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ALTERNATIVE ENVIRONMENTAL DISPUTE RESOLUTION BASED ON LOCAL WISDOM OF BANJAR TRADITIONAL COMMUNITY

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Abstract: *The purpose of this study is first to identify the difficulties of the community as victims in resolving environmental disputes through the courts (litigation) and then to find a pattern of environmental dispute resolution outside the courts that can be applied in accordance with the values and local wisdom of the Banjar community. The research method used is normative legal research, namely examining the applicable legal norms related to the resolution of environmental disputes. The results of this study: First, in the Settlement of Environmental Disputes in court (litigation) there are several weaknesses, namely the formality of the court system, proof of the elements contained in Article 1365 BW, the burden of proof is on the plaintiff / victim. In addition, settlement through the Court requires a lot of court costs, a long time, and court decisions are not satisfactory because the settlement is win-lose, less responsive, and no special court for environmental cases has been formed. Nevertheless, Law No. 32/2009 and and Government Regulation Number 54 of 2000 has opened up opportunities for the establishment of an Environmental Dispute Resolution Service Provider Institution outside the courts in the regions. In order to be more effective, a pattern of dispute resolution can be developed which has become a culture or customary law in the Banjar community, namely the "Bedamai culture" as a reflection in efforts to maintain harmonious order in society. The Bedamai institution can be used as an alternative to resolving environmental disputes that are traditional in nature which can be strengthened in Regional Regulation Products.*

Keywords: *Dispute resolution Environment; Local wisdom; Banjar Society.*

1. INTRODUCTION

In South Kalimantan with the condition of the region rich in natural resources, especially from mining products such as iron ore, gold and coal. Management of natural resources often causes many environmental problems. In addition, in South Kalimantan, apart from the mining sector, the palm oil plantation sector is also growing increasingly in each district, in addition there are also industries that in their operational activities have the potential to produce waste. From the activities carried out in several sectors, on the one hand, it will produce the welfare of the people's lives and on the other hand it will have a negative impact on the community. If

managed unwisely, it will endanger the survival of humans and their environment. So that there is the potential for pollution or environmental damage that will harm the surrounding community and can also potentially cause environmental disputes with the community.

In social life, conflict or disputes are often unavoidable, because there are various interests that each party wants to maintain. Many people equate conflict or disputes with acts of violence, so that both are often viewed negatively. Therefore, conflict and disputes are considered as something that must be avoided, eliminated, or at least minimized(Rahmadi, 2010). Environmental disputes are often associated with many interests or related to losses such as threats to survival, loss of livelihood, decreased quality of economic value of property rights owned, besides that it can also have an impact on health, recreational activities, and the beauty and cleanliness of the environment (Sari, 2014).

So far, the settlement of environmental disputes through the Court (litigation) has not produced many results. Dispute resolution through the courts in resolving environmental disputes has so far relied more on formal legal provisions and is considered less able to make legal breakthroughs (Abduh, 2024). Therefore, the process of resolving environmental disputes through the courts has so far been considered less effective and has not provided a sense of justice for all parties in resolving environmental disputes. Communities as victims often have difficulty accessing the justice system due to limited information and legal knowledge and costs, often becoming obstacles for them to obtain a fair settlement. Therefore, to overcome this ineffectiveness, it is important to improve the environmental dispute resolution system to be more efficient and produce a complete settlement that can be accepted by the parties.

Since ancient times, the way to resolve disputes in Indonesian society has prioritized the values of deliberation and consensus. which prioritizes achieving peace. There are various traditions and customary institutions that are often used in resolving problems in society, both between individuals and between groups in accordance with the local wisdom of the local community, such as the existence of institutions "village consultations, customary meetings, customary courts, village courts, stone burning culture, begundem institutions," and the like. The culture of peaceful dispute resolution in Customary Law, where customary leaders can act as mediators in resolving disputes between members of their community if there are differences of opinion or disputes in society. This is in line with the fourth principle of Pancasila, which emphasizes the importance of deliberation in decision making (Wantua et al., 2024).

