**Original Article** 

# THE ROLE OF THE COMMUNITY IN DEMANDS FOR COMPENSATION LOSSES ACCORDING TO LAW ON PROTECTION AND MANAGEMENT ENVIRONMENT

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#### **ABSTRACT**

**Background**. Community involvement is very important in managing the environment to create a healthy living space. Health is not just about physical condition or a clean environment, but also about overall well-being. Everyone has the same rights and responsibilities in protecting the environment. Communities often work with NGOs to deal with pollution and environmental damage.

**Research Methods**. This Research uses a legal study approach by looking at laws and regulations related to community roles in environmental protection. It also explores how people and NGOs solve environmental problems through mediation instead of going to court.

**Findings**. The study found that while people and NGOs prefer using mediation to solve environmental disputes, there are problems with legal certainty. This makes the mediation results unclear or hard to enforce.

**Conclusion.** To fix this, a mediation process that is officially recognized by the court is needed. This will help provide clear legal outcomes and fairness for everyone involved.

**Keywords**: Community Participation, Dispute Resolution Environment, Environmental Management, Legal Certainty, Role of Law Enforcement Community.

#### **BACKGROUND**

The country of Indonesia is one of a country with various potentials very abundant natural resources [1]. contained natural resources very extraordinary this is a gift from God YME then a good living environment and health is given to all people human beings without exception and the right to get a good living environment and healthy is for all humans even living creatures in the world [1]. Behind the equality of rights. In the context of environmental management Life certainly cannot be separated from the role a society where every person/society have the same rights over conditions a decent and good living environment for reside and conduct his life [2]. So, in this case the State must provide good environmental facilities for all people, both the community and the villages and communities living in urban. This right has been guaranteed in 1945 Constitution article 28 H, that everyone has the right to the environment good and healthy life [3]. Everyone is part of society and society have the same rights, obligations and roles in environmental management including his role in law enforcement environment, including village communities, remote areas, as well as cities, because of the scope environment is not only in places only certain but the entire territory of the State Unitary Republic of Indonesia[4].

The role of society in protection and environmental management is listed in Article (70) of Law Number 32 2009 concerning Protection and Environmental Management, namely[5]:

Social Supervision, Advice Giving, opinion, suggestion, objection, complaint Submission of information and/or reports. As for the procedures for making complaints if suspected happen Destruction And Environmental pollution, has been determined That in order to implement the provisions Article 65 paragraph (6) of Law Number 32/2009 on Protection and Management Environment, need to establish Regulation of the Minister of State for the environment regarding Complaints and Handling Procedures Complaints Due to Alleged Pollution and/or Environmental Destruction. The Role As well as Society in Formation Legislation in the Field of Environment and issuance of decisions in Environmental field In Law Number 32 2009 on Protection and Environmental Management Article 1 step 25, environmental disputes are A dispute between two or more parties arising from activities that have the potential and/or has had an impact on the environment, Class action lawsuits and rights sue the organization (legal standing )the very principled difference between a lawsuit representation and rights of lawsuit between organizations other[6,7]. In the representative lawsuit are 1) All members are directly involved experience or suffer a loss; 2) Claims can be in the form of compensation for losses. in the form of money and/or demands prevention (remedy) or demands in the form of court to do or not to do something (injunction) that declarative in nature.

Meanwhile, the right to issue [8,9] is: 1. The organization does not experience direct loss in context organizational lawsuit (legal standing) more based on an understanding of the loss that public nature; 2. Organizational demands (legal standing) are not met can be in the form of compensation in the form of money except for compensation that has been issued organization For its handling and demands only in the form of a request for recovery or demands in the form of a court order to do or not to do something which is declarative in nature[2,3]. Urgency of the right to sue organizations/NGOs the environment is Factors of Interest Society and Resource Control Factors natural resources by the State[3]. Right to Sue Environmental Organizations, In Law- Law Number 32 of 2009 concerning Environmental Protection and Management Life in question must have something suspected of possible acts against the law in Environmental Law.

