/or damaged environments, can have a deterrent effect on initiators or perpetrators and can remind corporations to avoid environmental destruction and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental rescue through litigation in judicial practice, prosecutors have broader coercive powers, for example, removal, searches, faster executions. The results of the research and innovation are that effective environmental rescue solutions are carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge.*

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Efectiveness of Environmental Dispute Settlement Models Through Litigastion and Non-litigation

Rochmani Rochmani

Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id

Wenny Megawati

Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id

Dyah Listyarini

Universitas Boyolali, Indonesia, E-mail:dyahlistyarini@gmail.com

Fitika Andraini

Universitas Stikubank, Indonesia, E-mail:fitika@edu.unisbank.ac.id

Adi Suliantoro

Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id

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ABSTRACT

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage. This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation (through court) or non-litigation (outside court). The aim of the research is to examine and analyze models for resolving environmental disputes through litigation and non-litigation and to examine and analyze which of the two models of environmental dispute resolution is more effective. The research method used is normative legal research to find the law for an in-concocreto case. The model for resolving environmental disputes through litigation with criminal law instruments which is preceded by an environmental

impact study by a judge is more effective because it can carry out prosecutions, restore the environment, demand compensation for polluted and/or damaged environments, can have a deterrent effect on the initiator and can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice, prosecutors have broader powers of coercion, for example detention, searches, quicker executions. Dispute resolution through litigation not only deters perpetrators who violate it but also directs other people not to commit acts that violate environmental law.

1. INTRODUCTION

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[1] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

1.RESEARCH METHODS

The The type used in this research is normative legal research to find the law for an in-concocreto case. In this research, legal norms contained in statutory regulations are needed as major premises, while relevant facts in the case (legal facts) are used as minor premises. Through the syllogism process, a conclusion will be obtained in the form of the in-concreto positive law that is sought. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed. The research specifications used in this research are descriptive legal research. This research is intended to describe in detail a certain legal phenomenon, namely that many environmental disputes have not been resolved, so it is necessary to use an effective environmental dispute model that can produce ecological justice. The data sources used in this research are: secondary data. Secondary legal materials can come from the scientific work of scholars, journals related to the issues discussed, and research results and data obtained from the Central Java Provincial Environment and Forestry Service, the Ministry of Environment and Forestry, as well as data obtained from in the form of a court decision. The data collection method in this research was carried out by means of literature study. The literature study

[1] Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

in this research revolves around resolving environmental disputes through litigation and through non-litigation. The data analysis technique in this research is using qualitative data analysis. According to Bogdan and Biklen, as quoted by J. Moleong, what is meant by qualitative data analysis are efforts made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what what is important and what was learned, and deciding what to tell others.[2] The data presentation method is presented in the form of descriptions of environmental dispute resolution through litigation and through non-litigation. The data analysis method is carried out using qualitative analysis by testing data and concepts, theories and doctrines as well as laws and regulations related to dispute resolution through litigation and through non-litigation.

2.RESULT AND DISCUSSION

2.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[3]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve environmental disputes.[4]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[5]

ADR (Alternative Disputes Resolution)[6]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and

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[2] M.A. Prof. DR. Lexy J. Moleong, “Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.,” accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[3] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

[4] Kiljamilawati Pangkep, “NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES” 8, no. 1(nd): 2018–2019.

[5] John Richard; Pujiono Lalutihamalo, “IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books,” accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.

[6] Tao He, Lulu Liu, and Manyi Gu, “The Role and Development Trend of Third-Party Mediation in Environmental Disputes,” *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

academics as a way of resolving environmental disputes that is oriented towards environmental justice.[7]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative lawsuits.[8][9]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Republic of Indonesia Minister of Environment Regulation No. 02 of 2013, namely:

1. Written warning;
2. Government Coercion;
3. Suspension of Environmental Permits;
4. Revocation of Environmental Permit.

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[10]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely,

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[7] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.
[8] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).
[9] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.
[10] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.

to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[11]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[12]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

Below is data on environmental law enforcement through administrative instruments:

TABLE 1. Envinronmental Management Monitoring of Business/Activities

Supervision results	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
Number of supervised	17	63	38	57	35	35	32	30	32	17	33
Obedient / change obedient	14	47	28	47	30	15	25	23	26	17	32
Disobedience/proceeding	3	16	12	10	5	20	7	7	6	-	1
Administrative Sanctions issued	10	20	17	20	10	20	25	23	26	17	32

Sources: Central Java Regional Environment and Forestry Service, Rochmani R, 2024 (edited)

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

1. Temporary cessation of production activities.
2. Transfer of production facilities.
3. Closure of waste water or emissions channels.
4. Demolition.
5. Confiscation of goods or tools that have the potential to cause violations.

[11] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).
[12] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

6. Temporary cessation of all production activities.

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[13]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[14]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

[13] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[14] Setiadi.

2.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

1. Normative criteria.
2. Instrument criteria.
3. Opportunitide criteria.

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[15]

The advantages of the environmental dispute resolution model through non-litigation are:

a. The voluntary nature of the process
b. Fast procedure
c. Non-judicial decisions
d. Control by managers who know best about the organization's needs
e. Secret procedures (confidential)
f. Greater flexibility in designing problem-solving requirements
g. Save costs and time
h. Protection and maintenance of employment relationships
i. High probability of implementing the deal
j. Higher levels of control and easier prediction of results
k. Agreements that are better than just compromise or results obtained from a win/lose settlement method.
l. Decisions that last over time[16]

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

a. Political and cultural factors
b. The non-litigation route is not something new
c. The non-litigation route is in line with developing community participation.

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[17][18] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

[15] H.G.; et all van de Bunt, “Strafrechttelijke Handhaving van Mellieurecht” (nd).
[16] Pangkep, “NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES.”
[17] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).
[18] Yuhong Zhao, “Mediation of Environmental Disputes,” *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.

a. The late date is not long.
b. Component costs are not high.
c. The confidentiality of the matter is guaranteed.
d. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[19]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

a. There are still no implementing regulations for this Law regarding dispute resolution outside of court;

b. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;

c. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.

d. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[20]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows:

a. There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement;

b. The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement;

c. Provide complete and correct information to the mediator, and have nothing to hide;

d. Willing to carry out what has been mutually agreed upon.

In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[21]

2.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

1. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.
2. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
3. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[22]

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[23][24]

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

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[19] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

[20] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

[21] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[22] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[23] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[24] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. “Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

“KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[2526]

The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[27]

In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[28]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[29]

2.4. Effective Envinronmental Dispute Resolution Model

[25] Lusia Arumingtyas, “Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id,” accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[26] Lastuti Abubakar and Tri Handayani, “The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice,” *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[27] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

[28] Rochmani Rochmani et al., “Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court,” *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[29] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article 1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured

party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[30]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[3132]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge

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[30] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

[31] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).

[32] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[33]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence.

Settlement of environmental disputes through litigation with criminal sanctions[34]can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environments. In this way, resolving environmental disputes through litigation can be more effective and can produce ecological justice because it can provide sanctions for the initiator (the person responsible for the activities carried out) and pay attention to the environment that is the victim by providing sanctions to restore the damaged and/or polluted environment.

3. CONCLUSION

Administrative environmental law enforcement is also one way of resolving environmental disputes through non-litigation, namely enforcing environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions. The model for resolving environmental disputes through non-litigation with administrative sanctions is a law enforcement that is more in the direction of preventive environmental law

[33] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.
[34] "The Environment of Conflict Mediation and Utilization of Coaching in Korea Korea Association of Mediators Chang Hee WON," 2019.

enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred. With administrative sanctions, there are still many violators who do not comply with administrative sanctions. Administrative sanctions do not have a deterrent effect. The dispute resolution model through litigation, whether using criminal law instruments or using civil instruments, is more effective when compared to non-litigation environmental dispute resolution. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law.

An effective environmental dispute resolution model carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can carry out prosecution, restore the environment, demand compensation for a polluted and/or damaged environment, and can have a deterrent effect for the initiator. and can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice, prosecutors have broader powers of coercion, for example detention, searches, quicker executions. Dispute resolution through litigation not only deters the initiator who violates it but also directs other people not to commit acts that violate the law.

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Efectiveness of Environmental Dispute Settlement Models Through Litigastion and Non-litigation

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Rochmani Rochmani
Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id
Wenny Megawati
Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id
Dyah Listyarini
Universitas Boyolali, Indonesia, E-mail:dyahlistyarini@gmail.com
Fitika Andraini
Universitas Stikubank, Indonesia, E-mail:fitika@edu.unisbank.ac.id
Adi Suliantoro
Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id

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ABSTRACT

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage. This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation (through court) or non-litigation (outside court). The aim of the research is to examine and analyze models for resolving environmental disputes through litigation and non-litigation and to examine and analyze which of the two models of environmental dispute resolution is more effective. The research method used is normative legal research to find the law for an in-concocreto case. The model for resolving environmental disputes through litigation with criminal law instruments which is preceded by an environmental impact study by a judge is more effective because it can carry out prosecutions, restore the environment, demand compensation for polluted and/or damaged environments, can have a deterrent effect on the initiator and can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice, prosecutors have broader powers of coercion, for example detention, searches, quicker executions. Dispute resolution through litigation not only deters perpetrators who violate it but also directs other people not to commit acts that violate environmental law.

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1. INTRODUCTION

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This

can cause harm to people or the environment itself which experiences pollution and/or environmental damage.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[1] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

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1. RESEARCH METHODS

The The type used in this research is normative legal research to find the law for an in-concocreto case. In this research, legal norms contained in statutory regulations are needed as major premises, while relevant facts in the case (legal facts) are used as minor premises. Through the syllogism process, a conclusion will be obtained in the form of the in-concreto positive law that is sought. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed. The research specifications used in this research are descriptive legal research. This research is intended to describe in detail a certain legal phenomenon, namely that many environmental disputes have not been resolved, so it is necessary to use an effective environmental dispute model that can produce ecological justice. The data sources used in this research are: secondary data. Secondary legal materials can come from the scientific work of scholars, journals related to the issues discussed, and research results and data obtained from the Central Java Provincial Environment and Forestry Service, the Ministry of Environment and Forestry, as well as data obtained from in the form of a court decision. The data collection method in this research was carried out by means of literature study. The literature study in this research revolves around resolving environmental disputes through litigation and through non-litigation. The data analysis technique in this research is using qualitative data analysis. According to Bogdan and Biklen, as quoted by J. Moleong, what is meant by qualitative data analysis are efforts made by working with data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding what what is important and what was learned, and deciding what to tell others.[2] The data presentation method is presented in the form of descriptions of environmental dispute resolution through litigation and through non-litigation. The data analysis method is carried out using qualitative analysis by testing data and concepts, theories and doctrines as well as laws and regulations related to dispute resolution through litigation and through non-litigation.

2. RESULT AND DISCUSSION

2.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

[1] Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

[2] M.A. Prof. DR. Lexy J. Moleong, "Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.," accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

Settlement of environmental disputes through non-litigation[3]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve environmental disputes.[4]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[5]

ADR (Alternative Disputes Resolution)[6]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[7]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative lawsuits.[8][9]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Republic of Indonesia Minister of Environment Regulation No. 02 of 2013, namely:

1. Written warning;

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[3] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.
[4] Kiljamilawati Pangkep, "NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES" 8, no. 1(nd): 2018–2019.
[5] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.
[6] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.
[7] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.
[8] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).
[9] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.

2. Government Coercion;

3. Suspension of Environmental Permits;

4. Revocation of Environmental Permit.

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[10]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[11]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[12]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

Below is data on environmental law enforcement through administrative instruments:

TABLE 1. Envinronmental Management Monitoring of Business/Activities

Supervision results	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
Number of supervised	17	63	38	57	35	35	32	30	32	17	33
Obedient / change obedient	14	47	28	47	30	15	25	23	26	17	32
Disobedience/proceeding	3	16	12	10	5	20	7	7	6	-	1
Administrative Sanctions issued	10	20	17	20	10	20	25	23	26	17	32

[10] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.
[11] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).
[12] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

Sources: Central Java Regional Environment and Forestry Service, Rochmani R, 2024 (edited)

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

1. Temporary cessation of production activities.
2. Transfer of production facilities.
3. Closure of waste water or emissions channels.
4. Demolition.
5. Confiscation of goods or tools that have the potential to cause violations.
6. Temporary cessation of all production activities.

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[13]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[14]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of

[13] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[14] Setiadi.

2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

2.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

1. Normative criteria.
2. Instrument criteria.
3. Opportunitide criteria.

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[15]

The advantages of the environmental dispute resolution model through non-litigation are:

a. The voluntary nature of the process
b. Fast procedure
c. Non-judicial decisions
d. Control by managers who know best about the organization's needs
e. Secret procedures (confidential)
f. Greater flexibility in designing problem-solving requirements
g. Save costs and time
h. Protection and maintenance of employment relationships
i. High probability of implementing the deal
j. Higher levels of control and easier prediction of results
k. Agreements that are better than just compromise or results obtained from a win/lose settlement method.
l. Decisions that last over time[16]

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

a. Political and cultural factors
b. The non-litigation route is not something new
c. The non-litigation route is in line with developing community participation.

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

[15] H.G.; et all van de Bunt, "Strafrechttelijke Handhaving van Mellieurecht" (nd).
[16] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[1718] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

a. The late date is not long.
b. Component costs are not high.
c. The confidentiality of the matter is guaranteed.
d. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[19]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

a. There are still no implementing regulations for this Law regarding dispute resolution outside of court;
b. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;
c. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.
d. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[20]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows:

a. There is an agreement between both parties to resolve disputes outside the court, either in

[17] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).
[18] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.
[19] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."
[20] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

written form or verbal agreement;

b. The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement;
c. Provide complete and correct information to the mediator, and have nothing to hide;
d. Willing to carry out what has been mutually agreed upon.

In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[21]

2.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

1. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.
2. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
3. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[22]

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[23][24]

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's

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[21] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[22] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[23] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[24] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. "Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

"KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[25][26]

The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[27]

In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[28]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[29]

2.4. Effective Envinronmental Dispute Resolution Model

When selecting instruments to resolve environmental cases, it is necessary to pay attention

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[25] Lusia Arumingtyas, "Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[26] Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[27] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

[28] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[29] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article 1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search,

faster execution, and so on.[30]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[31][32]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting

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[30] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

[31] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).