Considering the potential for environmental conflicts or disputes in society, especially in the community in South Kalimantan, some of whose areas are located on wetlands that have their own characteristics and have rivers as one of the places of activity, there is the potential for pollution and environmental damage, especially at this time with the rapid development of palm oil plantations and mining which is increasing, this can trigger disputes, between the community who are in fact facing business people who have a strong position both economically and in terms of human resources. To prevent disputes and violence in resolving conflicts, an effective, efficient resolution is needed that can end in peace between the parties. For this reason, it is necessary to create a pattern for resolving environmental disputes that can provide justice and legal certainty for the parties and have a strong legal basis in resolving conflicts or disputes so that they will not cause new problems or become prolonged conflicts that will harm both parties. Therefore, to obtain a

complete resolution of environmental disputes, it is necessary to find a pattern of dispute resolution by utilizing dispute resolution based on local wisdom of the Banjar community in South Kalimantan known as "Adat or Badamai Culture" as a traditional mediation that has cultural roots that have long lived in the community. The purpose of this study is to identify the obstacles of the community as victims in resolving environmental disputes through the courts (litigation) which is then to find a pattern of environmental dispute resolution outside the courts that can be applied in accordance with the values and local wisdom of the Banjar Community.

2. METHODS

The research method used in this study is normative legal research. This study uses a statute approach and a conceptual approach. The legal materials used in this study are primary legal materials and secondary legal materials. Primary legal materials and secondary legal materials are obtained by conducting an inventory and identification of legal materials relevant to the needs of the analysis. The primary legal materials used are Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Government Regulation Number 54 of 2000 concerning Institutions Providing Environmental Dispute Resolution Services Outside the Court, while the secondary legal materials used are from reference books, legal journals, papers, and scientific articles or writings related to this study.

3. RESULTS AND DISCUSSION

3.1. Constraints of the Community as Victims in Resolving Environmental Disputes Through the Courts/Litigation

Disputes are a phenomenon that is often found in various types of societies throughout the world, from traditional societies to postmodern and modern societies. This phenomenon is related to the legal system that applies in the society, or more specifically to the function of law in community life which has become the center of attention of researchers in the fields of law and society, Legal Anthropology, and Business Law (Abdurahman, 2018, p. 513).

Environmental disputes are disputes between two or more parties that arise due to the presence or alleged presence of environmental pollution and/or damage which is a "species" of the "genus". In this context, environmental disputes are part of the type of dispute that contains conflict or disputes in the environmental field life. Lexically, the term "dispute" can be interpreted as "a dispute or disagreement involving conflicting claims or rights, where one party submits a claim or demand that is denied by the other party." In terms of terminology, there are various terms in English such as dispute resolution, conflict management, conflict resolution, or conflict intervention. In a dispute including an environmental dispute, there is not only a dispute between the disputing parties, but also contains a claim as the main element that characterizes the existence of a dispute. Therefore, the definition of an environmental dispute in Article 1 number 19 of the Environmental Management

Law, this definition does not fully reflect the meaning of the dispute. in its entirety and completeness because it only describes the dispute as "a dispute between two or more parties" without being equipped with elements of a claim or demand (Sawitri & Bintoro, 2010).

Equipped with elements of claims or demands. Conflict is a situation where two or more parties have conflicting interests. Conflict can develop into a dispute if one party who feels aggrieved expresses their dissatisfaction or concerns directly to the other party who is considered to be the cause of the loss, or to a third party. Disputes, as a real manifestation of disagreement or conflict between various parties, cannot be allowed to continue without resolution. Therefore, efforts are needed to resolve them so that they do not drag on and cause more detrimental impacts. Basically, dispute resolution aims to end disputes that occur in society. Through this resolution, it is hoped that the relationship between the parties involved can return to normal (Rahmadi, 2010). Philosophically, dispute resolution is an effort to restore the relationship between the disputing parties or restore the losses of the injured party to its original state. By restoring the relationship, it is hoped that they can establish relationships, both socially and legally, between one another (Salim.HS, 2014).

