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Conflict Resolution From the Viewpoint of Sustainable Forest Management (An Indonesian Case Study)

Mas Achmad Santosa,[1]

Conflict Management in Indonesia

General Introduction

In general a conflict management involves three approaches: (1) power-based conflict management; (2) rights-based conflict management ("right-or-wrong" approach which is usually performed through a judiciary mechanism such as court, tribunal or arbitrage; and (3) interest-based conflict management customarily performed through a negotiation process.
Power-based conflict management lies in the hand of the superior powers (determined by authority and financial power). In general, people tend to believe that power and money is the best weapon for resolving problems. Whenever the other two approaches fails to work (rights-based or interest-based conflict management), and the burden of discontent becomes intolerable, the last option is often direct physical action.

In a traditional society, it is common to apply the interest-based conflict management to achieve win-win solutions. Studies conducted in some highlands in South Sumatera show that traditional negotiations proved to be the most capable of bringing justice to everyone with the help of a *jurai tua* (tribal chief). A *jurai adat* is essential to record the final outcome, yet the conciliation is reached by decision of the disputing parties. In addition, a process called the *nganjuk ngambik exists*, a session where all arguments and opinions are heard and considered. This is similar to the concept of "reciprocity" in modern negotiations where each party is expected to reach a profound understanding of its own interests and that of its rivals.

The Minangkabau people in West Sumatera use negotiation to resolve disputes between people in the Kerapatan Kaum and Kerapatan Suku. Before putting the issue on the table, the community leaders (acting as appointed mediators) usually conduct separate meetings with each of the disputing parties — such a mechanism is called the *bilik ketek* — to discuss the issues on an individual basis. This *bilik ketek* is similar to an element recognized in interest-based conflict management as the "caucus".

One shortcoming of interest-based conflict management is that it may be limited to use in traditional societies such as in Indonesia where people are bound to traditional values. According to Dr. Takdir Rahmadi (1986), there are contextual differences between conflicts which occurred for the Minangkabau and the ones occurring now in modern society. It is possible that the traditional mechanisms of conflict management cannot be directly applied to solve conflicts that occur in modern society. In the dispute between the HPH (*Hak Pengusahaan Hutan*/Rights of Forest Industrialization) holders and the local people, both of the parties are familiar to one another, and they also have recognized the mediators, their own community leaders. They therefore have a strong tendency to try to resolve the dispute and to maintain good relationships among themselves. Yet in the context of modern society, as addressed by Dr. Rahmadi, the disputing parties do not recognize one another's rights so there is no force to unite them.

In disputes involving foreign parties (such as those involving multinational corporations), the traditional mechanisms cannot be applied directly. However, it may be useful to adopt some elements of the traditional mechanisms into modern conflict management.

Modernization and development in Indonesia are the main reasons for the conflicts between the Powerless versus the Powerful, which are usually resolved through power-based conflict

[1] Executive Director, Indonesian Center for Environmental Law

management. The approaches of authorities (local, provincial and central governments) when they confront such conflicts are usually unfavorable to the injured parties for various reasons: they show no respect for the complaints of the injured parties; government officials act as if they are representing merely the interests of the capital owners; the state oppresses and imprisons anyone representing the people's voice; military forces intervene for the supposed purpose of maintaining public stability.

Many key officers in central and provincial governments still believe that the alternative dispute resolution (ADR) reached in any agreement is an end itself, not simply a means to an end.

Studies conducted by Dr. Moore and Santosa on feudalism, culture, and relationship patterns between government and people which use "top-down" approaches concluded that there is also an absence of a true healthy democratic environment and a lack of respect for law and enforcement — these create the context for power-based conflict management to develop, including in the managing of conflict in the sector of forest resources.

Conflict relating to natural resources frequently involve external parties, namely the indigenous people, the companies which hold concessions from the central and local governments to exploit natural resources. The local government allows military forces interfere in the resolution process. As a result, traditional conflict management is no longer suitable to resolve problems because it is no longer just the local people involved in the conflict. The rapid economic development of the country is worsening with the practices of corruption, collusion and nepotism by government officials, often making them take the side of the capital owners' interest.

When there is a conflict, the local government does not try to resolve the problems but rather intimidates people instead to make them accept development projects within their area. If there is any "resolution" process conducted to settle the dispute, it is simply designed to cool the anger of the local people. The government does not purely intend to help the local people to find the best solution for them. The alternative dispute resolution process is to the power holders nothing but an end in itself and not a means to an end.

Conflict Resolution According to Indonesian Legal System

In the law enforcement system in Indonesia, particularly to manage conflict in the sector of forest resources, conflict resolution components should exist to reach proper settlements. The answers to three questions will help determine whether or not the legal system in Indonesia has the needed parameters for a conflict resolution system. First, are there mechanisms available for the local people to be involved in the process of negotiation (conflict may be avoided if the local people are involved) Second, is there any mechanism that allows the local people to address their complaints Third, do the people have access to justice.