[32] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[33]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence.

Settlement of environmental disputes through litigation with criminal sanctions[34]can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environments. In this way, resolving environmental disputes through litigation can be more effective and can produce ecological justice because it can provide sanctions for the initiator (the person responsible for the activities carried out) and pay attention to the environment that is the victim by providing sanctions to restore the damaged and/or polluted environment.

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[33] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.
[34] "The Environment of Conflict Mediation and Utilization of Coaching in Korea Korea Association of Mediators Chang Hee WON," 2019.

3. CONCLUSION

Administrative environmental law enforcement is also one way of resolving environmental disputes through non-litigation, namely enforcing environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions. The model for resolving environmental disputes through non-litigation with administrative sanctions is a law enforcement that is more in the direction of preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred. With administrative sanctions, there are still many violators who do not comply with administrative sanctions. Administrative sanctions do not have a deterrent effect. The dispute resolution model through litigation, whether using criminal law instruments or using civil instruments, is more effective when compared to non-litigation environmental dispute resolution. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law.

An effective environmental dispute resolution model carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can carry out prosecution, restore the environment, demand compensation for a polluted and/or damaged environment, and can have a deterrent effect for the initiator. and can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice, prosecutors have broader powers of coercion, for example detention, searches, quicker executions. Dispute resolution through litigation not only deters the initiator who violates it but also directs other people not to commit acts that violate the law.

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3. Bukti Konfirmasi Submit Revisi, Respon kepada Reviewer, dan Artikel yang Diresubmit (06 Mei 2025)

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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

Rochmani Rochmani

Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id

Wenny Megawati

Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id

Adi Suliantoro

Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id

Muhammet Ebuzer Ersoy

Faculty of Law, Istanbul University, Turki,ebuzer_ersoy@hotmail.com

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ABSTRACT

Human activities that cause environmental pollution and/or damage will affect environmental sustainability. This can trigger environmental disputes between initiators, corporations and communities. In resolving environmental disputes, it can be done through litigation (through the courts) or non-litigation (outside the courts). The purpose of this research is to study and analyze an effective environmental dispute resolution model that can support environmental sustainability. The research method used is normative legal research to find the law for an in-concocreto dispute. The environmental dispute resolution model through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can carry out prosecution, environmental restoration, demands for compensation for polluted and/or damaged environments, can have a deterrent effect on initiators or perpetrators and can remind corporations to avoid environmental destruction and/or damage in

their industrial businesses. Effectiveness of Criminal Law Instruments in Resolving Environmental Disputes Through Litigation In judicial practice, prosecutors have broader coercive powers, such as detention, searches, faster executions. The results of research and innovation are that effective environmental dispute resolution is carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge.

1. INTRODUCTION

Sustainability according to the Explanation of Article 2 letter b, Law No. 32 of 2009 concerning Environmental Protection and Management is that every person bears obligations and responsibilities towards future generations and towards fellow human beings in one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the environment.

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not damaged either physically or the social system that supports it.[35] The meaning of sustainability here is that the environment remains in good condition that can be utilized by the current generation and future generations. Good environmental conditions do not experience physical damage and there is community participation to participate in managing the environment. According to Huey D. Johnson, sustainability is not an activity plan but a philosophical statement, a way of thinking about how humans relate to nature. In environmental sustainability, there is a continuous relationship between humans and nature.[36] This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment. Thus, society in developing the economy is expected to be oriented towards environmental sustainability, so that it does not cause pollution and/or damage to the environment and the environment can still be used according to its intended use by the current generation and future generations.[37] The principle of sustainability requires designing an agenda in resolving environmental disputes with a long-term visionary dimension, to resolve environmental disputes based on the environment. This principle is in line with the fact that the environment has a long-term dimension. Thus, in resolving environmental disputes, it also has a long-

[35] Donella H Meadows, Dennis L Meadows, Jorgen, Randers, 1992, Beyond Global Collapse the or A Sustainable Future Limits, Earthscan Publications Limeted, London, H. 209

[36] Huey D. Johnson, Tanpa Tahun, Green Plans, Greenprint for Sustainability, Universiyy of Nebraska Lincoln and London, H.29

[37] Bhatti, S. H., Saleem, F., Murtaza, G., & Haq, T. U. (2022). Exploring the impact of green human resource management on environmental performance: the roles of perceived organizational support and innovative environmental behavior. International Journal of Manpower, 43(3), 742-762.

term dimension. Resolving environmental disputes with a long-term dimension is resolving environmental disputes that are oriented towards environmental sustainability. In resolving environmental disputes, it is necessary to pay attention to the consequences that will arise from human activities. The activities referred to here are activities that may cause pollution and/or damage to the environment. Resolving environmental disputes with a long-term dimension is not only for resolving current environmental disputes, but is also beneficial for the future. This is because the environment is not only for the current generation, but also for future generations.

The principle of sustainability also requires choosing alternatives in resolving environmental disputes based on the environment. This environment-based environmental dispute resolution does not only resolve disputes between the parties as victims and other parties who cause victims, but also considers the community that will be affected by environmental damage and the environment itself. This principle of sustainability implies that every person (Indonesia) has an obligation to preserve the capacity of the environment and also to support the principle of justice between generations. The principle of environmental sustainability requires the responsibility of every person in one generation to preserve the capacity of the environment as an effort to meet the needs and justice of both the current and future generations. An idealism that should remain focused and abstracted into the reality of environmental management in Indonesia.[38]

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.[39]

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[40] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

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[38] Syamsuharya Bethan, 2008, Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional, Sebuah Upaya Penyelamatan Lingkungan Hidup dan Kehidupan Antar Generasi, Alumni, Bandung, H. 129

[39] Khan, M. R., Khan, H. U. R., Lim, C. K., Tan, K. L., & Ahmed, M. F. (2021). Sustainable tourism policy, destination management and sustainable tourism development: A moderated-mediation model. Sustainability, 13(21), 12156

[40] Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

Judges are law enforcers who play the most important role in deciding a dispute, including environmental disputes. In their decisions, judges must pay attention to and integrate environmental sustainability to achieve ecological justice. If in court the judge has not paid attention to and integrated environmental sustainability in deciding an environmental dispute, it will be a weakness that will ultimately not result in ecological justice. This also has the potential to make environmental dispute resolution in court ineffective and not support environmental sustainability and there is no bias towards those who suffer the most if environmental pollution and/or damage occurs, namely the environment itself.

This study aims to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. Ideally, in resolving environmental disputes, an effective environmental dispute resolution method is needed that supports environmental sustainability.

4.RESEARCH METHODS

The approach in the study uses normative legal research to find the law for an in-concocreto dispute. In this study, legal norms contained in laws and regulations are required as major premises, while relevant facts in the dispute (legal facht) are used as minor premises. Through the syllogism process, a conclusio (conclusion) will be obtained in the form of the sought-after positive law in-concreto. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed that supports environmental sustainability. The research specification used in this study is descriptive legal research. The data analysis technique in this study uses qualitative data analysis.[41]

5.RESULT AND DISCUSSION

5.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[42]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve

[41] M.A. Prof. DR. Lexy J. Moleong, “Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.,” accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[42] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

environmental disputes.[43]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[44]

ADR (Alternative Disputes Resolution)[4546]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[47]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative lawsuits.[4849]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Regulation of the Minister of Environment of the Republic of Indonesia No. 02 of 2013, namely:

1. Written warning; a form of disciplinary sanction given to someone who violates the regulations.

2. Government Coercion; real actions taken by the government or on behalf of the government.

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[43] Kiljamilawati Pangkep, "NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES" 8, no. 1(nd): 2018–2019.

[44] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.

[45] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

[46] Hapsari, D. R. I., Ilmiawan, A. A. S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. Indonesia Law Reform Journal, 2(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

[47] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.

[48] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).

[49] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.

3. Suspension of Environmental Permit; an administrative sanction in the form of legal action to temporarily not enforce an environmental permit.

4. Revocation of Environmental Permit; legal action that can be taken by the government against a business or activity if it violates the provisions of the applicable environmental permit.

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[50]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[51]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[52]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a

[50] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.
[51] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).
[52] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

1. Temporary cessation of production activities. Temporary cessation of production activities is an action that requires a company to temporarily stop all or part of the production of goods and services for a certain period of time.

2. Transfer of production facilities. Transfer of production facilities is an action to move various facilities, equipment, and infrastructure used in the production process from one location to another.

3. Closing of wastewater or emission channels. Closing of wastewater or emission channels is a sanction or action that can be taken by the government to stop violations related to waste or emission discharges that are not in accordance with regulations. This includes closing drains used to dispose of wastewater or emissions without permission or in a manner that is harmful to the environment.

4. Demolition. Demolition, in the context of construction, is the activity of dismantling or demolishing part or all of a building, including components, building materials, and related infrastructure. This can be done for various reasons, such as new construction, repairs, or maintenance.

5. Confiscation of goods or equipment that have the potential to cause violations. Confiscation of goods or equipment that have the potential to cause violations is a form of administrative sanction of government coercion used to stop violations and restore the original state. This aims to prevent negative impacts from the violation, for example on the environment or public health.

6. Temporary cessation of all production activities. Temporary cessation of all production activities can mean the temporary closure of a factory or production facility for a certain period of time. This can be an administrative sanction imposed on entrepreneurs who violate the provisions. In addition, temporary cessation can also occur in the context of maintenance, repairs, or system improvements in the factory.

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's

duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[53]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[54]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

[53] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[54] Setiadi.

5.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

a. Normative criteria

Normative criteria are standards or rules used to assess or evaluate something, usually based on values or standards that are considered ideal or correct. These criteria can be used in various contexts, ranging from individual performance evaluations, legal analysis.

b. Instrument criteria

Instrument characteristics refer to characteristics that determine the quality and performance of an instrument in measuring or collecting data. These characteristics determine how well the instrument can provide valid and reliable results.

c. Opportunity criteria

Positive factors that arise from the environment that can be used by judges in considering their decisions

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[55]

The advantages of the environmental dispute resolution model through non-litigation are voluntary nature of the process, fast procedures, non-judicial decisions, control by managers who know the organization's needs best, confidential procedures, greater flexibility in designing the terms of problem resolution, cost and time savings, protection and maintenance of work relationships, high possibility of implementing agreements, higher level of control and easier to predict results, better agreements than just compromise or results obtained from win/lose settlement methods, decisions that last over time.[56]

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

a. Political and cultural factors. Political culture refers to the values, attitudes, and behavior of society in a political context, which can be influenced by various cultural factors such as social norms, traditions, and inherited values

b. Non-litigation channels are not new. Dispute resolution outside the court (non-litigation) or what is known as Alternative Dispute Resolution (ADR/APS) has been known for a long time, through the tradition of deliberation and consensus in Indonesian culture.

c. Non-litigation channels are in line with the development of community participation, this shows that dispute resolution outside the court (non-litigation) supports increased community participation in problem solving. This is because non-litigation processes are often more flexible, easily accessible, and allow the parties involved to be more active in finding solutions.

[55] H.G.; et all van de Bunt, “Strafrechttelijke Handhaving van Mellieurecht” (nd).
[56] Pangkep, “NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES.”

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[5758] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

e. The late date is not long.
f. Component costs are not high.
g. The confidentiality of the matter is guaranteed.
h. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[59]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

e. There are still no implementing regulations for this Law regarding dispute resolution outside of court;

f. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;

g. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.

h. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

[57] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[60]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows, There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement, The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement, Provide complete and correct information to the mediator, and have nothing to hide, Willing to carry out what has been mutually agreed upon, In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[61]

5.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

4. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.
5. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
6. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[62]

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[6364]

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[58] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.

[59] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

[60] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

[61] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[62] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[63] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[64] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. “Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

“KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes

to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[6566]

The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[67]

In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[68]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[69]

2.4 Effective Environmental Dispute Resolution Model that Supports Environmental Sustainability

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article

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[65] Lusia Arumingtyas, "Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[66] Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[67] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

[68] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[69] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[70]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits

[70] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[7172]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact

[71] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).
[72] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[73]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence.

Settlement of environmental disputes through litigation with criminal sanctions[74]can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environments. In this way, resolving environmental disputes through litigation can be more effective and can produce ecological justice because it can provide sanctions for the initiator (the person responsible for the activities carried out) and pay attention to the environment that is the victim by providing sanctions to restore the damaged and/or polluted environment. With sanctions to restore the polluted and/or damaged environment, this means that the solution supports environmental sustainability.

6. CONCLUSION

The purpose of this study is to examine and analyze an effective environmental dispute resolution model that supports environmental sustainability. An effective environmental dispute resolution model is carried out through litigation with criminal law instruments preceded by an environmental impact assessment by a judge. With this model, prosecution, environmental restoration, compensation claims for polluted and/or damaged environments can be carried out and can have a deterrent effect on initiators or perpetrators, and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice; prosecutors have broader coercive powers, for example detention, searches, faster executions. Dispute resolution through litigation not only deters initiators or perpetrators who cause environmental pollution and/or damage, but is also intended to prevent others from committing acts that violate environmental law.

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[73] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.

[74] "The Environment of Conflict Mediation and Utilization of Coaching in Korea Korea Association of Mediators Chang Hee WON," 2019.