Participation has meaning towards preventive legal protection for people. The public can find out interests through objections, hearings, as well as forms of roles and others. For that reason, there needs to be obligations of government organs to provide information and people's rights to be heard [3]. As in other countries other developments, for Indonesia the problem environmental pollution as a disturbance towards the order of human life, especially in caused by an increase in population very rapid, utilization of natural resources excessive use of technology not in accordance with existing natural conditions and human behavior patterns towards nature, in this relationship the role of society and the government will be very important in balance between the use of nature and improvement of nature[10].

With the enachment of Law – Law Number 32 of 2009 concerning Environmental Protection and Management Life roles, rights and obligations community in environmental management life is increasingly given a wider space [6]. This is reflected, for example, in Article 91 Article (1) states that society given the right to file a lawsuit group representative for interests himself and/or for the benefit of other members of society if they experience losses due to pollution and/or environmental damage. This is positioning society in a position that strong when they suffer losses on the occurrence of environmental pollution [9].

By being given the right in the form of class action lawsuit then bargaining position for the community which is usually weak when dealing with companies (big corporations) will become stronger because you can file a group lawsuit through his representative who felt the same and suffer losses due to pollution that happened[8]. This research will find out about

the community participate in environmental law enforcement in law number 32 of 2003 2009 and explaining that how do people deal with this environmental law enforcement.

#### RESEARCH METHODS

The type of the research used was normative, namely a type of research law obtained from study literature, by analyzing a legal issue through regulations legislation, literature and other reference materials that related to Existence and Prospects for Government Regulations specifically Constitution protection and environmental management.

The author of this thesis will use 3 types of approach, The first is Legislation (statute approach) which states in 1945 constitution Law no. 32 of 2009 concerning environmental management and protection. Research that prioritizes materials law in the form of regulations legislation as material basic reference in doing research, which is related to Protection and Management Environment. Second, Conceptual Approach. This research uses sources main library materials research and analyzes data secondary in the form of statutory regulation invitation that regulates about Protection and Management Environment, and Data is analyzed using logic and presented systematically to answer the problems that has been formulated. Thrid is Historical Approach, History legal developments Indonesia from the books that relate with the Law Environment and from the internet.

#### **FINDINGS**

## 1. The Role of Society in Enforcement Environmental Law

In environmental protection and management in Indonesia it is known as the term Good Environmental Governance.or environmental management principles that well, the principle of openness and participation society is an essential principle in good environmental management, especially in administrative procedures, environmental licensing and AMDAL as instrument environment. Prevention "Government pollution obligated grow and develop public awareness of responsibility his/her responsibility in environmental management life through counseling, guidance environmental education and research1life. [1]

In providing education the environment should be able to answer two questions the needs required, namely,[1] a. Human resource development who are technically competent with in-depth knowledge and skills in assessing and managing the environment. b. And can foster attitudes and behavior towards a sensitive society and responsible for environment. The first need is directed on settlement problems environment, while the second need directed at increasing public capacity pressure in maintaining sustainability environmental functions and preventing environmental damage.

In the context of environmental management Life certainly cannot be separated from the role a society where every person/society have the same rights over conditions a decent and good living environment for reside and conduct his life. So, in this case the State must provide good environmental facilities for all people, both the community and both villages and urban communities. This right has been guaranteed in 1945 Constitution Article 28 H paragraph (1) that; "Everyone has the right to live. "Physical and spiritual prosperity, residence, and get a good living environment and healthy and have the right to receive services health. Everyone is part of society and society have rights, the same obligations and roles in environmental management including its role in environmental law enforcement, without

except for village communities, remote, and cities, because of the scope environment is not only in places only certain but the entire territory of the State Unitary Republic of Indonesia.

As for the implementation of the role community in environmental management life has been regulated in law Number 32 of 2009 concerning Protection and Environmental Management includes several forms, namely, Article 70 paragraph (1) That: The role of society can be in the form of:

## 1. Social Supervision

The role of society in this matter is more of a regulatory function or legislation because of its representation in the representative institution will determine legislation or the regulations that will be made. Participate in supervising making laws, drafting laws or regulations regarding environment that cares about environmental sustainability. "The role of society directly in social supervision is carried out well individually or in groups (Institution Self-reliance Public). Do supervision direct environmental disputes can towards the existence of the environment is maintained [2].