The Constitution on Principles of Forestry Issues (UU No.5 Year 1967), the sole legal instrument on the sector of forest industrialization, does not regulate the three parameters mentioned above. For instance, Article 8 of UU No.8/1967 does not give opportunities for the local people to be involved in the process of resolution nor does it allow them to be involved in the process of managing the forest production. In the field of forest reservations, the local people are to maintain their obligation to prevent and extinguish fires (Article 10 PP No.28 Year 1988 on Conservatory of Forest). People's participation in the forest sector is nothing but mass participation or supportive participation; it is not the meaningful or genuine participation that it should be.

The indigenous people's rights are actually denied in the said UU No.8/1967. Although it is clearly defined in the UU that people have the rights to take forest products and maintain the forest as their source of livelihood, it is somehow limited by the regulations stipulated. The UU No.17 on forest reservations is only a tool for the government and capital owners to neglect the rights of the indigenous people. In other words, there is no scheme of conflict management whatsoever contained in UU No.5/1967.

In the new PP No. 5 Year 1999 on the management of the productive forests, issued to reform law enforcement as proposed by the International Monetary Fund (IMF), the participation of local

people is treated better. A new regulation is issued to replace the old UU No.8/1967 and other governmental regulations on forest industrialization. The Chapter VI of PP No. 8 Year 1999 states that indigenous people have the right to harvest forest products to meet their daily life needs. In addition, the indigenous people and the surrounding community are given priority to be involved in the process of forest industrialization. The people is also allowed to participate to share their inputs concerning any forest industrialization actions. Although the involvement of the local people is strictly monitored by the Ministry of Forests, it can somehow minimize and avoid conflicts on forest sector.

Article 10 ..... and Article 32

[1] Achmad [...], Study of Traditional Negotiation performed by the Indigenous People in the Highlands of South Sumatera (*laporan Hasil penelitian Mediasi Traditional dalam Masyarakat Adat di dataran Tinggi Sumatera Selatan*), Indonesian Center for Environmental Law (ICEL), 1997.

[2] Based on the article 6 UU No.5/1967, the Forest Industrialization is a general planning section to supply, procure and use forests within the region of the Republic of Indonesia for: (a) controlling water resources and avoiding floods; (b) using forest products; (d) providing main income sources for the indigenous people; (d) providing nature conservation, biodiversity study, culture, national company, reclamation and tourism; (e) transmigration, agriculture, plantation, and cattle breeding; and (f) others which are beneficial for the public interest.

The focus on new policy on the production forest concession (Government Regulation No. 6/1999) is the cooperative's role in the planting and natural forest concession rights. Article 10 of Government Regulation No. 6 of 1999 confirms that cooperatives established by communities surrounding forests have rights to obtain forest concession rights. Forest concession rights granted to the local community through cooperatives are called community forest concession rights. The commitment toward local community effectiveness particularly for forest-dependent people is restated in Article 32 of Government Regulation No. 6/1999 mentioning that forest concessions in certain areas may be stipulated by the government just for the local community or other community groups in a cooperative. Service facilities and required dispensation for the cooperative to obtain Forest Concession Rights as in the dispensation in appraisal in the auction requirements may also be stipulated by the government (Article 32).

Different with the law and regulations in the forestry field, Law No. 23 of 1997 of the Environmental Management Act regulates conflict resolution mechanisms in detail. Law No. 23 of 1997 not only provided the basis for conflict solution by courts, but also out-of-court settlement by negotiation, mediation or arbitration. In the out-of-court mechanisms dispute settlement it is confirmed that the third party service must be neutral and independent (Article 32). The neutral third party in Article 32 shall be (a) approved by the disputing parties; (b) have no family and/or working relationship with one of disputing parties; (c) have skill/capability to conduct negotiation and mediation; and (d) have no interest in the negotiation process and its results.

Independence here must be emphasized considering in various local conflicts, the third party's roles are generally delegated to government officials who are occasionally incapable of being neutral. As presented by Moore and Santosa (1995) "....Leaders, especially government officials, generally see themselves as authoritative decision makers and facilitators of collaborative process and consensus agreements...".

In order to follow up the articles on out of court dispute settlement as regulated in Law No. 23 of 1997 on Environment Management, recently the government has been arranging a Draft of Government Regulation (RPP) on the Dispute Settlement Service Providers In The Environment Field. The Service Providers regulated in this Government Regulation are more concerned to those established by the government and carried out professionally and independent in the frame of public

service (for the public which is incapable of paying commercial mediation services but nevertheless needs ADR services).

As an effort to prevent conflict, Law No. 23 of 1997 also gives rights to the community to participate in the process of decision making in relation with environmental management starting from layout, planning, environmental impact analysis (EIA), permits, and policy, to dispute settlement in or out of court. Recognition on substantial participation is very important to make use of the community as well as to prevent conflicts arising in the future (Article 5). Besides being entitled to participate in the process of making decisions, the community has also rights relating to environmental information in order to realize effective community participation (Article 5). The Articles in Law No. 23 of 1997 need to be proved in actual implementation.

