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Mediated Forum: An Alternative Environmental Dispute Resolution - A Case of Dukuh Tapak River Pollution

by

Zain Saidi
MEDIATION FORUM

AN ALTERNATIVE ENVIRONMENTAL DISPUTE RESOLUTION

A CASE OF DUKUH TAPAK RIVER POLLUTION

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INTRODUCTION

This paper was first published as part of the IOCU (International Organization of Consumers Unions) Earth Summit Resource Kit: Consumer Action for a Green World (June 1992, Rio De Janeiro). The case story is written based on the case of serious pollution problems in Dukuh Tapak, Semarang, Central Java, Indonesia.

It shows what roles consumers can play in the environment management, especially in developing new values and attitude which in turn will influence private sector to be more responsive and responsible towards environmental problems they raised.

This case also proves that the tripartite approaches to environmental problems is not only applicable but also appropriate to assure public participation. Mediation forum, as form of alternative dispute resolution - an out of court environmental dispute settlement - as shown in this case, seems to be quite effective. It is proved that this method is less complicated and much cheaper compare to legal proceedings before the court of law. Especially in a situation where there is a shortage of skilled prosecutors and the laboratory equipment to provide the pollution evidence.

However in the mediation process all sides should have equal status and they should be receptive to settling their disputes amicably. Only if all this requirement is met a real participatory communication will go on smoothly.

From the case study it was also shown that the role of the press can be very significant in making the campaign and communication successful.
In August 1991, after a 15-year struggle for their rights, the people of the Dukuh Tapak subdistrict got their victory. Eight factories are to pay 220 million rupiahs (US $112,000) in compensation to victims of pollution and another 185 million rupiahs (US $93,000) towards undoing the damage done to the environment by their pollution of the Dukuh Tapak river in Semarang, Central Java, Indonesia.

The agreement was reached by a mediation team made up of local government representatives, the polluter, the victims, the Environment Control Agency (Bapedal), the Legal Aid Foundation (YLBHI), the Indonesian Environment Forum (WALHI), and the Indonesian Consumer Organization (YLKI). Reaching the agreement proved very difficult, since the dispute had to be settled outside of a courtroom, and involved companies that for many years had refused to negotiate with the local NGOs.

The environmental pollution caused by the industries had been going on since 1976. Not only had the Tapak river been polluted, but fish ponds and rice fields of the local people (around 200 hectares) had also been damaged. As a result of the pollution, the income of the local population had declined drastically.

Despite the gravity of the situation and the fact that scientific studies were carried out by various parties including the NGOs and the government, the problem remained unsettled. The victims were too patient. For 15 years they worked hand in hand with local NGOs and tried every means of persuasion in confronting the companies - all to no avail. All efforts by environmentalists and public law activists were unsuccessful in dealing with the problem.

However, in April 1991, 15 NGOs based in Jakarta, Semarang and Solo (respectively the national capital and two major provincial cities in Central Java) decided to adopt a strategy never used before. A boycott action was chosen for the first time in the history of Indonesian NGO campaigning. Facilitated by YLKI, a boycott was proclaimed of the products of eight factories responsible for polluting the environment in the Dukuh Tapak area.

Immediately after the NGOs had announced the boycott, a controversy arose. The mayor of Semarang, Soetrisno Suharto called on the activists to change their minds. He argued that the boycott would result in at least 1,000 people losing their jobs or suffering a reduction in income at the very least. The Minister of Population and Environment, Emil Salim, had a different view however. His comment as quoted
in a newspaper, Suara Pembaruan, just two days after the boycott was "despite the concern regarding the fate of the employees, the pollution itself cannot be justified." He also said that the NGOs were entitled to defend consumers' rights. "It is consumers' money, so they have the rights to buy or not to buy a certain thing, they have the rights not to buy things (from companies) polluting the environment," the minister was quoted as saying by The Jakarta Post newspaper.