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4. Bukti konfirmasi review dan Respon kepada Reviewer B (19 Mei 2025)

#39404 Review

SUMMARY | REVIEW | EDITING | HISTORY | REFERENCES

Submission

Authors: Rochmani Rochmani, Wenny Megawati, Adi Suliantoro, Muhammet Ebuzer Ersoy
Title: An Effective Environmental Dispute Resolution Model That Supports Environmental Sustainability
Section: Articles
Editor: Ong Victoria
Review Version: 39404-89074-1-RV.DOCX 2024-08-14 ENSURING A BLIND REVIEW
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Peer Review — Round 1

SELECT REVIEWER | VIEW REGRETS, CANCELS, PREVIOUS ROUNDS

Reviewer A — Mauro Zamboni

Review Form: None / Free Form Review

REQUEST	UNDERWAY	DUE	ACKNOWLEDGE
2025-04-11	2025-04-11	2025-05-09	

Recommendation: Revisions Required 2025-04-30
Review: 2025-04-30
Uploaded files: 39404-103046-1-RV.DOCX 2025-04-30 Let author view file ☑ Record

Reviewer B — Wahyu Jafar

Review Form: None / Free Form Review

REQUEST	UNDERWAY	DUE	ACKNOWLEDGE
2025-04-11	2025-04-11	2025-05-09	

Recommendation: Accept Submission 2025-05-19
Review: No Comments
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Reviewer C — Rousseau Napitu

CANCEL REQUEST

Review Form: None / Free Form Review SELECT REVIEW FORM

REQUEST	UNDERWAY	DUE	ACKNOWLEDGE
2025-04-11	—	2025-05-09	

Editor To Enter: WILL DO THE REVIEW | UNABLE TO DO THE REVIEW
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Decision: Revisions Required 2025-04-11 | Accept Submission 2025-05-28
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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

Rochmani Rochmani
Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id
Wenny Megawati
Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id
Adi Suliantoro
Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id
Muhammet Ebuzer Ersoy
Faculty of Law, Istanbul University, Turki,ebuzer_ersoy@hotmail.com

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ABSTRACT

Human activities that cause environmental pollution and/or damage will affect environmental sustainability. This can trigger environmental disputes between initiators, corporations and communities. In resolving environmental disputes, it can be done through litigation (through the courts) or non-litigation (outside the courts). The purpose of this research is to study and analyze an effective environmental dispute resolution model that can support environmental sustainability. The research method used is normative legal research to find the law for an in-concocreto dispute. The environmental dispute resolution model through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can carry out prosecution, environmental restoration, demands for compensation for polluted and/or damaged environments, can have a deterrent effect on initiators or perpetrators and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. Effectiveness of Criminal Law Instruments in Resolving Environmental Disputes Through Litigation In judicial practice, prosecutors have broader coercive powers, such as detention, searches, faster executions. The results of research and innovation are that effective environmental dispute resolution is carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge.

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1. INTRODUCTION

Sustainability according to the Explanation of Article 2 letter b, Law No. 32 of 2009 concerning Environmental Protection and Management is that every person bears obligations and responsibilities towards future generations and towards fellow human beings in one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the environment.

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not damaged either physically or the social system that supports it.[1] The meaning of sustainability here is that the environment remains in good condition that can be utilized by the current generation and future generations. Good environmental conditions do not experience physical damage and there is community participation to participate in managing the environment. According to Huey D. Johnson, sustainability is not an activity plan but a philosophical statement, a way of thinking about how humans relate to nature. In environmental sustainability, there is a continuous relationship between humans and nature.[2] This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment. Thus, society in developing the economy is expected to be oriented towards environmental sustainability, so that it does not cause pollution and/or damage to the environment and the environment can still be used according to its intended use by the current generation and future generations.[3] The principle of sustainability requires designing an agenda in resolving environmental disputes with a long-term visionary dimension, to resolve environmental disputes based on the environment. This principle is in line with the fact that the environment has a long-term dimension. Thus, in resolving environmental disputes, it also has a long-term dimension. Resolving environmental disputes with a long-term dimension is resolving environmental disputes that are oriented towards environmental sustainability. In resolving environmental disputes, it is necessary to pay attention to the consequences that will arise from human activities. The activities referred to here are activities that may cause pollution and/or damage to the environment. Resolving environmental disputes with a long-term dimension is not only for resolving current environmental disputes, but is also beneficial for the future. This is because the environment is not only for the current generation, but also for future generations.

The principle of sustainability also requires choosing alternatives in resolving environmental disputes based on the environment. This environment-based environmental dispute resolution does not only resolve disputes between the parties as victims and other parties who cause victims, but also considers the community that will be affected by environmental damage and the environment itself. This principle of sustainability implies that every person (Indonesia) has an obligation to preserve the capacity of the environment and also to support the principle of justice between generations. The principle of environmental sustainability requires the responsibility of every person in one generation to preserve the capacity of the environment as an effort to meet the needs and justice of both the current and future

[1] Donella H Meadows, Dennis L Meadows, Jorgen, Randers, 1992, Beyond Global Collapse the or A Sustainable Future Limits, Earthscan Publications Limeted, London, H. 209

[2] Huey D. Johnson, Tanpa Tahun, Green Plans, Greenprint for Sustainability, Universiyy of Nebraska Lincoln and London, H.29

[3] Bhatti, S. H., Saleem, F., Murtaza, G., & Haq, T. U. (2022). Exploring the impact of green human resource management on environmental performance: the roles of perceived organizational support and innovative environmental behavior. International Journal of Manpower, 43(3), 742-762.

generations. An idealism that should remain focused and abstracted into the reality of environmental management in Indonesia.[4]

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.[5]

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[6] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

Judges are law enforcers who play the most important role in deciding a dispute, including environmental disputes. In their decisions, judges must pay attention to and integrate environmental sustainability to achieve ecological justice. If in court the judge has not paid attention to and integrated environmental sustainability in deciding an environmental dispute, it will be a weakness that will ultimately not result in ecological justice. This also has the potential to make environmental dispute resolution in court ineffective and not support environmental sustainability and there is no bias towards those who suffer the most if environmental pollution and/or damage occurs, namely the environment itself.

This study aims to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. Ideally, in resolving environmental disputes, an effective environmental dispute resolution method is needed that supports environmental sustainability.

1. RESEARCH METHODS

The approach in the study uses normative legal research to find the law for an in-concocreto dispute. In this study, legal norms contained in laws and regulations are required as major premises, while relevant facts in the dispute (legal facht) are used as minor premises. Through the syllogism process, a conclusio (conclusion) will be obtained in the form of the sought-after positive law in-concreto. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective

[4] Syamsuharya Bethan, 2008, Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional, Sebuah Upaya Penyelamatan Lingkungan Hidup dan Kehidupan Antar Generasi, Alumni, Bandung, H. 129

[5] Khan, M. R., Khan, H. U. R., Lim, C. K., Tan, K. L., & Ahmed, M. F. (2021). Sustainable tourism policy, destination management and sustainable tourism development: A moderated-mediation model. Sustainability, 13(21), 12156

[6] Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

environmental dispute resolution model is needed that supports environmental sustainability. The research specification used in this study is descriptive legal research. The data analysis technique in this study uses qualitative data analysis.[7]

2. RESULT AND DISCUSSION

2.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[8]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve environmental disputes.[9]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[10]

ADR (Alternative Disputes Resolution)[1112]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[13]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative lawsuits.[1415]

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[7] M.A. Prof. DR. Lexy J. Moleong, "Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.," accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[8] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

[9] Kiljamilawati Pangkep, "NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES" 8, no. 1(nd): 2018–2019.

[10] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.

[11] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

[12] Hapsari, D. R. I., Ilmiawan, A. A. S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. Indonesia Law Reform Journal, 2(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

[13] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.

[14] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).

[15] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Regulation of the Minister of Environment of the Republic of Indonesia No. 02 of 2013, namely:

1. Written warning; a form of disciplinary sanction given to someone who violates the regulations.
2. Government Coercion; real actions taken by the government or on behalf of the government.
3. Suspension of Environmental Permit; an administrative sanction in the form of legal action to temporarily not enforce an environmental permit.
4. Revocation of Environmental Permit; legal action that can be taken by the government against a business or activity if it violates the provisions of the applicable environmental permit.

Commented [adm2]: describe the existing criminal sanctions according to their intended use

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[16]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[17]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[18]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

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[16] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.
[17] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).
[18] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

1. Temporary cessation of production activities. Temporary cessation of production activities is an action that requires a company to temporarily stop all or part of the production of goods and services for a certain period of time.
2. Transfer of production facilities. Transfer of production facilities is an action to move various facilities, equipment, and infrastructure used in the production process from one location to another.
3. Closing of wastewater or emission channels. Closing of wastewater or emission channels is a sanction or action that can be taken by the government to stop violations related to waste or emission discharges that are not in accordance with regulations. This includes closing drains used to dispose of wastewater or emissions without permission or in a manner that is harmful to the environment.
4. Demolition. Demolition, in the context of construction, is the activity of dismantling or demolishing part or all of a building, including components, building materials, and related infrastructure. This can be done for various reasons, such as new construction, repairs, or maintenance.
5. Confiscation of goods or equipment that have the potential to cause violations. Confiscation of goods or equipment that have the potential to cause violations is a form of administrative sanction of government coercion used to stop violations and restore the original state. This aims to prevent negative impacts from the violation, for example on the environment or public health.
6. Temporary cessation of all production activities. Temporary cessation of all production activities can mean the temporary closure of a factory or production facility for a certain period of time. This can be an administrative sanction imposed on entrepreneurs who violate the provisions. In addition, temporary cessation can also occur in the context of maintenance, repairs, or system improvements in the factory.

Commented [adm3]: describe the existing criminal sanctions according to their intended use

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete

actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[19]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[20]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

2.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

a. Normative criteria

   Normative criteria are standards or rules used to assess or evaluate something, usually based on values or standards that are considered ideal or correct. These criteria can be used in various contexts, ranging from individual performance evaluations, legal analysis.

b. Instrument criteria

   Instrument characteristics refer to characteristics that determine the quality and performance of an instrument in measuring or collecting data. These characteristics determine how well the instrument can provide valid and reliable results.

c. Opportunity criteria

   Positive factors that arise from the environment that can be used by judges in considering their decisions

Commented [adm4]: describe the existing criminal sanctions according to their intended use

Normative criteria are based on the view that criminal law is only applied to violations that

[19] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[20] Setiadi.

have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[21]

The advantages of the environmental dispute resolution model through non-litigation are voluntary nature of the process, fast procedures, non-judicial decisions, control by managers who know the organization's needs best, confidential procedures, greater flexibility in designing the terms of problem resolution, cost and time savings, protection and maintenance of work relationships, high possibility of implementing agreements, higher level of control and easier to predict results, better agreements than just compromise or results obtained from win/lose settlement methods, decisions that last over time.[22]

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

a. Political and cultural factors. Political culture refers to the values, attitudes, and behavior of society in a political context, which can be influenced by various cultural factors such as social norms, traditions, and inherited values
b. Non-litigation channels are not new. Dispute resolution outside the court (non-litigation) or what is known as Alternative Dispute Resolution (ADR/APS) has been known for a long time, through the tradition of deliberation and consensus in Indonesian culture.
c. Non-litigation channels are in line with the development of community participation, this shows that dispute resolution outside the court (non-litigation) supports increased community participation in problem solving. This is because non-litigation processes are often more flexible, easily accessible, and allow the parties involved to be more active in finding solutions.

Commented [adm5]: describe the existing criminal sanctions according to their intended use

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[2324] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

a. The late date is not long.
b. Component costs are not high.
c. The confidentiality of the matter is guaranteed.
d. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is

[21] H.G.; et all van de Bunt, "Strafrechttelijke Handhaving van Mellieurecht" (nd).
[22] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."
[23] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).
[24] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.

consensus deliberation.[25]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

a. There are still no implementing regulations for this Law regarding dispute resolution outside of court;
b. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;
c. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.
d. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[26]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows, There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement, The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement, Provide complete and correct information to the mediator, and have nothing to hide, Willing to carry out what has been mutually agreed upon, In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[27]

Commented [adm6]: describe the existing criminal sanctions according to their intended use

2.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

1. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.

[25] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."
[26] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).
[27] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

2. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
3. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[28]

Commented [adm7]: describe the existing criminal sanctions according to their intended use

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[29][30]

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. “Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either

[28] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[29] Rochmani, “Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup,” *Bina Hukum Lingkungan* 4, no. 2 (2020).

[30] Oliver C. Ruppel and Larissa Jane H. Houston, “The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections,” *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

through civil or criminal proceedings.
"KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[3132]
The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[33]
In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[34]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[35]

2.4 Effective Environmental Dispute Resolution Model that Supports Environmental Sustainability

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article 1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which

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[31] Lusia Arumingtyas, "Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.
[32] Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.
[33] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).
[34] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.
[35] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[36]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the

[36] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

equipment they need. borne by the state.[37][38]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The

[37] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).
[38] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

environment itself actually also has the right to be protected and restored from damage and/or pollution.[39]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence.

Settlement of environmental disputes through litigation with criminal sanctions[40]can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environments. In this way, resolving environmental disputes through litigation can be more effective and can produce ecological justice because it can provide sanctions for the initiator (the person responsible for the activities carried out) and pay attention to the environment that is the victim by providing sanctions to restore the damaged and/or polluted environment. With sanctions to restore the polluted and/or damaged environment, this means that the solution supports environmental sustainability.

Commented [adm8]: types of sanctions to restore polluted and/or damaged environments and their benefits

[39] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.
[40] "The Environment of Conflict Mediation and Utilization of Coaching in Korea Korea Association of Mediators Chang Hee WON," 2019.

3. CONCLUSION

The purpose of this study is to examine and analyze an effective environmental dispute resolution model that supports environmental sustainability. An effective environmental dispute resolution model is carried out through litigation with criminal law instruments preceded by an environmental impact assessment by a judge. With this model, prosecution, environmental restoration, compensation claims for polluted and/or damaged environments can be carried out and can have a deterrent effect on initiators or perpetrators, and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice; prosecutors have broader coercive powers, for example detention, searches, faster executions. Dispute resolution through litigation not only deters initiators or perpetrators who cause environmental pollution and/or damage, but is also intended to prevent others from committing acts that violate environmental law.

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5. Bukti Konfirmasi Submit Revisi, dan Artikel yang Diresubmit

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#39404 Review

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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

Rochmani Rochmani
Universitas Stikubank, Indonesia, Email: rochmani@edu.unisbank.ac.id
Wenny Megawati
Universitas Stikubank, Indonesia, Email: wennymegawati@edu.unisbank.ac.id
Adi Suliantoro
Universitas Stikubank, Indonesia, Email: adisuliantoro@edu.unisbank.ac.id
Muhammet Ebuzer Ersoy
Faculty of Law, Istanbul University, Turki Email:ebuzer_ersoy@hotmail.com

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ABSTRACT

In resolving environmental disputes, it can be done through litigation or non-litigation. The purpose of this study is to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. The research method used is normative legal research to find the law for in-concocreto disputes. The environmental dispute resolution model through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can carry out prosecution, environmental restoration. Effectiveness of Criminal Law Instruments in Resolving Environmental Disputes Through Litigation In judicial practice, prosecutors have broader coercive powers, such as detention, searches, faster executions. The results of research and innovation are effective environmental dispute resolution carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge.