Another Law in relation with forest management that recognizes community participation is the Law on Lay Out Plan (Law No. 24 of 1992). According to this Law, communities are entitled to participate in the spatial/layout planning process and to obtain information in relation with the matters concerned.

There is no other major law or regulation in the area of environmental or natural resource management which regulates community objection (complaint) mechanisms, for projects which inflict damage on the community. One objection management mechanism providing the functions of feed-back and interaction between an apparatus as the receiver of objections and the community as the litigant is the newest Government Regulation in the environmental management field, Government Regulation No. 18 of 1999 on Dangerous and Toxic Material Waste Management.

In the forest management field, the government should develop a conflict settlement mechanism providing facilities in the case the local community is injured by government policy in forest management and by behavior of production forest entrepreneurs.

Conflict Analysis in Relation with Forest Management

For this paper four cases were analyzed: (1) Mangilang Case (West Sumatra); (2) Bukit Tiga Puluh National Park Case (Cinaku River, Riau Province); (3) Sandai Case (West Kalimantan); and (4) Jelmu Sibak Case (East Kalimantan). All occurred in the remote areas of Kalimantan and Sumatra, between 1993 and the time of this study. Generally, the above cases have not been settled satisfactorily, even though the government has conducted administrative action or promised to take follow-up action. The conflicting parties are the central government (as licenser) or local government (as the field supervisory apparatus), plantation entrepreneur and forest concession holder, and traditional or local community. From the above four cases, the following can be concluded:

- Conflicts in the field of forest management generally arise as a result of the implementation of forest concession rights granted by the government having caused various problems;
- Locations of Forest Concession Rights granted by the government, actually are business areas, and residential or traditional areas of the local/traditional community. Generally, it can be said that forest concession location occasionally overlaps with traditional rights to land held by the local/traditional community;
- Procedures of exploitation by companies holding Forest Concession rights have threatened the livelihood of the local/traditional community. The company usually damages the community livelihood by cutting trees or the community's plantations without any compensation payment. Generally the conflict occurred because the Forest Concession Right overlaps with the areas where the local/traditional community makes livelihood;
- The government's response to the community objection is generally late, and in fact many objections have been neglected. The delayed/late response has allowed disputes to accumulate, become more complicated and more difficult to be resolved;
- The decision-making process relating to natural resource allocation (forest concessions) is not carried out transparently by involving the local community, so conflicts of interest arise

and the community is injured, being politically and economically weaker than the concession right holder;

- There is weak control by the concerned governmental agencies, so that the violations which occur in the field accumulate and escalate, and over time these problems also become difficult to be resolved.

- The neglect of local or traditional community interests has particularly created an lack of recognition (and a lack of legal and governmental regulatory certainty) on traditional community rights.
- In the cases analyzed, the "settlement" process occasionally involved parties which have no relevancy with the cases, such as the military in the Jelmu Sibak case. This is a result of the new *orde represive politic* implementing the development agenda in order to foster economic growth;
- In the cases analyzed, the awareness of the importance of neutral and independent mediators in the settlement of the cases has not been possessed by the parties, both the community and the government. Neutral third parties with skill and capability to settle the conflict could positively influence the settlement process.

Recommendations

- The conflicts between local/traditional communities and the companies holding forest concessions occurred because of macro-level structural conditions of the state where the development policies are directed to foster economic growth by relying on a biased political stability with various repressive and military policies. In order to overcome these problems, it is necessary to conduct a re-orientation of economic, political and legal development. The demands for political, legal and economic reform made out by various cycles of pro-reform parties, are principally demands for re-orientation of various sectors. The forest concession policy stated in Government Regulation No. 6/1999, which places more emphasis on the local and traditional community roles (compared to the previous policy) may be realized if good a government condition can be realized;
- In the new Forestry Law (substitution of Law No. 5/1967) and the new Law on Land Affairs (amendment of the Law on Agrarian Principles) -- which is now still in draft form requires a clarification of the tenure status given to the local/traditional community so that there is a guarantee and legal certainty for them to manage their land resources, and as a device to prevent the threats of capital flows and the power of economic globalization;
- The roles of communities should be recognized and promoted in the decision-making process in relation with their livelihood. For example, in mechanisms which are transparent and involve the community should be absolute requirements, with regards to the granting permits for forest and plantation concessions , in order to prevent the violations and misuse;
- The social and political roles of ABRI (the Indonesian Armed Forces) must be re-defined so that it does not participate in civil disputes, as this generally makes worse the existing conflicts;
- Under good government, it is necessary to develop a conflict management mechanism in the field of natural resources (including forestry) consisting of: (1) objection mechanism obligating the government and its agencies to respond to the community objections in a timely way; (2) reliable dispute settlement mechanisms or dispute settlement service providers (which are truly independent) -- whether through an arbitration forum or out-of-court, by option of the disputing parties. The out-of-court dispute settlement mechanisms may use environmental dispute settlement mechanisms based on Article 33 Law No. 23/1997 of the Environment Management Act