In order to provide protection for anyone whose civil rights are violated in an environmental dispute, the makers of Law No. 32/2009 provide two alternatives for resolving environmental disputes, namely resolving them through the courts or outside the courts in accordance with the mechanisms determined by the law. This is regulated in Article 84 paragraph (1) of Law No. 32/2009 concerning Environmental Protection and Management which provides alternatives for resolving environmental disputes which can be pursued through the courts or outside the courts. Article 87 of Law No. 32/2009 can be used as one of the legal bases for filing an environmental lawsuit, considering that the Environmental Protection Law does not determine the procedures for suing for environmental compensation, so in practice so far lawsuits in court still refer to Article 1365 BW. as the basis for the plaintiff's lawsuit in a letter which also contains a demand that the defendant be declared to have committed an unlawful act(Supramono, 2013).

Based on Article 1243 and Article 1365 of the Civil Code which adopt the principle of liability based on fault. According to this provision, the element of fault is an element that greatly determines the existence of responsibility or in other words, if the element of fault cannot be proven, there will be no obligation to compensate. The proof based on this principle is considered burdensome for the victim as the plaintiff who files the lawsuit, because they must be able to prove the element of fault from the defendant (Absori, 2000). Because the burden of proof is placed on the plaintiff to prove it based on Article 1865 BW/Article 163 HIR/Article 283 RBg, whereas in general in cases of environmental pollution-destruction, victims usually do not understand the law (are not legal) and are economically weak, and are already in a state of suffering. If they have to face the defendant, who is generally a

company that is economically and has strong human resources, they are facing a victim in a weak position. It is a heavy thing and is considered unfair if the burden of proof must be on the victim who needs compensation (Supriadi, 2006).

Siti Sundari Rangkuti expressed similar sentiments that liability based on fault contains difficulties and the provisions on tort contain weaknesses in terms of proving the defendant's fault in addition to the high cost of litigation. In addition to the element of fault, there are losses that occur due to environmental pollution that do not always directly affect people or property. As Lummert stated that "Damage does not always have a direct impact on humans or property. Damage often causes changes in nature, landscape, climate, or the quality of air, water, and soil (Rangkuti, 2000).

As a form of legal settlement that is impartial (neutral) but does not always provide satisfaction to the parties, in addition to costs, time, reputation and others, there are often several obstacles in resolving disputes through the Court. Among them are in the execution of victory that has been obtained by one party, it is not necessarily able to be implemented quickly, it can even cause new problems, both from the losing party or from other interested parties, the Court's Decision is not able to resolve the dispute, but is only a decision. Different from the method of resolving disputes outside the court such as mediation which is not only aimed at making decisions, but also aims to resolve disputes. Former Supreme Court Justice M. Yahya Harahap identified 5 weaknesses in resolving disputes through the courts, namely the dispute resolution process through the courts is considered very slow, the court costs incurred are large, the settlement is not responsive, the decisions made often do not resolve the problem and the judge's ability is still generalist (Abdurahman, 2018, p. 511). So that it becomes an obstacle in resolving certain cases completely, especially in environmental dispute cases.

In addition, so far, environmental cases are still the scope of general courts and there has been no special court that handles environmental cases, considering that environmental cases have special characteristics, therefore they require special handling and cannot be equated with violations of the law in general, for example in terms of specificity related to scientific evidence. From environmental cases that have recently increased, both in terms of the impacts caused, the mode used and the role of the perpetrators who often involve large corporations, it is an urgent need for environmental cases to require special and accountable handling. Facts show that in several recent cases involving large companies and individuals, the courts often make decisions that are felt not to fulfill the sense of justice of the community (Rochmani, 2020). According to the Executive Director of Wahana Lingkungan Indonesia, Abetnego Tarigan, there is a need to establish a special judicial institution to handle environmental dispute cases, because there are still obstacles faced, namely in terms of implementing regulations in the field of the environment and natural resources, which still have many weaknesses related to handling environmental dispute cases or conflicts related to control of natural

resources. In addition, the personal capabilities of law enforcers such as judges who do not yet fully understand the legal substance related to environmental dispute issues (Hukum Online, 2013). The presence of a special judicial institution for environmental cases in the future can be used as a channel for civil society and residents affected by environmental damage/pollution cases to obtain ecological justice. by placing judges who have high integrity who understand the substance of environmental law and who side with the environment and human rights (Junef & Husain, 2021).