1. INTRODUCTION

Sustainability according to the Explanation of Article 2 letter b, Law No. 32 of 2009 concerning Environmental Protection and Management is that every person bears obligations and responsibilities towards future generations and towards fellow human beings in one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the

environment.[75]

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.[76]

Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not damaged either physically or the social system that supports it.[77] The meaning of sustainability here is that the environment remains in good condition that can be utilized by the current generation and future generations. Good environmental conditions do not experience physical damage and there is community participation to participate in managing the environment. According to Huey D. Johnson, sustainability is not an activity plan but a philosophical statement, a way of thinking about how humans relate to nature. In environmental sustainability, there is a continuous relationship between humans and nature.[78]

This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment.[79] Thus, society in developing the economy is expected to be oriented towards environmental sustainability, so that it does not cause pollution and/or damage to the environment and the environment can still be used according to its intended use by the current generation and future generations.[80] The principle of sustainability requires designing an agenda in resolving environmental disputes with a long-term visionary dimension, to resolve environmental disputes based on the environment. This principle is in line with the fact that the environment has a long-term dimension. Thus, in resolving environmental disputes, it also has a long-term dimension. Resolving environmental disputes with a long-term dimension is resolving environmental disputes that are oriented towards environmental sustainability. In resolving environmental disputes, it is necessary to pay attention to the consequences that will arise from human activities. The activities referred to here are activities that may cause pollution and/or damage to the environment. Resolving environmental disputes with a long-term dimension is not only for resolving current environmental disputes, but is also beneficial for the future. This is because the environment is not only for the current generation, but also for future generations.

The principle of sustainability also requires choosing alternatives in resolving environmental disputes based on the environment.[81] This environment-based environmental dispute resolution does not only resolve disputes between the parties as victims and other parties who cause victims, but also considers the community that will be affected by environmental damage and the environment itself. This principle of sustainability implies that every person (Indonesia) has an obligation to preserve the capacity of the environment and also to support the principle of justice between generations. The principle of environmental sustainability requires the

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[75] Hernanda, Trias, and Urip Giyono. (2022), Environmental legal protection of rivers in the perspective of sustainable development. *Jurnal Jurisprudence* 11. no. 1, 100-113.

[76] Jazuli, Ahmad. (2015), Dinamika hukum lingkungan hidup dan sumber daya alam dalam rangka pembangunan berkelanjutan. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4. no. 2, 181-197.

[77] Donella H Meadows, Dennis L Meadows, Jorgen, Randers, 1992, Beyond Global Collapse the or a Sustainable Future Limits, Earthscan Publications Limeted, London, page.209

[78] Huey D. Johnson, Tanpa Tahun, Green Plans, Greenprint for Sustainability, Universiyy of Nebraska Lincoln and London, H.29

[79] Rastegar, Fatemeh Motamed, Farzaneh Hassani, and Shiva Amirkhani. (2013), Harmony between Humans and Nature. *Landscape & Imagination* 91.

[80] Bhatti, S. H., Saleem, F., Murtaza, G., & Haq, T. U. (2022). Exploring the impact of green human resource management on environmental performance: the roles of perceived organizational support and innovative environmental behavior. International Journal of Manpower, 43(3), 742-762.

[81] Salinding, Marthen B. (2017), Dasar Filosofi Mediasi Sebagai Pilihan Penyelesaian Sengketa Lingkungan Hidup. *Borneo Law Review* 1. no. 1, 39-57.

responsibility of every person in one generation to preserve the capacity of the environment as an effort to meet the needs and justice of both the current and future generations. An idealism that should remain focused and abstracted into the reality of environmental management in Indonesia.[82]

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.[83] Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[84] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective. Judges are law enforcers who play the most important role in deciding a dispute, including environmental disputes. In their decisions, judges must pay attention to and integrate environmental sustainability to achieve ecological justice. If in court the judge has not paid attention to and integrated environmental sustainability in deciding an environmental dispute, it will be a weakness that will ultimately not result in ecological justice. This also has the potential to make environmental dispute resolution in court ineffective and not support environmental sustainability and there is no bias towards those who suffer the most if environmental pollution and/or damage occurs, namely the environment itself.

Previous research stated that Environmental disputes can occur at the local, national, and even international levels. Parties who do environmental damage are individuals (individuals in the community), legal entities, business actors (small, medium, or large), and small, medium, and prominent industrial players.[85] M. Yusuf said in his writing that that environmental disputes can be resolved outside the court through dispute resolution mechanisms and alternatives. The technical regulations stipulated by UUPLH are outside the law. These service facilities are not appropriately used to resolve environmental disputes. This system does not yet exist at the city or prefecture level.[86]

This study aims to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. Ideally, in resolving environmental disputes, an effective environmental dispute resolution method is needed that supports environmental sustainability.

2. RESEARCH METHODS

The approach in the study uses normative legal research to find the law for an in-

[82] Syamsuharya Bethan, 2008, Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional, Sebuah Upaya Penyelamatan Lingkungan Hidup dan Kehidupan Antar Generasi, Alumni, Bandung, H. 129

[83] Khan, M. R., Khan, H. U. R., Lim, C. K., Tan, K. L., & Ahmed, M. F. (2021). Sustainable tourism policy, destination management and sustainable tourism development: A moderated-mediation model. Sustainability, 13(21), 12156

[84]Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

[85] Dewi Sulistianingsih, etc, Environmental Dispute Resolution Through Alternative Dispute Resolution, *ICILS 2022*, July 27-28, Semarang, Indonesia, DOI.10.4108/eai.27-7-2022.2342420

[86] M. Yusuf, The Impact of Climate Change On Environmental Disputes And Conflicts In Indonesia, Communale Journal, Vol 1 Issue 3 2023, page.160-168

concocreto dispute.[87] In this study, legal norms contained in laws and regulations are required as major premises, while relevant facts in the dispute (legal facht) are used as minor premises. Through the syllogism process, a conclusio (conclusion) will be obtained in the form of the sought-after positive law in-concreto. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed that supports environmental sustainability. The research specification used in this study is descriptive legal research. The data analysis technique in this study uses qualitative data analysis.[88]

3. RESULT AND DISCUSSION

1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[89]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve environmental disputes.[90] Alternative Disputes Resolution is also an instrument for resolving environmental disputes through non-litigation.[91]

ADR (Alternative Disputes Resolution)[9293]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[94]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing

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[87] Rochmani, Rochmani, et al. "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court." *Pandecta Research Law Journal* 18. no. 1 (2023): 53-63.

[88] M.A. Prof. DR. Lexy J. Moleong, "Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.," accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[89] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

[90] Komala Sridewi Lestari, Devi Siti Hamzah Marpaung, Penyelesaian Sengketa Lingkungan Hidup Diluar Pengadilan (Non Litigasi) Melalui Jalur Negosiasi (Studi Kasus Tumpah Nya Minyak Di Laut Karawang), JUSTITIA: Jurnal Ilmu Hukum dan Humaniora, Vol. 9 No. 2 Tahun 2022.page.651-660

[91] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=keateaaaqbaj&oi=fnd&pg=pa189&dq=effectiveness+of+environmental+dispute+resolution+models+through+litigation+and+non litigation&ots=k86lkgwjsy&sig=ftadcvzsgppwlqwtygql0jpzk8s&redir_esc=y# v=onepage&q=effectivene.

[92] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

[93] Hapsari, D. R. I., Ilmiawan, A. A. S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. Indonesia Law Reform Journal, 2(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

[94] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.

administrative sanctions, as well as state administrative lawsuits.[95][96]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Regulation of the Minister of Environment of the Republic of Indonesia No. 02 of 2013, namely: 1. Written warning; a form of disciplinary sanction given to someone who violates the regulations. 2. Government Coercion; real actions taken by the government or on behalf of the government. 3. Suspension of Environmental Permit; an administrative sanction in the form of legal action to temporarily not enforce an environmental permit. 4. Revocation of Environmental Permit; legal action that can be taken by the government against a business or activity if it violates the provisions of the applicable environmental permit.

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement,[97] where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred. Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[98] The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[99] The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[100] Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions. From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of; Temporary cessation of production activities. Temporary cessation of production activities is an action

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[95] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).

[96] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.

[97] Nurvita, Nita. (2024), Comparison Of Environmental Law Enforcement With Civil Law And Administrative Law. *Lex Societas: Journal of Law and Public Administration* 1. no. 2, 72-80.

[98] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.

[99] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).

[100] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

that requires a company to temporarily stop all or part of the production of goods and services for a certain period of time. Transfer of production facilities. Transfer of production facilities is an action to move various facilities, equipment, and infrastructure used in the production process from one location to another. Closing of wastewater or emission channels. Closing of wastewater or emission channels is a sanction or action that can be taken by the government to stop violations related to waste or emission discharges that are not in accordance with regulations. This includes closing drains used to dispose of wastewater or emissions without permission or in a manner that is harmful to the environment. Demolition. Demolition, in the context of construction, is the activity of dismantling or demolishing part or all of a building, including components, building materials, and related infrastructure. This can be done for various reasons, such as new construction, repairs, or maintenance. Confiscation of goods or equipment that have the potential to cause violations. Confiscation of goods or equipment that have the potential to cause violations is a form of administrative sanction of government coercion used to stop violations and restore the original state. This aims to prevent negative impacts from the violation, for example on the environment or public health. Temporary cessation of all production activities. Temporary cessation of all production activities can mean the temporary closure of a factory or production facility for a certain period of time. This can be an administrative sanction imposed on entrepreneurs who violate the provisions. In addition, temporary cessation can also occur in the context of maintenance, repairs, or system improvements in the factory.

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations.[101] This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[102]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[103]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a

[101] Kasno, Kasno, Gatot Dwi Hendro Wibowo, and Chrisdianto Eko Purnomo. (2024), Pengenaan Sanksi Administrasi Bidang Telekomunikasi Pasca UU Cipta Kerja. *Jatiswara* 39. no. 1, 26-44.

[102] Wicipto Setiadi, Administrative Sanctions As One Of The Instruments For Law Enforcement In Legislation, *Indonesian Legislation Journal* Vol 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.

[103] Setiadi.

fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are, Normative criteria Normative criteria are standards or rules used to assess or evaluate something, usually based on values or standards that are considered ideal or correct. These criteria can be used in various contexts, ranging from individual performance evaluations, legal analysis. Instrument criteria, Instrument characteristics refer to characteristics that determine the quality and performance of an instrument in measuring or collecting data. These characteristics determine how well the instrument can provide valid and reliable results. Opportunity criteria, Positive factors that arise from the environment that can be used by judges in considering their decisions.

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[104] The advantages of the environmental dispute resolution model through non-litigation are voluntary nature of the process, fast procedures, non-judicial decisions, control by managers who know the organization's needs best, confidential procedures, greater flexibility in designing the terms of problem resolution, cost and time savings, protection and maintenance of work relationships, high possibility of implementing agreements, higher level of control and easier to predict results, better agreements than just compromise or results obtained from win/lose settlement methods, decisions that last over time.[105]

Criminal sanctions in the criminal law system have various purposes that reflect the function of punishment in society. Criminal sanctions are intended as a form of retaliation (retributive) against perpetrators of crimes, namely to provide appropriate punishment for acts that violate the law. However, along with the development of legal thought, criminal sanctions are also directed towards prevention purposes, both generally and specifically. The purpose of general prevention is to provide a deterrent effect on society so that they do not commit crimes, while specific prevention aims to prevent the same perpetrator from repeating their actions. The purpose of rehabilitation is to seek improvement and guidance for perpetrators so that they can return to being law-abiding and productive members of society after serving their sentences. In recent developments, a restorative justice approach has emerged which focuses on restoring losses and social relationships damaged by criminal acts, by actively involving perpetrators, victims, and the community in the settlement process.

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared.[106] This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly,

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[104] H.G.; et all van de Bunt, “Strafrechttelijke Handhaving van Mellieurecht” (nd).

[105] Pangkep, “NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES.”

[106] Asmara, Teguh Tresna Puja, Isis Ikhwansyah, and Anita Afriana. (2019), Ease of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi di Indonesia. *University Of Bengkulu Law Journal* 4. no. 2, 118-136.

cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties). So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[107][108] This ADR (Alternative Dispute Resolution) method has characteristics, namely: The late date is not long, Component costs are not high, The confidentiality of the matter is guaranteed, If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[109]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles, There are still no implementing regulations for this Law regarding dispute resolution outside of court, There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors; Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[110]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows, There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement, The parties are willing to respect each other and are willing to sacrifice

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[107] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).

[108] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.

[109] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

[110] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

some of their desires in order to reach an agreement, Provide complete and correct information to the mediator, and have nothing to hide, Willing to carry out what has been mutually agreed upon, In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[111]

3. Envinronmental Dispute Resolution Model Through Litigation

Law enforcement is an effort to bring ideas of justice, legal certainty, and social benefits into reality.[112] So law enforcement is essentially the process of an embodiment of ideas. Concrete law enforcement is the enactment of positive laws in practice as they should be adhered to.[113] Therefore, providing justice in a case means deciding the law in concreto in maintaining and guaranteeing the adherence of material law by using the procedural means established by formal law, in this case, law enforcement officials, and is an effort to realize the ideas and concepts of law that people expect to come true. Law enforcement is a process that involves many things.[114]

Joseph Goldstein differentiates criminal law enforcement into 3 parts, total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[115]

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[116][117]

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows: Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

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[111] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[112] Kurniawan, Itok Dwi. (2023), Correlation between Justice, Legal Certainty, and Benefit in Law Enforcement in Indonesia." *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8. no. 4, 3970-3977.