## 2. Providing Advance, opinions, suggestions, objections, complaint

Dimensions of the role of society also reflected in the provision of advice, opinions, suggestions, objections, and complaints on the discrepancies between the should be with reality. "The role of bcommunity can provide advice and opinions to step environmental protection and management life" [2]. This has been institutionally carried out by the Government, Institutions or Environmental organizations. Objection of possible actions damage or disrupt the process environmental protection and management life.

## 3. Delivery of Information and/or Report

Submit a complaint to law enforcement agency or agency the authority of devices government village (ward), continued to the Sub-district Head and forwarded to Regent, if he finds action which damaged the environment. If later on it will cause a dispute among the people who object or make a complaint, then the resolution environmental disputes can take through the courts or outside court. With the enactment of Law-Law Number 32 of 2009 concerning Environmental protection and Management Life Roles, Rights, and obligations communities in environmental management life is increasingly diven a wider space. This is reflected, for example, in Articles 91 Article (1) states that ". Society given the right to file a lawsuit group representative for interests himself and/or for the benefit of other members of society if suffer losses due to pollution and/or environmental damage." In this positions society in a position who are strong when they suffer losses due to environmental pollution. With the occurance of pollution, society given the right to sue individual has the right to sue relating to rights as citizens protected by other laws[6].

By being given the right in the form of lawsuits individually and representatively (class action) then the bargaining position for society that is usually weak when dealing with companies (corporations) will become stronger because it can file a class action lawsuit through his representative who felt the same and suffer losses due to pollution. What happens? The rights that are owned society as follows.

- 1. Everyone has the right to a healthy environment good and healthy life as part of human rights.
- 2. Everyone has the right to get environmental education, access information, access to participation, and access justice in fulfilling rights a good and healthy living environment.

- 3. Everyone has the right to apply proposals/or objections to the plan business and/or activity Which expected to cause impact towards the environment.
- 4. Everyone has the right to play a role in environmental protection and management live according to the laws and regulations invitation.
- 5. Every entitled to do person complaint due to alleged pollution and/or environmental destruction.
- 6. Further provisions regarding procedures complaints as referred to in paragraph (5) is regulated by Ministerial Regulation Then Article 65 paragraph (6) mandates that the complaint procedure (participation) is regulated in the Ministerial Regulation. And Article 66 of the UUPPLH stipulates that everyone who fights for the right to a good and healthy living environment does not can be prosecuted criminally or sued civilly.

## 2. Complaint Procedures

In accordance with Article 65 paragraph (5) of the Law Law Number 32 of 2009 concerning Environmental Protection and Management Life. "Everyone has the right to do complaint due to alleged pollution and/ or environmental destruction" [6]

Complaints can be submitted to The responsible agency both in terms of direct with come to And submit a complaint to the Secretariat Complaints or Complaint Posts or not directly through the Complaints Media in the form of telephone; facsimile; letter; electronic mail; website; social media; instant messaging; application complaints; or other media in accordance with least development and complaints Loading information [5]; Firstly, The complainant's identity in the form of name, address, telephone number that can be contacted or e-mail. Secondly, Location of the incident. Thridly, Alleged source or cause. Next is, Time description of the incident and impact felt also desired resolution; and last is Information on whether or not complaints have been made submitted to the Responsible Agency Answer

For verification of complaints to be carried out activity:

- 1. Administrative check, covering inspection of licensing documents and/or request for data or information required from other work units, or parties' others deemed relevant.
- 2. Field Inspection, including physical field and other related documents in field.

Verification is done by:

- 1. Environmental Supervisor (PLH) live for the Ministry.
- 2. Regional Environmental Supervisor (PLHD) for environmental complaints living in an environmental agency in provinces and districts.
- 3. State Civil Apparatus (ASN) who appointed by the Minister, governor, or regent/mayor in accordance with his authority in terms of agency the environment does not yet have PLH or PLHD; or
- 4. State Civil Apparatus (ASN) who appointed by the Minister, governor or head of forest management unit according to with its authority, in managing complaints in the forestry sector. (Article 21 of the Minister of Environment and Forestry Regulation No. P.22 of 2013) 2017).