Thus, in resolving environmental disputes through the courts, it has not yet provided satisfactory results for the community seeking justice. The community as victims faces various difficulties, including the imbalance of position for victims with the defendant (company) both in terms of Human Resources, finances and power, in addition, victims as plaintiffs who do not understand the law must face the formalities of the judicial system which are considered complicated, the burden of proof is not easy, the long legal process also hinders access to justice for people who do not have sufficient resources to face the protracted legal process. plus there is no court that specifically handles environmental cases so that they can be handled by judges who have special abilities in handling environmental cases civilly. So that the resolution of environmental disputes through the courts is considered the last bastion of justice seekers and is still considered unable to fulfill justice for victims in seeking justice.

3.2. Settlement of environmental disputes outside the court in accordance with the local wisdom values of the South Kalimantan community

Alternative Dispute Resolution (ADR) is a way to resolve conflicts without going through the court process. This method was born as a response to dissatisfaction with the litigation process which tends to be confrontational and often complicated and convoluted. The background that is the reason for the interest and attention to ADR is First, the need for a more responsive and flexible dispute resolution mechanism to meet the needs in resolving a dispute,; Second; community involvement in the dispute resolution process needs to be strengthened; and Third, Expanding access to achieving justice allows every environmental dispute, which has unique characteristics, to be resolved through an appropriate resolution mechanism. This gives the parties the opportunity to determine the best dispute resolution method in resolving their problems (Wijoyo, 1999).

Di Indonesia, although the term ADR is relatively new, in reality, dispute resolution by consensus has long been carried out by the community, which basically emphasizes efforts for deliberation, consensus, kinship and peace. Dispute resolution through ADR has its own appeal because it is in line with the traditional socio-cultural system based on deliberation and consensus (Dodi, 2022). According to Mas Ahmad Santoso, Alternative Dispute Resolution (ADR) is a way of resolving conflicts

or disputes outside the court in a cooperative manner that aims to reach an agreement or solution to a conflict or dispute that is win-win. The meaning of win-win is a solution or agreement that can accommodate the interests of the parties involved in a conflict (shared interest) (Rahmawati, 2018). This can be seen from the fact that the life of Indonesian society is more oriented towards balance and harmony, which sometimes the level of balance and harmony is not achieved when fully submitting dispute resolution through judicial institutions, where basically everyone wants to be respected, appreciated and no one wants to be defeated in their interests. The habit of Indonesian society in resolving disputes through informal and local mechanisms is called *"in a family way"* (Astarini, 2020).

In Law No. 32/2009, the Settlement of Environmental Disputes outside the court is regulated in Articles 84 and 85 of Law No. 32/2009. Based on Article 84 of Law No. 32/2009, the settlement of civil environmental disputes can be carried out through a court mechanism or an out-of-court mechanism based on the voluntary choice of the disputing parties. Settlement of Environmental Disputes outside the court cannot be applied in the settlement of environmental criminal disputes. The purpose of resolving Environmental Disputes outside the court is to reach an agreement, namely an agreement on the Form and amount of compensation, recovery measures due to environmental pollution and/or damage, certain actions to ensure that pollution and/or damage to the environment will not recur; and/or actions to prevent negative impacts on the environment, in its settlement can only be done in three forms of environmental dispute resolution options, namely through negotiation, mediation, and arbitration (Rahmadi, 2010, p. 289).

