

Long legal process hampers justice: Report

Local communities will suffer greater difficulty in achieving environmental justice due to the absence of a simpler dispute mechanism in the midst of a steady increase of environmental damage caused by human activities, an institute says in its recent research report.

Prayekti Murharjanti, a researcher from the Leiden University's Van Vollenhoven Institute (VVI), said only a few environmental disputes resolved by litigations or mediations had ended with a just solution for local communities afflicted by the environmental damage.

"Justice has not been on the side of the victims because it is very difficult for victims of pollution to prove their case at court," she said at the launch of the report titled "The Effectiveness of Environmental Dispute Resolution in Indonesia".

VVI Project Manager, Ward Berenschot, said Indonesia had seen an excessive proliferation of environmental disputes triggered by, among others, intensified deforestation and big mining operations.

"A more effective and efficient environmental dispute mechanism is in dire need to make sure that the developmental costs are not a burden on the weakest groups only," he said.

According to the Indonesian Forum for the Environment (Walhi), the country's environmental disputes in 2009 reached 387 cases, comprising 127 in forestry, 120 in mining and energy, 48 in coastal areas and sea, 38 in big plantations, 17 in water and food, and 47 in environment and other natural resources.

"Environmental damage in Indonesia will increase by 50 to 70 percent in 2011 from last year's figure," said Walhi activist Mukri Priatna as quoted by tempointeraktif.com news portal.

Meanwhile, according to the Environment Ministry, people's pollution and environmental destruction complaints in 2009 reached 98 cases. Only 33 of 98 cases have been resolved by the ministry, including three cases through mediation.

In the research, the VVI researchers studied 44 environmental disputes that occurred between 1989 and 2009, of which 17 cases were dealt with through mediation and 27 cases through litigation. Only 23 verdicts of the 27 litigation cases were known, the team said.

During the disputes, many victims reportedly had difficult experiences with the justice system. The report says that victims could win only 13 percent of 23 cases, while the remaining saw the communities losing.

It even takes a long process for the victims to win the disputes. "It takes between two to 10 years after their legal process starts," Prayekti said.

Many litigants and judges showed poor knowledge on the existing environmental laws, including environmental principles, resulting in a low success rate.

"They often fail to understand scientific evidence as legal proof that is needed in court," Prayekti said.

People's complaints received BY THE ENVIRONMENT MINISTRY 2002 – 2006

Year	Complaints	Environmental cases	Non-environmental cases
2002	54	38	16
2003	61	56	5
2004	70	57	13
2005	151	76	46
2006	246	212	34
2009	-	98	-

Source: The Environment Ministry, 2010

Environmental disputes in 2009

Fields	Cases
Forestry	127
Mining and energy	120
Coastal areas and sea	48
Big plantations	38
Water and food	17
Environment and other natural resources	47
Total	387

Source: WALHI, 2010



Citing an example, she said a judge could not hand down a penalty in a recent forest fire case caused by land clearing, saying that no significant proof, including the person who burned the forests, could be found.

“It’s so silly because scientifically we can prove whether the forest fire is caused by human activities or not,” she said.

The report concludes that mediation is a much more effective mechanism. About 82 percent of 17 environmental mediations have achieved agreements, of which 64 percent of their compensation claims have been paid by the companies.

Prayekti said the mediation process was relatively quick. “It takes 1.2 years only on average,” she said. However, it is not easy to get polluters to attend a mediation process, which takes 10.1 years on average. Because alleged polluters come on a voluntary basis, they cannot be forced.

Mediation failures usually relate to unbalanced power between corporates and their opponents. “A polluting company has financial power and strong political support to win disputes,” she said.

Prayekti said that a simpler environmental dispute mechanism would not only give a just solution to people afflicted by environmental destruction, but would also keep the environment clean and sustainable.” (ebf)