Support for the action was also expressed by Nabil Makarim, Deputy of Indonesia's new Environment Control Agency (Bapedal). This new agency, structured along the lines of the United States' Environmental Protection Agency, was created last June 1990 by Presidential Decree with wide-ranging powers, including the rights to take polluters to court. "It is not fair to put the (pollution) burden on the people's shoulders," Makarim stated, adding that, "consumers have the right to get a clean and healthy environment."

"This action clearly indicates people's concerns about the deteriorating environment which eventually affects us all," said Bambang Ryadi, Chairman of the Biological Science Club Secretariat, an NGO that had investigated the case since it first came to light. "This firm attitude must be demonstrated to those industries which have ignored people's complaints."

The negligent industries produce different products. One is a paper plant, the others a soap factory, a chemical (citric acid) plant, a ketchup and tomato sauce manufacturer and a food and noodle manufacturer. The Dukuh Tapak subdistrict had over time become heavily industrialised despite objections of the local community.

"The decision to change the status of the area from agricultural to industrial was taken in a nondemocratic way," said Mas Achmad Santosa of the Indonesian Legal Aid Foundation (LBH), the boycott action co-sponsor. He based his argument on a government regulation which states that local people should be involved in the decision-making process and that a decision can only be made after they have been consulted.

INCREASING THE PRESSURE

In addition to launching the boycott, the NGOs urged the government to revoke the licenses of industries operating in the area, until such time as a solution to the pollution problem could be found. A letter had been sent by the Legal Aid Foundation to the Minister of Industry just a few days after the Semarang meeting.
At the same time, the NGOs also asked the Central Java governor to set up an independent team to assess the losses suffered by the residents.

Meanwhile the NGOs team were gaining more and more support. The Indonesian Environmental Forum (WALHI) announced that its network - at least 100 participating NGOs - would join the boycott campaign.

A joint YLKI-LBH-WALHI team was then assigned to prepare a campaign kit. The kit was designed to be as practical and useful as possible. It contains the history of the Dukuh Tapak pollution case, the philosophy of boycott action (based on the consumer right to choose and the right to a healthy environment), press clipping and model letters for use as campaign tools. A set of action guides was included, and a special June edition of WARTA KONSUMEN, YLKI’s monthly magazine, was also prepared to support the campaign and demonstrated how serious the action was.

The joint team, with the local community and the NGOs sponsoring the boycott, also agreed that the campaign would be launched on 5 June - World Environment Day.

But the scenario changed in May 1991, after the mayor of Semarang invited NGOs, the factory owners and an officer from the Bapedal to sit down together and discuss their differences. The meeting was held soon thereafter, and resulted in an agreement to set up a joint team, made up of representatives from all parties, in order to devise mediation process for handling environmental disputes. It was felt that this was the most appropriate mechanism, as the Indonesian culture basically prefers conciliation to direct confrontation. In the Indonesian term it is known as musyawarah mufakat.

The first team meeting was held on 27 May 1991. The agenda was still limited to procedural matters and had not yet touched on substance. Planning for the boycott was postponed for the time being. By the second meeting, on 10 June, the team reached a decision to address four main points: assessment of the polluted area; the losses of the people (based on their yields from fish ponds and rice fields); action to rehabilitate the damaged area; and finally, the installation of a pollution-control plant. The team set a deadline for compelling its work of 1 September 1991.

On Tuesday, 27 August, an agreement was reached by the mediation team requiring that the polluters install waste treatment plants as soon as possible or face
lawsuits and administrative action. The mediation team also decided to immediately form another team - a task force - to monitor compliance with the agreement.

CHANGING THE SYSTEM

This case represents a kind of 'first pillar' in the environmental fight against companies and government policy. This case also proves that times have changed. Now people are more aware and conscious of the seriousness of environmental problems. As consumers they are developing new values and attitudes. Consumers are being encouraged not to buy products which cause damage to the environment during their production. They have been introduced to green consumerism.

The victory has also made the business community more aware of the need to install waste treatment facilities in their factories. Hopefully, from now on the business community will stop any practice of polluting the environment. The out-of-court mechanism to settle the dispute also appears to be relatively effective.

And last but certainly not the least, this case has proved to the Kali Tapak community one thing beyond doubt: that when the consumer voice is organised, the system can be changed.

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