In Indonesia, out-of-court dispute resolution is regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 10 of this law states that Alternative Dispute Resolution is defined as a mechanism for resolving disputes or differences of opinion carried out based on procedures agreed upon by the parties, namely through out-of-court channels such as consultation, negotiation, mediation, conciliation, or assessment by experts. This is also explained in the General Explanation of the law. For environmental disputes, there are two forms of out-of-court settlement. First, through a neutral third party who does not have the authority to make decisions. The results of this mechanism are not fully binding, so if one party is not satisfied, the dispute can be brought to court. Second, through arbitration which produces a final decision that is binding on all parties to the dispute (Wahyuni, 2013).

By opening the opportunity for dispute resolution outside the court or ADR in the Environmental Law, it is a way out to help victims of environmental pollution/damage who have so far faced difficulties in the process of proving through the courts, especially in scientifically proving the elements contained in Article 87 of the Environmental Law which is closely related to the provisions of Article 1365 of the Civil Code (Wijoyo, 1999). Although the settlement of environmental disputes

outside the courts can only be implemented if the parties agree to choose it. Philosophically and sociologically, the concept of ADR has long been deeply rooted in Indonesian society, philosophically ADR contains substantial values contained in Pancasila, especially the fourth principle. While sociologically empirically ADR is a dispute resolution model based on the cultural values of Indonesian society, which has models of dispute resolution through peaceful means that live in Indonesian culture based on deliberation and consensus to resolve all disputes or problems in society (Usman et al., 2025).

The ADR concept is implemented with an approach that prioritizes the principle of family based on deliberation and consensus assisted by a neutral third party as a mediator, where the parties work together to resolve the problem through deliberation and consensus which will result in a win-win solution. In. Article 84 paragraph (3) of Law Number 32 of 2009 itself emphasizes that lawsuits can only be filed through the courts if efforts to resolve disputes outside the courts are unsuccessful. This means that the state (government) wants environmental problems to be resolved through deliberation and consensus of both parties. In general, environmental problems are related to pollution and compensation (reparations). There are parties suspected of polluting the environment and parties who feel they are victims of environmental pollution (Siombo, 2012).

The existence of disputes in various societies in the world is a universal phenomenon. Every society has its own model for resolving disputes according to the style of that society. With the existence of alternative resolution of environmental disputes outside of court, it is hoped that it will increase society's obedience to a value system based on deliberation. Furthermore, Article 86 paragraph (3) of Law No. 32/200 and Government Regulation Number 54 of 2000 concerning Institutions Providing Environmental Dispute Resolution Services Outside the Court, based on these provisions, provides an opportunity for the community to form an independent and impartial environmental dispute resolution service provider institution. Where the central government and regional governments can facilitate the formation of an independent and impartial environmental dispute resolution service provider institution (Usman et al., 2025).

Regarding the institutional form in resolving an environmental pollution dispute, Japan can be a good example, namely the existence of a national-level body established based on the Law concerning the Settlement of Environmental Pollution Disputes, Environmental Disputes Coordination Commission. This body aims to resolve pollution disputes through conciliation, mediation or arbitration, namely for disputes that are considered critical or disputes that cover a wide area. For the settlement of other disputes in each prefecture, an Environmental Disputes Council is formed, which is tasked with carrying out conciliation, mediation and arbitration. Parties who wish to claim damages in the field of civil law can choose whether through a civil court, the Environmental Disputes Coordination Commission or the

Environmental Disputes Council in their province, whether through a civil court, or through the Environmental Disputes Coordination Commission or the Environmental Disputes Council in their province (Hardjasoemantri, 2000).