[113] HR, Muhammad Adam. (2021), Lemahnya Penegakan Hukum Di Indonesia. *JISH: Jurnal Ilmu Syariah Dan Hukum* 1. no. 1, 57-68.

[114] Mustakim Mahmud, (2020), The Rights of Diversion In The Children's Criminal Jurisdiction System As The Intent of Legal Protection, *Indonesia Prime*, 5, no (1) 51-67

[115] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[116] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[117] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion. According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations. On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. “Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology. On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

“KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[118][119] The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[120]

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[118] Lusia Arumingtyas, “Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id,” accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[119] Lastuti Abubakar and Tri Handayani, “The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice,” *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[120] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[121]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[122]

4. Effective Environmental Dispute Resolution Model that Supports Environmental Sustainability

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law. Normative criteria are used in resolving environmental cases that have difficulties in terms of proof.[123] As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article 1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. I[124]n the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in

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[121] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[122] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

[123] Rochmani, Rochmani, Safik Faozi, and Wenny Megawati. (2018), Instrumen Hukum Pidana Dalam Penyelesaian Perkara Lingkungan Hidup Di Pengadilan. *Prosiding SENDI_U*

[124] Prim Haryadi. 2022.*Penyelesaian Sengketa Lingkungan Melalui Gugatan Perdata*. Sinar Grafika, Jakarta

terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[125]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[126][127]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step.

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[125] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

[126] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).

[127] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[128]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence. Types of sanctions aimed at restoring polluted and/or damaged environments in resolving environmental disputes include the obligation to directly restore affected ecosystems, such as reclamation, reforestation, cleaning up hazardous waste, or rehabilitating damaged environmental habitats. Perpetrators may also be required to pay compensation costs for environmental damage, namely by replacing damage in one area with conservation measures. This sanction is enforced through a binding court decision. With the application of these sanctions, ecological recovery will occur by restoring the function and carrying capacity of the environment that has been disrupted due to unlawful acts, providing a deterrent effect on perpetrators, encouraging legal and moral responsibility for the environment, and creating justice for affected communities.

4. CONCLUSION

The purpose of this study is to examine and analyze an effective environmental dispute resolution model that supports environmental sustainability. An effective environmental dispute resolution model is carried out through litigation with criminal law instruments preceded by an environmental impact assessment by a judge. With this model, prosecution, environmental restoration, compensation claims for polluted and/or damaged environments can be carried out and can have a deterrent effect on initiators or perpetrators, and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice; prosecutors have broader coercive powers, for example detention, searches, faster executions. Dispute resolution through litigation not only deters initiators or perpetrators who cause environmental pollution and/or damage, but is also intended to prevent others from committing acts that violate environmental law.

[128] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.

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6. Bukti konfirmasi review dan Respon kepada Reviewer C

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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

Rochmani Rochmani
Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id
Wenny Megawati
Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id
Adi Suliantoro
Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id
Muhammet Ebuzer Ersoy
Faculty of Law, Istanbul University, Turki,ebuzer_ersoy@hotmail.com

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ABSTRACT

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage. This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation (through court) or non-litigation (outside court). The aim of the research is to examine and analyze models for resolving environmental disputes through litigation and non-litigation and to examine and analyze which of the two models of environmental dispute resolution is more effective. The research method used is normative legal research to find the law for an in-concocreto case. The model for resolving environmental disputes through litigation with criminal law instruments which is preceded by an environmental impact study by a judge is more effective because it can carry out prosecutions, restore the environment, demand compensation for polluted and/or damaged environments, can have a deterrent effect on the initiator and can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice, prosecutors have broader powers of coercion, for example detention, searches, quicker executions. Dispute resolution through litigation not only deters perpetrators who violate it but also directs other people not to commit acts that violate environmental law.

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•Abstract consists of (The purpose of the research is one sentence, there is no description of the one sentence approach method, which must include important results and findings, 1 sentence background, if possible there are keywords, purpose of the findings which occupy the most portion)
•Show novelty

1. INTRODUCTION

Sustainability according to the Explanation of Article 2 letter b, Law No. 32 of 2009 concerning Environmental Protection and Management is that every person bears obligations and responsibilities

towards future generations and towards fellow human beings in one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the environment.

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not damaged either physically or the social system that supports it.[1] The meaning of sustainability here is that the environment remains in good condition that can be utilized by the current generation and future generations. Good environmental conditions do not experience physical damage and there is community participation to participate in managing the environment. According to Huey D. Johnson, sustainability is not an activity plan but a philosophical statement, a way of thinking about how humans relate to nature. In environmental sustainability, there is a continuous relationship between humans and nature.[2] This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment. Thus, society in developing the economy is expected to be oriented towards environmental sustainability, so that it does not cause pollution and/or damage to the environment and the environment can still be used according to its intended use by the current generation and future generations.[3] The principle of sustainability requires designing an agenda in resolving environmental disputes with a long-term visionary dimension, to resolve environmental disputes based on the environment. This principle is in line with the fact that the environment has a long-term dimension. Thus, in resolving environmental disputes, it also has a long-term dimension. Resolving environmental disputes with a long-term dimension is resolving environmental disputes that are oriented towards environmental sustainability. In resolving environmental disputes, it is necessary to pay attention to the consequences that will arise from human activities. The activities referred to here are activities that may cause pollution and/or damage to the environment. Resolving environmental disputes with a long-term dimension is not only for resolving current environmental disputes, but is also beneficial for the future. This is because the environment is not only for the current generation, but also for future generations.

The principle of sustainability also requires choosing alternatives in resolving environmental disputes based on the environment. This environment-based environmental dispute resolution does not only resolve disputes between the parties as victims and other parties who cause victims, but also considers the community that will be affected by environmental damage and the environment itself. This principle of sustainability implies that every person (Indonesia) has an obligation to preserve the capacity of the

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[1] Donella H Meadows, Dennis L Meadows, Jorgen, Randers, 1992, Beyond Global Collapse the or A Sustainable Future Limits, Earthscan Publications Limeted, London, H. 209

[2] Huey D. Johnson, Tanpa Tahun, Green Plans, Greenprint for Sustainability, Universiyy of Nebraska Lincoln and London, H.29

[3] Bhatti, S. H., Saleem, F., Murtaza, G., & Haq, T. U. (2022). Exploring the impact of green human resource management on environmental performance: the roles of perceived organizational support and innovative environmental behavior. International Journal of Manpower, 43(3), 742-762.

environment and also to support the principle of justice between generations. The principle of environmental sustainability requires the responsibility of every person in one generation to preserve the capacity of the environment as an effort to meet the needs and justice of both the current and future generations. An idealism that should remain focused and abstracted into the reality of environmental management in Indonesia.[4]

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.[5]

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[6] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

Judges are law enforcers who play the most important role in deciding a dispute, including environmental disputes. In their decisions, judges must pay attention to and integrate environmental sustainability to achieve ecological justice. If in court the judge has not paid attention to and integrated environmental sustainability in deciding an environmental dispute, it will be a weakness that will ultimately not result in ecological justice. This also has the potential to make environmental dispute resolution in court ineffective and not support environmental sustainability and there is no bias towards those who suffer the most if environmental pollution and/or damage occurs, namely the environment itself.

This study aims to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. Ideally, in resolving environmental disputes, an effective environmental dispute resolution method is needed that supports environmental sustainability.

1. RESEARCH METHODS

The approach in the study uses normative legal research to find the law for an in-concocreto dispute. In this study, legal norms contained in laws and regulations are required as major premises, while relevant

[4] Syamsuharya Bethan, 2008, Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional, Sebuah Upaya Penyelamatan Lingkungan Hidup dan Kehidupan Antar Generasi, Alumni, Bandung, H. 129

[5] Khan, M. R., Khan, H. U. R., Lim, C. K., Tan, K. L., & Ahmed, M. F. (2021). Sustainable tourism policy, destination management and sustainable tourism development: A moderated-mediation model. Sustainability, 13(21), 12156

[6] Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

facts in the dispute (legal facht) are used as minor premises. Through the syllogism process, a conclusio (conclusion) will be obtained in the form of the sought-after positive law in-concreto. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed that supports environmental sustainability. The research specification used in this study is descriptive legal research. The data analysis technique in this study uses qualitative data analysis.[7]

2. RESULT AND DISCUSSION

2.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[8]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve environmental disputes.[9]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[10]

ADR (Alternative Disputes Resolution)[1112]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[13]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative

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[7] M.A. Prof. DR. Lexy J. Moleong, "Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.," accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[8] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

[9] Kiljamilawati Pangkep, "NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES" 8, no. 1(nd): 2018–2019.

[10] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.

[11] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

[12] Hapsari, D. R. I., Ilmiawan, A. A. S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. Indonesia Law Reform Journal, 2(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

[13] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.

lawsuits.[14][15]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Republic of Indonesia Minister of Environment Regulation No. 02 of 2013, namely:

1. Written warning;
2. Government Coercion;
3. Suspension of Environmental Permits;
4. Revocation of Environmental Permit.

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Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[16]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[17]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[18]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used,

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[14] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).
[15] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.
[16] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.
[17] Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).
[18] "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

1. Temporary cessation of production activities.
2. Transfer of production facilities.
3. Closure of waste water or emissions channels.
4. Demolition.
5. Confiscation of goods or tools that have the potential to cause violations.
6. Temporary cessation of all production activities.

Commented [rvw3]: describe with argumentative language in the form of paragraphs and their correlation

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[19]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[20]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the

[19] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[20] Setiadi.

business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

2.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

1. Normative criteria.
2. Instrument criteria.
3. Opportunitide criteria.

Commented [rvw4]: describe with argumentative language in the form of paragraphs and their correlation

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[21]

The advantages of the environmental dispute resolution model through non-litigation are:

a. The voluntary nature of the process
b. Fast procedure
c. Non-judicial decisions
d. Control by managers who know best about the organization's needs
e. Secret procedures (confidential)
f. Greater flexibility in designing problem-solving requirements
g. Save costs and time
h. Protection and maintenance of employment relationships
i. High probability of implementing the deal
j. Higher levels of control and easier prediction of results
k. Agreements that are better than just compromise or results obtained from a win/lose settlement method.
l. Decisions that last over time[22]

Commented [rvw5]: describe with argumentative language in the form of paragraphs and their correlation

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

a. Political and cultural factors
b. The non-litigation route is not something new
c. The non-litigation route is in line with developing community participation.

Commented [rvw6]: describe with argumentative language in the form of paragraphs and their correlation

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply,

[21] H.G.; et all van de Bunt, "Strafrechttelijke Handhaving van Mellieurecht" (nd).
[22] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[2324] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

a. The late date is not long.
b. Component costs are not high.
c. The confidentiality of the matter is guaranteed.
d. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[25]

Commented [rvw7]: describe with argumentative language in the form of paragraphs and their correlation

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

a. There are still no implementing regulations for this Law regarding dispute resolution outside of court;
b. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;
c. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.
d. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[26]

Commented [rvw8]: describe with argumentative language in the form of paragraphs and their correlation

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the

[23] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).
[24] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.
[25] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."
[26] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

success of resolving disputes outside of court are as follows:

a. There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement;
b. The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement;
c. Provide complete and correct information to the mediator, and have nothing to hide;
d. Willing to carry out what has been mutually agreed upon.

In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[27]

Commented [rvw9]: describe with argumentative language in the form of paragraphs and their correlation

2.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

1. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.
2. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
3. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[28]

Commented [rvw10]: describe with argumentative language in the form of paragraphs and their correlation

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[29][30]

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

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[27] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[28] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[29] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[30] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. "Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

"KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[3132]

The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[33]

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[31] Lusia Arumingtyas, "Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[32] Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[33] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

[34] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[35] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

2.4 Effective Environmental Dispute Resolution Model that Supports Environmental Sustainability

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article 1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision

has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[36]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[37][38]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and

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[36] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

[37] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).

[38] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[39]Likewise, so that the decision has a deterrent effect, the perpetrator is given a prison sentence.

Settlement of environmental disputes through litigation with criminal sanctions[40]can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environments. In this way, resolving environmental disputes through litigation can be more effective and can produce ecological justice because it can provide sanctions for the initiator (the person responsible for the activities carried out) and pay attention to the environment that is the victim by providing sanctions to restore the damaged and/or polluted environment. With sanctions to restore the polluted and/or damaged environment, this means that the solution supports environmental sustainability.

[39] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.
[40] "The Environment of Conflict Mediation and Utilization of Coaching in Korea Korea Association of Mediators Chang Hee WON," 2019.

3. CONCLUSION

The purpose of this study is to examine and analyze an effective environmental dispute resolution model that supports environmental sustainability. An effective environmental dispute resolution model is carried out through litigation with criminal law instruments preceded by an environmental impact assessment by a judge. With this model, prosecution, environmental restoration, compensation claims for polluted and/or damaged environments can be carried out and can have a deterrent effect on initiators or perpetrators, and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice; prosecutors have broader coercive powers, for example detention, searches, faster executions. Dispute resolution through litigation not only deters initiators or perpetrators who cause environmental pollution and/or damage, but is also intended to prevent others from committing acts that violate environmental law.

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AN EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION MODEL THAT SUPPORTS ENVIRONMENTAL SUSTAINABILITY

Rochmani Rochmani

Universitas Stikubank, Indonesia, E-mail:rochmani@edu.unisbank.ac.id

Wenny Megawati

Universitas Stikubank, Indonesia, E-mail:wennymegawati@edu.unisbank.ac.id

Adi Suliantoro

Universitas Stikubank, Indonesia, E-mail:adisuliantoro@edu.unisbank.ac.id

Muhammet Ebuzer Ersoy

Faculty of Law, Istanbul University, Turki,ebuzer_ersoy@hotmail.com

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ABSTRACT

Activities that cause pollution and/or environmental damage will affect environmental destruction. This can trigger environmental conflicts between initiators, corporations and communities. In environmental resolution, it can be done through litigation or non-litigation (outside the court). The purpose of this research is to study and analyze the model of effective environmental resolution that can support environmental desires. The research method used is normative legal research to find the law for an in-concocreto resolution. The model of environmental rescue resolution through litigation with criminal law instruments preceded by an environmental impact study by a judge is more effective because it can make debts, environmental restoration, demands for compensation for polluted and/or damaged environments, can have a deterrent effect on initiators or perpetrators and can remind corporations to avoid environmental destruction and/or damage to their industrial businesses. The effectiveness of

criminal law instruments in resolving environmental rescue through litigation in judicial practice, prosecutors have broader coercive powers, for example, removal, searches, faster executions. The results of the research and innovation are that effective environmental rescue solutions are carried out through litigation with criminal law instruments preceded by an environmental impact study by a judge.