#### The authorized verifier:

- 1. Carry out inspections in accordance with complaint data or other documents which is related.
- 2. Ask for information.
- 3. Make copies of documents and/or make necessary notes.
- 4. Enter the location related to verified thing.
- 5. Take photos or make audio recordings visual.
- 6. Take samples according to provisions of laws and regulations.
- 7. Checking equipment; and
- 8. Checking the installation and/or tool transportation.
- 9. Verification implementer as Supervisor Environment/Environmental Supervisor Life The area is authorized to stop certain violations based on Article 22 Permenlhk No. P.22 of 2017.

Complainants have the right to receive information about:

- 1. Development or status of management complaint
- 2. Report on the results of the complaint; and
- 3. Follow-up on complaint results

#### **DISCUSSIONS**

## 1. Representative Action in Disputes Environment

Most of the provision's environmental dispute resolution law Protection and Management Act Environment. (UUPPLH), adopting the provisions in the 1997 UULH, Settlement of environmental disputes in UUPPLH is regulated in Articles 87 to Article 93. According to the UUPPLH, dispute resolution environment can be achieved through voluntarily through two choices of mechanisms, namely court process mechanisms and mechanisms outside the court, then the civil suit through the courts can only be done if the out-of-court mechanism is declared failed by either party [3].

First class action lawsuit times regulated in Law Number 23 1997, concerning Law Environmental Management that then changed by law Number 32 of 2009 concerning Law protection and management Act Environment, in Law Number 32 of 2009, class action lawsuit (class action) is regulated in Article 91 of the UUPPLH that is:

- 1. The public has the right to file a lawsuit group representative for interests himself Alone and/or for the interests of society if from they suffered losses due to pollution and/or damage environment.
- 2. A lawsuit can be filed if there is one similarity of facts or events, basis law, as well as the types of claims between representatives and group member his group.

Whereas procedure lawsuit group representation based on Perma (Court Regulation) Number 1 of 2002 also adopts the known rules in Australia and the United States, Lawsuits Groups are a legal means that very suitable for use in cases environmental and protection matters consumer Because problems environment, such as pollution and/or environmental destruction often threatens interests of many people due to actions or business activities. For

example, water pollution river or air so it happens not easy to be localized due to the nature of water and air move from one area to another others. According to Permanent (Regulation Court) Number 1 of 2002 so that a lawsuit can be made through events class action lawsuit must fulfill the following requirements [4];

- 1. Number of group members or people who feels that they have suffered such a loss so many that it is not effective and efficient if the lawsuit is filed individually or jointly in a lawsuit according to normal procedures.
- 2. There are similarities in facts or events and the equality of the legal basis used is substantial, and there are similarities in the types of demands between group representatives and group members.

These two conditions can be understood through case examples if, for example, it happens Environmental pollution is caused by one or more companies that are at a loss residents in several districts or cities or two or more provinces, each group of residents living in different districts or cities apply lawsuits in several District Courts at the same time, then the possibility of a consequence occurring is the following consequences; First, human resources and personnel the state, especially the Judge or Court become wasteful, inefficient because several courts hear cases whose problems are the same and the claim is the same as the defendant's also. Second, different District Courts will result in decisions that different, different decisions with for things that similar or have basic similarities the lawsuit does not reflect any legal certainity and also contradictory with a sense of justice. Third, through lawsuits that different it can result in the defendant's bankruptcy which has convicted of comitting it unlawful act and must pay compensation.