In the Banjar community in South Kalimantan, the institution of "Adat bedamai" is known as one form of dispute resolution that is commonly used in society. Adat badamai is also called "babaikan, baparbaik, bapatut or mamatut, baakuran" and the resolution by means of suluh also means the result of a process of deliberation or discussion in a joint discussion with the intention of reaching a decision as a solution to a problem. Adat badamai is carried out in order to avoid disputes that can endanger the social order. The Badamai decision produced through the deliberation mechanism is an alternative effort in finding a way out to solve problems that occur in society. In the Banjar community, if there is a dispute between residents or a violation of norms (customs), residents tend to choose to resolve it peacefully and are reluctant to resolve it through the courts (litigation). Through Adat badamai, it has been proven effective in resolving disputes or disputes and is able to eliminate feelings of revenge, and has a role in creating security, order and peace in society (Hasan, 2010).

In the Encyclopedia of Islamic Law, the word "peace" is equivalent to the word "as-sulh," which means an agreement to resolve a dispute or disagreement into peace. The custom of badamai also means the result of a process of deliberation or discussion discussed together with the aim of reaching a decision to resolve a problem. It is implemented to avoid disputes that can endanger the social order. The Badamai decision produced through a deliberation mechanism is an alternative effort in finding a way out to solve problems that occur in society (Hasan, 2012). The Badamai custom in Banjar society is an implementation of the values of Islamic teachings which always teach a peaceful path or ishlah in resolving a dispute. It is the resolution of disputes in order to avoid the emergence of conflicts that can endanger the social order, so Badamai is always held, namely the resolution of legal disputes which is an alternative effort in finding a way out and solving problems that occur in society (Hasan, 2018).

The culture of badamai which originates from the Law of Sultan Adam which was officially enacted in 1835 is known as UUSA 1835, namely the Law of the Sultanate of Banjar which was in effect from 1835-1857 during the leadership of Sultan Adam Al-Wastsiq Billah. In Article 21 of UUSA 1835 specifically which is a reference to adat badamai, the Law orders village elders if there is a dispute to first reconcile ("mamatut") unless it is unsuccessful, then it can be resolved through a judge (kaekaha, 2021). This method was chosen as part of the social institution of the Banjar community because it is believed to be most in accordance with the culture of the Banjar community to make the best decisions through a deliberation mechanism. It is considered the most effective in preventing conflict, disputes, or hostility, and is able to reduce feelings of revenge that can damage social harmony.

In addition, the Badamai custom functions as a powerful means of communication to strengthen relationships and kinship between members of society. Thus, "Adat Badamai" has an important role in strengthening social control to prevent conflict in maintaining security and order in society (kaekaha, 2021).

Usually in resolving a dispute or problem involves the village elders who are considered as figures, who are usually involved in every village activity, and are always the first to be contacted if an outside party wants to make peace (babaikan) with one of the community members or groups of relatives (bubuhan) or those in the village. In addition, figures who can be involved in helping to resolve problems or disputes in the community, namely in certain circles of relatives there are residents who have positions or jobs that are considered prominent compared to other residents such as suppliers, civil servants in the city, and so on, or someone who is considered a wise person who has been proven in the community, so that he is considered older and is aligned with parents who are called village elders as a symbol of bubuhan (Hasan, 2012, p. 27). The Badamai custom describes an eastern culture that is familiar with the values or views of a society characterized by mechanical solidarity, it functions as a solution mechanism in solving various problems in society. When society changes according to the changes and modernization that occur, the position of the Badamai custom still has a place in the civil aspect when it is in a space and social order characterized by organic solidarity, which relies more on dispute resolution mechanisms with a litigation approach. The position of the Badamai Custom in the future is still quite prospective and can still be maintained by the community, with the support of the community itself to fight for the preservation of local wisdom values "Adat Bedamai " as a living law in society (Hasan, 2012, p. 34).

Customary peace is a pattern of dispute resolution outside the court known as non-litigation or alternative dispute resolution (APS) or Alternative Dispute Resolution (ADR). which prioritizes moral aspects through deliberation with the aim of providing balanced justice (win-win solution) without looking for the wrong and right parties. Unlike the litigation path in court, the disputing parties are positioned as opposing parties or enemies and there will be a losing and winning party (win-lose), a long time and affects (tired) physically and psychologically. as a last resort, dispute resolution through the court (litigation) can be taken if dispute resolution outside the court (non-litigation) does not find a solution, it can be taken through a formal and legally binding court such as through customary resolution (Pelu & Tarantang, 2022).