1. INTRODUCTION

Sustainability according to the Explanation of Article 2 letter b, Law No. 32 of 2009 concerning Environmental Protection and Management is that every person bears obligations and responsibilities towards future generations and towards fellow human beings in one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the environment.

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

Sustainability according to Donella H Meadows et al, is an environmental condition that can last from generation to generation, not damaged either physically or the social system that supports it.[129] The meaning of sustainability here is that the environment remains in good condition that can be utilized by the current generation and future generations. Good environmental conditions do not experience physical damage and there is community participation to participate in managing the environment. According to Huey D. Johnson, sustainability is not an activity plan but a philosophical statement, a way of thinking about how humans relate to nature. In environmental sustainability, there is a continuous relationship between humans and nature.[130] This relationship is in the form of harmony between humans and nature in utilizing and maintaining the environment. Thus, society in developing the economy is expected to be oriented towards environmental sustainability, so that it does not cause pollution and/or damage to the environment and the environment can still be used according to its intended use by the current generation and future generations.[131] The principle of sustainability requires designing an agenda in resolving environmental disputes with a long-term visionary dimension, to resolve environmental disputes based on the environment. This principle is in line with the fact that the environment has a long-term dimension. Thus, in resolving environmental disputes, it also has a long-term dimension. Resolving environmental disputes with a long-term dimension is resolving

[129] Donella H Meadows, Dennis L Meadows, Jorgen, Randers, 1992, Beyond Global Collapse the or
A Sustainable Future Limits, Earthscan Publications Limeted, London, H. 209
[130] Huey D. Johnson, Tanpa Tahun, Green Plans, Greenprint for Sustainability, Universiyy of Nebraska Lincoln and London, H.29
[131] Bhatti, S. H., Saleem, F., Murtaza, G., & Haq, T. U. (2022). Exploring the impact of green human resource management on environmental performance: the roles of perceived organizational support and innovative environmental behavior. International Journal of Manpower, 43(3), 742-762.

environmental disputes that are oriented towards environmental sustainability. In resolving environmental disputes, it is necessary to pay attention to the consequences that will arise from human activities. The activities referred to here are activities that may cause pollution and/or damage to the environment. Resolving environmental disputes with a long-term dimension is not only for resolving current environmental disputes, but is also beneficial for the future. This is because the environment is not only for the current generation, but also for future generations.

The principle of sustainability also requires choosing alternatives in resolving environmental disputes based on the environment. This environment-based environmental dispute resolution does not only resolve disputes between the parties as victims and other parties who cause victims, but also considers the community that will be affected by environmental damage and the environment itself. This principle of sustainability implies that every person (Indonesia) has an obligation to preserve the capacity of the environment and also to support the principle of justice between generations. The principle of environmental sustainability requires the responsibility of every person in one generation to preserve the capacity of the environment as an effort to meet the needs and justice of both the current and future generations. An idealism that should remain focused and abstracted into the reality of environmental management in Indonesia.[132]

In environmental problems at issue are actions caused by human actions. Human actions in the use of natural resources and industrial businesses can cause pollution and/or damage to the environment. This can cause harm to people or the environment itself which experiences pollution and/or environmental damage.[133]

Sustainability according to the Explanation of Article 2 letter b, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that every person bears the obligation and responsibility towards future generations and towards fellow human beings in one generation to maintain sustainability.

This situation can give rise to environmental disputes. Environmental disputes can be resolved through litigation[134] (through court) or non-litigation (outside court), as regulated in Article 84 of Law No. 32 of 2009 concerning Environmental Protection and Management (UPPLH). Of the two models for resolving environmental disputes, it is necessary to study and analyze which one is more effective.

Judges are law enforcers who play the most important role in deciding a dispute, including environmental disputes. In their decisions, judges must pay attention to and integrate environmental

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[132] Syamsuharya Bethan, 2008, Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional, Sebuah Upaya Penyelamatan Lingkungan Hidup dan Kehidupan Antar Generasi, Alumni, Bandung, H. 129

[133] Khan, M. R., Khan, H. U. R., Lim, C. K., Tan, K. L., & Ahmed, M. F. (2021). Sustainable tourism policy, destination management and sustainable tourism development: A moderated-mediation model. Sustainability, 13(21), 12156

[134]Agung Dwi Pranyoto, "Penyelesaian Sengketa Lingkungan Non Litigasi Menurut Undang-Undang Nomor 32 Tahun 2009," Jurnal Ilmiah Wahana Pendidikan 8, no. 15 (September 1, 2022): 1–6, https://doi.org/10.5281/ZENODO.7039695.

sustainability to achieve ecological justice. If in court the judge has not paid attention to and integrated environmental sustainability in deciding an environmental dispute, it will be a weakness that will ultimately not result in ecological justice. This also has the potential to make environmental dispute resolution in court ineffective and not support environmental sustainability and there is no bias towards those who suffer the most if environmental pollution and/or damage occurs, namely the environment itself.

This study aims to examine and analyze an effective environmental dispute resolution model that can support environmental sustainability. Ideally, in resolving environmental disputes, an effective environmental dispute resolution method is needed that supports environmental sustainability.

7.RESEARCH METHODS

The approach in the study uses normative legal research to find the law for an in-concocreto dispute. In this study, legal norms contained in laws and regulations are required as major premises, while relevant facts in the dispute (legal facht) are used as minor premises. Through the syllogism process, a conclusio (conclusion) will be obtained in the form of the sought-after positive law in-concreto. Seeing the fact that there are many environmental disputes that need to be resolved immediately, an effective environmental dispute resolution model is needed that supports environmental sustainability. The research specification used in this study is descriptive legal research. The data analysis technique in this study uses qualitative data analysis.[135]

8.RESULT AND DISCUSSION

8.1. Model for Resolving Envinronmental Disputes Through Non-Litigation

Settlement of environmental disputes through non-litigation[136]stated in Article 85 of Law 32 of Law no. 32 of 2009 concerning Environmental Protection and Management, that in resolving environmental disputes outside of court, third party services can be used to help resolve

[135] M.A. Prof. DR. Lexy J. Moleong, “Metodologi Penelitian Kualitatif / Penulis, Prof. DR. Lexy J. Moleong, M.A. | OPAC Perpustakaan Nasional RI.,” accessed November 28, 2023, https://opac.perpusnas.go.id/DetailOpac.aspx?id=1133305.

[136] Marthen B. Salinding, "PHILOSOPHICAL BASIS OF MEDIATION AS AN OPTION FOR ENVIRONMENTAL DISPUTE RESOLUTION," Borneo Law Review 1, no. 1 (June 25, 2017): 39–57, accessed November 30, 2023, http://180.250.193.171/index.php/bolrev/article/view/709.

environmental disputes.[137]ADR (Alternative Disputes Resolution) is also an instrument for resolving environmental disputes through non-litigation.[138]

ADR (Alternative Disputes Resolution)[139][140]is a term that first appeared in the United States, this concept is an answer to the dissatisfaction that has emerged in the United States society towards their justice system. This dissatisfaction stems from the problems of taking a very long time and expensive costs, as well as doubts about its ability to satisfactorily resolve complex cases. Complexity can be caused by the substance of the case being full of scientific issues (scientifically complicated) or it can also be caused by the large number and breadth of stakeholders who must be involved. In essence, ADR was developed by legal practitioners and academics as a way of resolving environmental disputes that is oriented towards environmental justice.[141]

Administrative environmental law enforcement is one way of resolving environmental disputes through non-litigation, which is the enforcement of environmental law by government institutions (officials or agencies) as state officials who have the authority to issue permits which have the function of monitoring and implementing administrative sanctions, as well as state administrative lawsuits.[142][143]

This is because administrative law enforcement is more focused on efforts to prevent environmental pollution and/or destruction. In addition, administrative law enforcement also aims to punish perpetrators of environmental pollution and/or destruction.

The types of administrative sanctions are stated in Articles 4 and 5 of the Regulation of the Minister of Environment of the Republic of Indonesia No. 02 of 2013, namely Written warning; a form of disciplinary sanction given to someone who violates the regulations, Government Coercion; real actions taken by the government or on behalf of the government, Suspension of Environmental Permit; an administrative sanction in the form of legal action to temporarily not

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[137] Kiljamilawati Pangkep, "NON-LITIGATIONAL SETTLEMENT OF ENVIRONMENTAL DISPUTES" 8, no. 1(nd): 2018–2019.

[138] John Richard; Pujiono Lalutihamalo, "IWLEG 2022: Proceedings of the 1st International Workshop on Law, Economics ... - Google Books," accessed November 30, 2023, https://books.google.co.id/books?hl=en&lr=&id=kEatEAAAQBAJ&oi=fnd&pg=PA189&dq=EFFECTIVENESS+OF+ENVIRONMENTAL+DISPUTE+RESOLUTION+MODELS+THROUGH+LITIGATION+AND+NON-LITIGATION&ots=k86LkGWJSY&sig=FTadcvzsGPPwLqwTYGqL0jPzk8s&redir_esc=y#v=onepage&q=EFFECTIVENE.

[139] Tao He, Lulu Liu, and Manyi Gu, "The Role and Development Trend of Third-Party Mediation in Environmental Disputes," *Sustainability 2023, Vol. 15, Page 10197* 15, no. 13 (June 27, 2023): 10197, https://doi.org/10.3390/SU151310197.

[140] Hapsari, D. R. I., Ilmiawan, A. A. S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. Indonesia Law Reform Journal, 2(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

[141] Hukum Lingkungan Teori and Legislasi dan Studi Kasus, "FROM THE AMERICAN PEOPLE," n.d.

[142] Rochmani, "Perlindungan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat Di Era Globalisasi," *Masalah-Masalah Hukum* 44, no. 1 (2015).

[143] Sabela Gayo, "RESOLVING ENVIRONMENTAL DISPUTE WITH MEDIATION METHOD," *International Asia Of Law and Money Laundering (IAML)* 1, no. 1 (March 25, 2022): 23–29, https://doi.org/10.59712/iaml.v1i1.5.

enforce an environmental permit, Revocation of Environmental Permit; legal action that can be taken by the government against a business or activity if it violates the provisions of the applicable environmental permit.

Administrative law enforcement is law enforcement that is more towards preventive environmental law enforcement, where law enforcement is preventive, not to return the situation to the way it was before environmental damage occurred.

Administrative sanctions that can be imposed for licensing violations can be in the form of government coercion (bestuurdwang), recall of favorable decisions, imposition of forced money by the government (dwangsom), imposition of administrative fines (administrative boete).[144]

The decision on administrative sanctions is "beschikking" or "determination". Determination or legal action (rechtshandeling) by the government regarding the authority and power it has as a result of a reaction to non-compliance in a concrete matter based on the special authority of the position. An order (bevelen) is a government action that contains an obligation, namely, to act (take actions), not to do something that is prohibited, to tolerate something (dulden), road construction or the permit process is still ongoing.[145]

The government's coercive administrative sanction is "beschikking" or "determination" which is meant by giving orders in the nature of actions or actions in the context of prevention, recovery, and return to the original situation.[146]

Within the framework of environmental law enforcement, administrative legal sanctions in the form of the imposition of government coercion (bestuursdwang) are one of the most widely used, apart from revocation of permits. Likewise, law enforcement carried out by the Central Java Province Environment and Forestry Service uses administrative sanctions.

From the table above, it can be seen that in resolving environmental disputes using administrative sanctions, it turns out that there are still many perpetrators of environmental violations who do not comply with the administrative sanctions issued by the government. By not complying with the administrative sanctions given, it can be said that administrative sanctions do not have a deterrent effect. Administrative sanctions can constitute government coercion. The government's coercive administrative sanctions vary, they can be in the form of;

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144 "Penegakan Hidup Lingkungan Hidup Dan Kehutanan," accessed November 30, 2023, https://babelprov.go.id/artikel_detil/penegakan-hidup-lingkungan-hidup-dan-kehutanan.

145 Arief Hidayat dan FX Adji Samekto, *Kajian Kritis Penegakan Hukum Lingkungan Di Era Otonomi Daerah* (Yogyakarta: Genta Press, 2007).

146 "Penegakan Hidup Lingkungan Hidup Dan Kehutanan."

7. Temporary cessation of production activities. Temporary cessation of production activities is an action that requires a company to temporarily stop all or part of the production of goods and services for a certain period of time.

8. Transfer of production facilities. Transfer of production facilities is an action to move various facilities, equipment, and infrastructure used in the production process from one location to another.

9. Closing of wastewater or emission channels. Closing of wastewater or emission channels is a sanction or action that can be taken by the government to stop violations related to waste or emission discharges that are not in accordance with regulations. This includes closing drains used to dispose of wastewater or emissions without permission or in a manner that is harmful to the environment.

10. Demolition. Demolition, in the context of construction, is the activity of dismantling or demolishing part or all of a building, including components, building materials, and related infrastructure. This can be done for various reasons, such as new construction, repairs, or maintenance.

11. Confiscation of goods or equipment that have the potential to cause violations. Confiscation of goods or equipment that have the potential to cause violations is a form of administrative sanction of government coercion used to stop violations and restore the original state. This aims to prevent negative impacts from the violation, for example on the environment or public health.

12. Temporary cessation of all production activities. Temporary cessation of all production activities can mean the temporary closure of a factory or production facility for a certain period of time. This can be an administrative sanction imposed on entrepreneurs who violate the provisions. In addition, temporary cessation can also occur in the context of maintenance, repairs, or system improvements in the factory.