As has been stated in the section previously, in class action lawsuit the group contains group representatives and group members whose numbers may be hundreds, thousands or millions." Perma Number 1 2002 did not mention any numbers of maximum group representatives. Article 1 letter b Perma Number 1 of 2002 only mentioning that the Group Representative is "one or more people who suffer a loss who filed the lawsuit and at the same time representing a larger group of people the amount. to act as a representative group, representatives of the members group. Judge before deciding to accept a class action lawsuit the group must test or determine whether group representative meets requirements. The first stage is the stage class action lawsuit filing based on Perma Number 1 of 2002 are as follows. First Council of Judges must ensure that the group representatives meet the qualifications or requirements for acting as a group representative, there are two the requirements that must be met to become a group representative are [4].

- 1. Group representatives according to the formulation in Article 1 letter b of Perma Number 1 of 2002 must as a party who also experienced it losses resulting from the defendant's actions such as well as the members of the Group.
- 2. Group representatives have honesty and seriousness for protect interests of group members.

The Second Stage is after the Deputy group passed the requirements exam as group representative, the panel of judges must check the formal requirements of the lawsuit letter besides being in accordance with civil procedure law, must also meet the requirements according to Perma, namely [4]:

a. Complete and clear identity of the representative groups, for example names, places residence, occupation and age.

- b. Detailed definition of the group and specific, even without mentioning names of the group members but enough with, for example in the lawsuit states' all residents living along river x is the one who suffers the consequences water pollution that occurred on the date or a particular month and year as a result of PT activities. Z. or all residents who live in Province x, and Y suffering from the haze that occurred on the date, month and year caused by the activities of PT, Z.
- c. Information about group members that is needed in connection with notification obligation.
- d. Position of all groups including representatives and group members who identified identified as stated in a clear and detailed
- e. In one group lawsuit letter, group members can be grouped into two or more subgroups, for example, the group whose rice fields polluted, groups whose health is only those who are disturbed, the group that only the house is polluted, the group whose homes and health are polluted.
- f. Determine the Petitum regarding compensation must be stated clearly and in detail, contains proposals regarding mechanisms or procedures for distributing compensation to all group members, for example the proposal to form a panel of experts to facilitate the distribution of compensation losses fairly.

The third stage is after the assembly The judge confirmed that the group representative meets the qualifications and the lawsuit letter too meet the formal requirements, the assembly The judge issued a ruling that the case the person concerned may be sued group, on the contrary if according to Judge's consideration, the case concerned is not valid or does not meet the requirements requirements to be filed through a lawsuit group, the examination of the case was stopped by a judge's decision [4]

The fourth stage is the panel of judges order the group representatives to be submitting a public notification proposal notification) to group members potential. According to Article 7 paragraph (2) notifications to groups potential is done through print media or electronics, government offices, such as sub-district, village, court. The Panel of Judges has the authority to determine and order the group representatives about how the notification is done. namely: through what means, for example via radio, letters news or flyers and time pages provide opportunities for prospective members group submits exit requirements to the District Court that is trying the case. Notification costs to prospective members This group must first be covered by group representative.

The fifth stage is the opening retrial by a panel of judges after the adjournment period of the hearing for a period of time waiting for the statements to come in out has ended and the number of people who conveying the outgoing statement has It is known that the trial process will continue is carried out according to procedures HIR and Rbg.

If lawsuit change loss is granted, the panel of judges is obliged to decide amount of compensation in detail, determination groups or subgroups that are entitled and steps that must be taken by group representatives in the process of determining and distribution or sharing of compensation fairly. filing of class action lawsuit carried out through a few procedures complicated because many people experience it loss and they may stay in one or more in the City/District or in the Province which is different, Therefore, the Judge must be creative and wise that justice for many people can be met, so on the initial stage of the trial The judge can provide advice to the representative plaintiff group, especially to improve letters lawsuit, for example clarifying the formulation groups and petitum sections, in

particular regarding the procedures for distributing compensation it would be fair if the lawsuit was granted.