In essence, dispute resolution according to customary law with the ADR concept has the same characteristics, namely:

a. It is a way of resolving disputes outside the court through a negotiation mechanism
b. The existence of a mediator who is accepted by the disputing parties in the

negotiation process
c. The mediator has an obligation to help the disputing parties find a solution
d. The mediator acts as a mouthpiece for the disputing parties
e. The mediator does not have the authority to decide during the negotiation process.(Lesmana, 2020)

The advantages of customary peace compared to the courts are that the decision resulting from customary peace is voluntarily accepted by the disputing parties, while the court decision can still be pursued through legal action by the party who does not accept it because it is considered unfair. However, customary peace also has weaknesses, namely that legally the decision resulting from customary peace is not legally binding, but philosophically it is morally binding for the parties. Peace is certainly a noble path by upholding the morality of the disputing parties. In addition, customary dispute resolution is more flexible and elastic than through official courts. Customary Courts still exist in society but their resolution is carried out through "Peace". This can be seen from the concept of recognizing the existence of Customary Courts in Papua Province in accordance with the special autonomy law for Papua Province (Abdurahman, 2018, p. 412).

With the existence of PP No. 54 of 2000, it opens up opportunities for dispute resolution outside the court by establishing a dispute resolution institution in accordance with the local wisdom of the community which can be established by the local community with the support of the Regional Government or by the Regional Government. This is an opportunity for dispute resolution through mediation using "traditional mediation" which is maintained in several regions such as the existence of a peace institution in Central Kalimantan Province which convenes and decides cases that occur in the community based on applicable customary law. This institution is regulated by the local Regional Government through a Regional Regulation. Through the utilization of such customary institutions, dispute resolution can be formed into a dispute resolution institution that is characterized by the local wisdom of its community by reviving dispute resolution institutions that are already known in the local customary community even though formally it is not a State Court institution as regulated in the Law. Therefore, it is necessary for the South Kalimantan Regional Government to strengthen the Bedamai institution that is in accordance with the character of the South Kalimantan community by adopting the concepts of this Bedamai institution as an alternative for resolving environmental disputes or disputes in other fields in Regional Regulation Products as well as the concept of recognizing the existence of Customary Courts in Papua Province and Central Kalimantan.

4. CONCLUSIONS

The obstacles that will be faced by the community as a plaintiff to successfully resolve environmental disputes through the courts are firstly the difficulties that will be faced in the process of proving the elements contained in Article 1365 BW, namely proving the element of fault (schuld) of the defendant as a polluter and/or

destroyer of the environment and the element of causality while the burden of proof is imposed on the plaintiff as the victim who is generally an ordinary person who does not understand the law and is financially weak and must face a company that is financially and humanly stronger. In addition, litigating through the courts takes a long time, is expensive and formal, the settlement is not satisfactory, tends to be win-lose, is less responsive and there has not been a special court for environmental cases and also has to deal with the existing judicial system, then it is likely that the case will be difficult to win. In order for the settlement of environmental disputes outside the court to be more effective and efficient in South Kalimantan, a settlement pattern that is the local wisdom of the Banjar Community can be accommodated, namely "Adat or Bedamai Culture". The South Kalimantan Regional Government can strengthen the Bedamai institution that is in accordance with the character of the Banjar Community of South Kalimantan by adopting the concepts of this Bedamai institution as an alternative for resolving environmental disputes or other disputes in Regional Regulation Products. Law No. 32/2009 and Government Regulation Number 54 of 2000 themselves have provided an opportunity for the the regional government and community to form an institution providing environmental dispute resolution services that are free and impartial. Where the central government and local governments can facilitate its formation, so that this regulation can open up opportunities for the use of traditional mediation concepts that are still alive in the community as part of the Customary Law institution.

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