Forced government action (bestuursdwang/politie dwang) is a real action (feitelijke handelingen) from state administrative officials to end a situation that is prohibited by the provisions of statutory regulations or to do something that someone should abandon because it is contrary to statutory regulations. This action is a direct action from state administration officials. These concrete actions are carried out by state administration officials in order to adjust the real conditions that have been determined in statutory regulations, when citizens neglect them. The authority of state administration officials to carry out these concrete actions is a consequence of the government's

duty that state administration officials are burdened with the task of implementing the provisions of statutory regulations.[147]

Even though the term is a coercive act, it is not always associated with physical coercion. Coercion here refers more to coercion by the government (in authority) on people who are deemed to be ignoring statutory regulations to fulfill or obey the provisions of statutory regulations.[148]

The consequences of not implementing "Government Coercion" are regulated in Article 79 of Law No. 32 of 2009 concerning Environmental Protection and Management. The imposition of administrative sanctions in the form of freezing the revocation of environmental permits as intended in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion. In Article 81 of Law No. 32 of 2009, it is stated that every person responsible for a business and/or activity that does not carry out government coercion may be subject to a fine for any delay in implementing government coercive sanctions. Article 114 of Law No. 32 of 2009: Every person in charge of business and/or government activities who does not carry out government coercion is punished with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

[147] Wicipto Setiadi, "ADMINISTRATIVE SANCTIONS AS ONE OF THE INSTRUMENTS FOR LAW ENFORCEMENT IN LEGISLATION," Indonesian Legislation Journal 6, no. 4 (November 29, 2018): 603–614, accessed November 30, 2023, https://e-jurnal.peraturan.go.id/index.php/jli/article/view/336.
[148] Setiadi.

8.2. Envinronmental Dispute Resolution Instrument

When resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case, it is necessary to pay attention to signs or criteria in choosing to apply administrative instruments or criminal law instruments. These criteria are

a. Normative criteria

Normative criteria are standards or rules used to assess or evaluate something, usually based on values or standards that are considered ideal or correct. These criteria can be used in various contexts, ranging from individual performance evaluations, legal analysis.

b. Instrument criteria

Instrument characteristics refer to characteristics that determine the quality and performance of an instrument in measuring or collecting data. These characteristics determine how well the instrument can provide valid and reliable results.

c. Opportunity criteria

Positive factors that arise from the environment that can be used by judges in considering their decisions

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as most morally reprehensible (socially most reprehensible).[149]

The advantages of the environmental dispute resolution model through non-litigation are voluntary nature of the process, fast procedures, non-judicial decisions, control by managers who know the organization's needs best, confidential procedures, greater flexibility in designing the terms of problem resolution, cost and time savings, protection and maintenance of work relationships, high possibility of implementing agreements, higher level of control and easier to predict results, better agreements than just compromise or results obtained from win/lose settlement methods, decisions that last over time.[150]

The effectiveness of using non-litigation channels in resolving environmental disputes is also supportedby the factors described above, also has various opportunities based on various supporting factors, such as:

d. Political and cultural factors. Political culture refers to the values, attitudes, and behavior of society in a political context, which can be influenced by various cultural factors such as social norms, traditions, and inherited values

e. Non-litigation channels are not new. Dispute resolution outside the court (non-litigation) or what is known as Alternative Dispute Resolution (ADR/APS) has been known for a long time, through the tradition of deliberation and consensus in Indonesian culture.

f. Non-litigation channels are in line with the development of community participation, this shows that dispute resolution outside the court (non-litigation) supports increased community participation in problem solving. This is because non-litigation processes are often more flexible, easily accessible, and allow the parties involved to be more active in finding solutions.

[149] H.G.; et all van de Bunt, “Strafrechttelijke Handhaving van Mellieurecht” (nd).
[150] Pangkep, “NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES.”

Apart from that, the process of resolving disputes through litigation which takes a long time causes the company or the parties involved in the dispute to experience uncertainty, and this uncertainty is unacceptable in the business world because it affects the plans that have been prepared. This is what makes the parties look for another approach to resolving environmental disputes, namely through a non-litigation approach to resolve disputes quickly, cheaply, effectively and can adapt to the pace of economic development, trade and investment (quick and lower in time and money to the parties).

So in practiceIn Indonesia there is also a relatively new model of dispute resolution, namely ADR (Alternative Dispute Resolution), which is quite popular in the United States and Europe, which includes consultation, negotiation, mediation and arbitration. The use of ADR as a non-litigation dispute resolution mechanism by considering all forms of efficiency and for future purposes as well as being profitable for the parties to the dispute.[151][152] This ADR (Alternative Dispute Resolution) method has characteristics, namely:

i. The late date is not long.
j. Component costs are not high.
k. The confidentiality of the matter is guaranteed.
l. If the court's decision is not always fairly favorable to the interests of the disputing parties, then this method tends to produce a win-win solution, because the approach used is consensus deliberation.[153]

Settlement of environmental disputes through non-litigation as regulated in Article 85 of Law Number 32 of 2009 concerning Environmental Protection and Management has the following obstacles:

i. There are still no implementing regulations for this Law regarding dispute resolution outside of court;

j. There is Article 85 which states that in resolving environmental disputes outside of court the services of mediators and/or arbitrators can be used. This is a bit confusing, because for settlement through arbitration if you look at Law number 30 of 1999 concerning arbitration, it is stated that the clausearbitration must be included in the agreement, whereas in environmental cases no agreement has been made beforehand, let alone an agreement with the community. Apart from that, arbitration settlement must go through existing bodies/institutions such as BANI, they cannot directly appoint people/individuals to be judges/jurors;

k. Article 85 also does not explicitly mention the need to settle through mediation or arbitration, because the words can use the services of mediators and/or arbitrators, meaning that negotiations and conciliation can also be carried out, so how can negotiation and conciliation mechanisms be carried out?where people still don't understand this mechanism.

l. In addition to determining the amount of compensation that must be provided for out-of-court dispute resolution, it can also decide on recovery actions resulting from pollution and/or destruction, certain actions to ensure that pollution and/or destruction will not recur, and/or actions to prevent impacts on the environment. life, in this case it is quite difficult for the parties and the mediator to determine, which requires additional knowledge.

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[151] Rochmani, "Legal Culture of Judges in Resolving Environmental Disputes in Court," Proceedings of SENDI U 2016, UNISBANK (2016).

If this dispute involves a large number of people, a representative must be appointed. Problems will also arise if there is no agreement from the plaintiffs regarding what will be requested, such as the form of compensation and the amount of compensation. Another obstacle is the absence of special institutions at the regional level that are dedicated to receiving and handling public complaints, as well as the absence of procedures and mechanisms for complaints, research and prosecution for compensation.[154]

Successful resolution of external disputes The court depends on several things including the intention or good faith of the parties to resolve the dispute. Several things that influence the success of resolving disputes outside of court are as follows, There is an agreement between both parties to resolve disputes outside the court, either in written form or verbal agreement, The parties are willing to respect each other and are willing to sacrifice some of their desires in order to reach an agreement, Provide complete and correct information to the mediator, and have nothing to hide, Willing to carry out what has been mutually agreed upon, In environmental disputes, there are several obstacles to resolving disputes outside of court, because resolving disputes outside of court requires a strong commitment.[155]

8.3. Envinronmental Dispute Resolution Model Through Litigation

Joseph Goldstein differentiates criminal law enforcement into 3 parts, namely:

7. total enforcement,is total law enforcement whose scope is as formulated in substantive criminal law (substantive law of crime). Total enforcement of criminal law is impossible because law enforcers are strictly limited by criminal procedural law which includes, among other things, the rules for arrest, detention, search, confiscation and preliminary examination. Likewise, substantive criminal law itself provides limitations.
8. Full enforcement,After the total scope of criminal law enforcement is reduced to the area of no enforcement in law enforcement, law enforcers are expected to enforce the law maximally.
9. Actual enforcement,According to Joseph Goldstein, full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, investigative tools, funds and so on, all of which result in the need to exercise discretion and the rest is what is called actual enforcement.[156]

With Joseph Goldstein's theory of law enforcement, Full Enforcement, it is hoped that law enforcers (judges) can implement this theory in resolving environmental disputes through litigation optimally so that ecological justice can be produced that pays attention to the environment itself, which is actually a victim other than humans who are victims.[157][158]

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[152] Yuhong Zhao, "Mediation of Environmental Disputes," *Journal of Comparative Law* 10 (2015), https://heinonline.org/HOL/Page?handle=hein.journals/jrnatila10&id=551&div=&collection=.

[153] Pangkep, "NON-LITIGATION SETTLEMENT OF ENVIRONMENTAL DISPUTES."

[154] Syahrul Machmud, Indonesian Environmental Law Enforcement (Yogyakarta: Graha Ilmu, 2011).

[155] Yanti Fristikawati, "OBSTACLES IN RESOLUTION OF ENVIRONMENTAL DISPUTES OUTSIDE OF COURT," Environmental Law Development 1, no. 1 (2016): 114–124, accessed November 30, 2023, https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v1n1.9.

[156] Dellyana Sant, Concept of Law Enforcement (Yogyakarta, 1988).

[157] Rochmani, "Urgensi Pengadilan Lingkungan Hidup DalamPpenyelesaian Sengketa Lingkungan Hidup," *Bina Hukum Lingkungan* 4, no. 2 (2020).

[158] Oliver C. Ruppel and Larissa Jane H. Houston, "The Human Right to Public Participation in Environmental Decision-Making: Some Legal Reflections," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 125–38, https://doi.org/10.3233/EPL-239001.

The success of resolving environmental disputes through litigation carried out by the Ministry of Environment and Forestry (KLHK), can be exemplified as follows:

Two days in a row, on February 25 and February 26 2020, the Ministry of Environment and Forestry won a civil lawsuit in an environmental pollution case. The court granted two KLHK civil lawsuits against companies that polluted the Citarum River Basin.

The Bale Bandung District Court found PT Kamarga Kurnia Textile Industri (KKTI) guilty and the North Jakarta District Court sentenced PT How Are You Indonesia (HAYI). This textile company was proven to have polluted the environment of the Citarum watershed and was sentenced to pay material compensation amounting to IDR 16.263 billion.

According to Ratio Ridho Sani, Director General of Law Enforcement, KLHK, this is the first time an environmental dispute has been attempted in a civil lawsuit in an environmental pollution case. He appreciated the district court's decision on these two lawsuits. According to Roy, his nickname, he believes that this decision is very fair and in favor of the environment and society. "In dubio pro natura," according to Roy, this decision should be a lesson for other corporations.

On February 25 2020, the Bale Bandung District Court Panel of Judges, chaired by Astea Bidarsari, and Member Judges Firza Andriyansyah and Herudinarto, granted the KLHK's lawsuit against KKTI. This company was proven to be polluting the environment at the KKTI location on Jalan Cibaligo KM 3 Leuwigajah, Melong Village, South Cimahi District, Cimahi City, West Java.

Based on this decision, the panel of judges sentenced KKTI to pay material compensation of IDR 4.25 billion, lower than the KLHK lawsuit of IDR 18.2 billion. “Many corporations have been processed and taken to court. "Even though the pollution has been going on for a long time, action will still be taken," said Roy. According to Roy, the Ministry of Environment and Forestry can trace traces and evidence of previous environmental pollution with the support of experts and technology.

On February 26 2020, the North Jakarta District Court Panel of Judges chaired by Taufan Mandala, with member judges Agus Darwanta and Agung Purbantoro, stated that HAYI having its address at Jalan Nanjung No 206, Cibeureum Village, South Cimahi District, Cimahi City was proven to be polluting the environment of the Citarum watershed. Meanwhile, the Panel of Judges sentenced HAYI to pay compensation of IDR 12.013 billion. This figure is lower than the KLHK lawsuit, IDR 12.198 billion. "Law enforcement against polluting companies in the Citarum watershed is the Ministry of Environment and Forestry's commitment to realizing a Fragrant Citarum." According to Roy, the Ministry of Environment and Forestry will not stop pursuing and bringing environmental polluters to justice, either through civil or criminal proceedings.

“KLH's commitment to creating a good and healthy living environment is very serious. "The Ministry of Environment will not stop bringing perpetrators of pollution and other LHK crimes

to court," according to Roy and, now more than 780 environmental and forestry cases have been processed in court.[159][160]

The Court's decision mentioned above can remind corporations to avoid causing environmental damage and/or damage to their industrial businesses. In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment. This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[161]

In various cases involving environmental issues, corporations are usually the most dominant subjects as the masterminds who cause a decline in the quality of the environment in a particular area or community environment.[162]This is inseparable from corporate activities that exploit large amounts of natural resources as a production factor to support operations which can directly or indirectly have an impact on the surrounding community. This can certainly trigger disputes between corporations and the public.[163]

2.4 Effective Environmental Dispute Resolution Model that Supports Environmental Sustainability

When selecting instruments to resolve environmental cases, it is necessary to pay attention to the criteria created by HG van de Bunt to formulate considerations between the choice of civil law or criminal law in enforcing environmental law.

Normative criteria are used in resolving environmental cases that have difficulties in terms of proof. As is known, proof in criminal law is more difficult than proof in civil law because in criminal law it is required to prove material truth, whereas in civil law formal truth is sufficient. Proving an act that violates environmental law is rather difficult, of course the tendency is to choose civil law.

Another thing that needs to be taken into consideration in the normative criteria, is whether the suspect's guilt (schuld) can be proven because both criminal law and civil law (if Article

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[159] Lusia Arumingtyas, "Dua Perusahaan Cemari DAS Citarum Kena Hukum Rp16,26 Miliar - Mongabay.Co.Id : Mongabay.Co.Id," accessed November 30, 2023, https://www.mongabay.co.id/2020/03/04/dua-perusahaan-cemari-das-citarum-kena-hukum-rp1626-miliar/.

[160] Lastuti Abubakar and Tri Handayani, "The Environmental Fund Management Model in Indonesia: Some Lessons in Legal Regulation and Practice," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 205–17, https://doi.org/10.3233/EPL-230013.

[161] Delmy Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?* (BP Lawyers counselor At Law, 2017).

[162] Rochmani Rochmani et al., "Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 53–63, https://doi.org/10.15294/PANDECTA.V18I1.36877.