## 2. Right to sue Organization Environment

Organization's right to sue (legal standing) is a mechanism for filing a lawsuit by Non-Governmental Organization (NGOs) as a result of violations of the law or the existence of an unlawful act carried out by other parties, namely NGOs. "Legal Standing is defined as the right to sue, in another term is called ius standi, personal standi, standing suit or legal standing is a positional right to do so lawsuit in court based on an interest held, in legal This standing is related to two main elements absolute interdependent so that it can called legal standing, namely the right to sue (standing) and the existence of interest (interest)" [1]

Organization the Can put forward the argument of loss like this different from the losses associated with real losses that are generally in be realized in the form of monetary compensation, Loss of interest in context legal standing is more based on an understanding that the environment belongs to everyone which demands shared responsibility to preserve it. One of the characteristics of legal standing is not being sued for filing a lawsuit compensation. However, demands for money or costs real expenses can be submitted, costs real expenses are real costs has been issued by environmental organizations. Claims that can be submitted to the court Include [1]

- 1. Demand to take legal action specifically related to compatibility environment
- 2. Stating that someone has done something unlawful act with pollute or damage the environment; And
- 3. Order to do it action in the form of repairing or create a waste management unit.

While the urgency of the right to sue environmental organizations/NGOs. are as the following is to accept the development the theory and application of this standing, at least whether or not it is based on two factors, The first is Interest protection factors (wide community), Some cases of power conservation support the environment is public, case Which concerning interest the wider community. The number of cases that emergence has encouraged the growth of advocacy organizations, such as Legal Aid Foundation Indonesia (YLBHI), Consumer Institute Indonesia (YLKI), and Wahana Indonesian Environment Association (WALHI) in Indonesia, besides For fight for interest society, these organizations very effective in push policy updates and changes attitudes and behavior of bureaucracy and circles entrepreneurs through pressure pressure (Pressures) that are carried out. One of the the pressure that can be exerted in the framework of the rule of law, is to file a lawsuit in court. In fighting for example, Organizations mentioned ongenerally, have no interest law. "In the sense of not having proprietary interest, or economic interests" [1] On the side others, for the benefit of society or the environment for example, it is necessary the existence of legal recognition recognition) which provides opportunities to an organization for file a conventional lawsuit because civil law doctrine requires there is a legal interest to be able to come on stage in court as plaintiff. Secondly, is Natural Resources control factors (by the state), Especially regarding cases concerning natural resources, natural resource objects, such as rivers, forests, and minerals or mines in general constitutionally controlled by the state. Control by the state has consequences, that the sustainable nature of natural resources more determined and dependent on consequences, activism, and the government's courage to ignore his obligation his obligation to maintaining sustainable natural resources, for example, by not implementing licensing or carrying out functions supervision as determined legislation. Conditions This kind of demands groups-community groups including NGOs take corrective action, in case This is through legal channels. So that the action the corrective

action can be carried out effective, it is necessary to provide access them to court through development of standing formula.

Standing rights are not directly guarantee the success of litigation public cases because basically. "Standing is just a "ticket" enter" into the legal advocate arena (legal bettle) which is full of various proof constraints, recovery device (remedial tools) available, until on the constraints related to readiness of the panel of judges to give the decision [1].

Therefore, division of standing concept as one of the procedural rights in litigation public cases must be followed development of procedural rights others. These rights include is the right of the community or seeker justice to gain access to expert witnesses, access to information, availability adequate remedial tools in civil lawsuits and development stract liability system.

The contribution of this research for implementing the law Number 32 of 2009 concerning protection and environmental management, especially the role of society in environmental protection and management life needs to be given constant learning the law itself and provides the widest the breadth to participate in planning until evaluation stage. In the problem dispute community environment is provided with facilities means to obtain his rights if occur and are affected by pollution or environmental destruction, either through groups or assisted by institutions community self-reliance.

#### **CONCLUSION**

The role and the community since the planning stage until evaluation in management the environment is to produce useful input and perceptions from citizens and society who interested (public interest) in frame increase quality environmental decision making. Because by involving the community potentially affected by activities and interest groups, decision makers decisions can capture views, needs and expectations of the community and the group and pour it out into the concept. n the context of implementing responsibilities responsibility for protection and management environment, environmental organization life has the right to file a lawsuit for interests of preserving environmental functions alive. The right to file a lawsuit is limited on demands for action certain without any claim for compensation, except for real costs or expenses.

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