[163] Nasution, *Bagaimana Penyelesaian Sengketa Lingkungan Hidup Dalam Hukum Indonesia?*

1365 BW is to be used) require that the perpetrator be guilty. In suing under Article 1365 BW (onrechtmatige daad) it is also required that there be losses arising from the action, which is one of the elements of an unlawful act. The complete elements of unlawful acts are; (1) The existence of an action; (2). This act is against the law; (3). There is an error on the part of the perpetrator; (4). There is loss for the victim; (5). There is a causal relationship between actions and losses. Different from criminal law as in the criminal provisions in the Environmental Protection and Management (UPPLH) law, there is no core part (bestanddeed) of the offense in the form of loss.

This is a consideration to avoid the use of civil instruments in Indonesia. In using article 1365 BW must have an interest in the case. In the criminal context, what is meant by an unlawful act is an act that violates statutory regulations, an act carried out outside one's power or authority and an act that violates general principles in the field of law. As for criminal provisions, such as in the Environmental Protection and Management Law (UUPPLH), which contains a formulation of environmental offenses, there is no "interest" as one of the core parts. Moreover, prosecutors who prosecute criminal cases do not question whether or not there is "interest" in the case.

In Indonesia, in resolving civil disputes, what is called a short procedure (kort geding) has not been implemented, in contrast to the Netherlands which recognizes and applies a short procedure in civil law, so that in Indonesia the ordinary procedure is also applied to lawsuits in environmental disputes. The civil process in environmental law is the same as civil cases in general where the process is protracted. In general, parties who lose, even though it is clear that they should have lost, can easily use appeals and then if the appeal is also lost, they will easily use cassation efforts so that a process, even though it is small in terms of losses, still drags on. If in the end the cassation has been decided and the decision has permanent legal force, the execution will take a long time. If the cassation is finally decided and the decision has permanent legal force, the execution will take a long time. Usually, even though it is clearly only a civil case, for example debts, the injured party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, search, faster execution, and so on.[164]

Thus, in accordance with these considerations, dispute resolution through litigation is more effective, whether using criminal law instruments or using civil instruments. The use of criminal law instruments is more effective than civil law instruments even though prosecutors also have the authority to represent both the state and the community in civil lawsuits

[164] Rochmani et al., "Deep –Ecology Approach to Environmental Protection and Saving Through Environmental Case Settlement in Court," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1290, https://doi.org/10.55908/sdgs.v11i10.1290.

including violations of environmental law. Another thing that needs to be considered in using instrument criteria is that the court costs are quite large in using civil legal instruments, as well as expertise in drafting lawsuits and countering is very much needed, in contrast to criminal prosecution because it has become the daily diet of prosecutors with all the equipment they need. borne by the state.[165][166]

The UUPPLH provides a limitation that criminal acts in the Environmental Protection and Management Law are crimes (Article 97, UUPPLH). Article 98 paragraph (1) of the UUPPLH states that people who can be punished if their actions result in exceeding air quality standards, ambient water quality standards, sea water quality standards or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion). If the act as intended in paragraph (1) results in injuries to people and/or harm to human health, they will be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00. (four billion) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (Article 98 paragraph (2) UUPPLH). If the act as referred to in paragraph (1) results in a person being seriously injured or dead, he/she shall be punished with imprisonment for a minimum of 5 (five years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000,000 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion).

An effective environmental dispute resolution model can be carried out through litigation using criminal law instruments which is preceded by a judge conducting an environmental impact study. Environmental impact studies can be carried out by judges by paying attention to one of the social impact study steps proposed by Branch et al. According to Branch et al, social impact studies can be carried out with three main things, namely scoping, analysis and mitigation and monitoring. Scoping can be carried out by a judge by collecting initial information about the social environment and a description of the geographical conditions of the prospective project location. Once the scoping step is complete, the impact forecasting step can begin. Impact forecasting begins by examining the interaction between project activities and information about the existing social condition. An overview of conditions without the project is presented. After impact estimation, the next step is to give weight and importance to each impact. This process becomes an analysis step. The next step is to assess whether the impacts predicted and evaluated can be mitigated. Mitigation for each impact

[165] Andi Hamzah, *Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 2008).
[166] Erwin Sahruddin, "INTEGRATION MODEL OF ENVIRONMENTAL DISPUTE SETTLEMENT OUTSIDE THE COURT BETWEEN LOCAL COMMUNITIES AND CORPORATIONS," *Journal of Public Administration, Finance and Law* 11, no. 23 (2022): 295–303.

must be formulated. Apart from that, it is also necessary to re-analyze whether there are any remaining impacts after mitigation. To assess whether mitigation is working well, it needs to be complemented by environmental monitoring. The results of environmental impact studies are used as a basis and consideration for providing decisions to perpetrators who commit environmental violations. In this way, it is hoped that it can produce decisions that are ecologically just. With an ecologically just decision, it is hoped that it will not only protect the people who are harmed but also protect the environment itself which is the victim. The environment itself actually also has the right to be protected and restored from damage and/or pollution.[167] Likewise, so that the decision has a deterrent effect, perpetrators of environmental violations are given criminal sanctions.

Criminal sanctions include: imprisonment and fines. Imprisonment is a prison sentence imposed on perpetrators who intentionally or negligently pollute and/or damage the environment. A fine is a payment of money as a criminal sanction imposed on perpetrators who intentionally or negligently pollute and/or damage the environment. The benefits of criminal sanctions are to provide a deterrent effect and prevent similar violations in the future, support environmental recovery through recovery financing from fines, provide a sense of justice to communities harmed by environmental pollution and/or damage and realize ecological justice. With this type of criminal sanction, it can create a deterrent effect and encourage perpetrators of environmental violations to be more responsible for the environment, so that a better and healthier environment is created and environmental sustainability is realized. Thus, an effective environmental dispute resolution model that supports environmental sustainability uses environmental dispute resolution through litigation with criminal sanctions.

[167] Bharat H. Desai, "The Essentiality of Human Rights for the Sustainable Environment," *Environmental Policy and Law* 53, no. 2–3 (January 1, 2023): 95–96, https://doi.org/10.3233/EPL-239005.

9.CONCLUSION

The purpose of this study is to examine and analyze an effective environmental dispute resolution model that supports environmental sustainability. An effective environmental dispute resolution model is carried out through litigation with criminal law instruments preceded by an environmental impact assessment by a judge. With this model, prosecution, environmental restoration, compensation claims for polluted and/or damaged environments can be carried out and can have a deterrent effect on initiators or perpetrators, and can remind corporations to avoid environmental destruction and/or damage in their industrial businesses. The effectiveness of criminal law instruments in resolving environmental disputes through litigation in judicial practice; prosecutors have broader coercive powers, for example detention, searches, faster executions. Dispute resolution through litigation not only deters initiators or perpetrators who cause environmental pollution and/or damage, but is also intended to prevent others from committing acts that violate environmental law.

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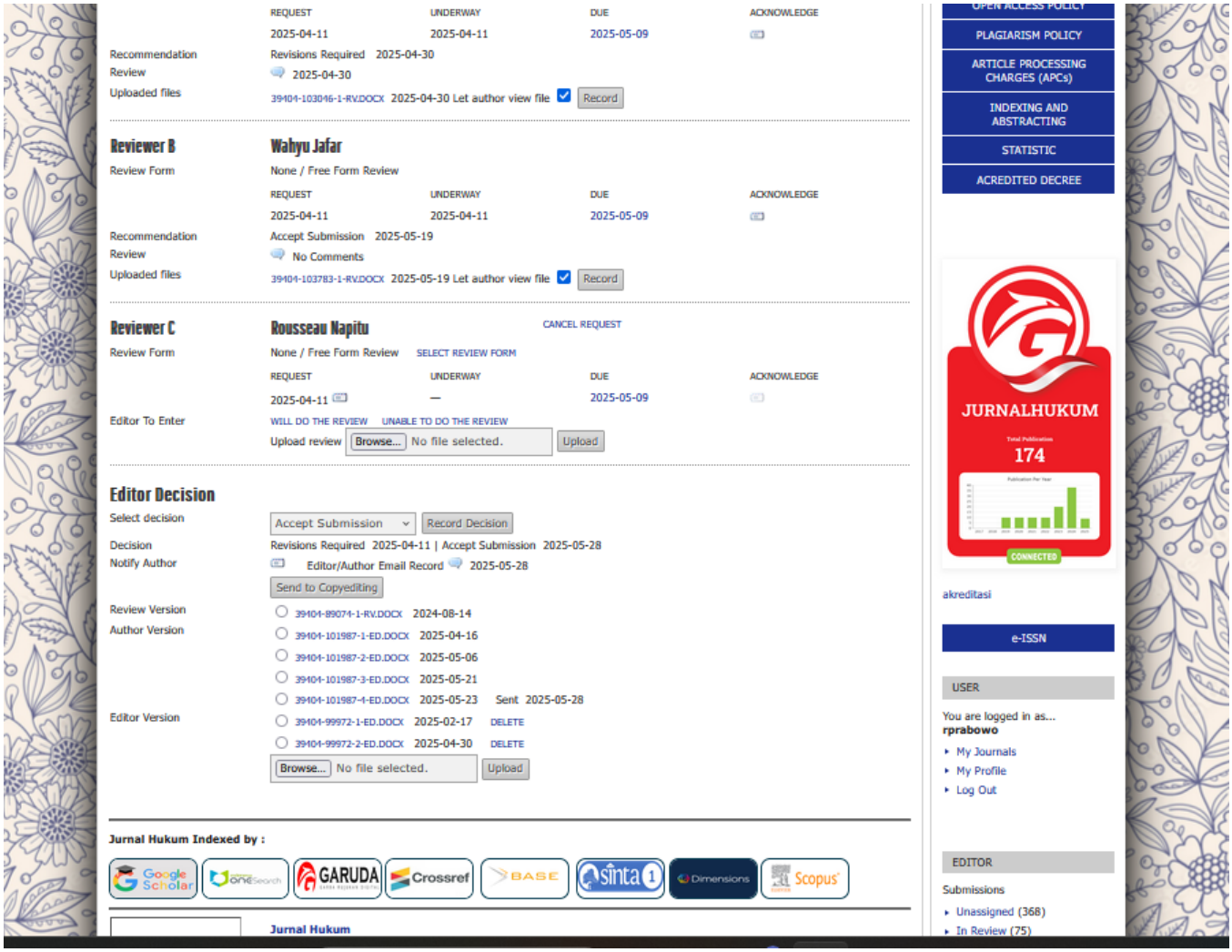
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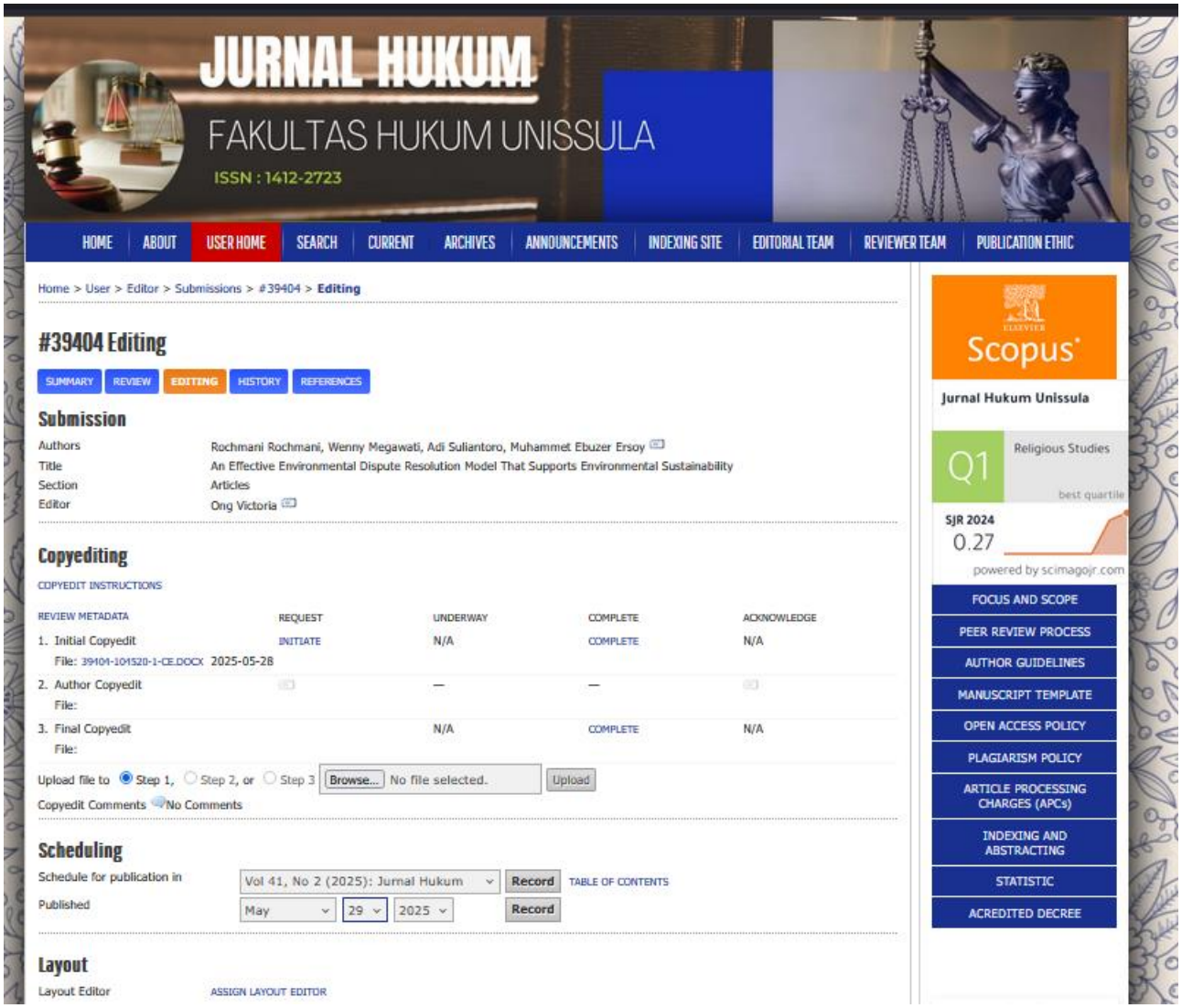
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