Chapter 4

ACCESS TO ENVIRONMENTAL JUSTICE IN INDONESIA

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I. INTRODUCTION

Over the past 20 years Indonesia has witnessed a rapid increase in disputes concerning aspects of the environment, as reflected in dozens of scholarly writings and thousands of newspaper reports. How many environmental disputes there are is impossible to tell, since reliable statistics are absent and moreover most disputes do not develop beyond the stages of ‘naming’ and ‘blaming’, remaining hidden in the villages. However, given the scale of environmental deterioration in Indonesia over the past 30 years, and the evidence from the materials available, the figure must be huge.

Remarkably, those disputes that do get to the ‘claiming’ stage seldom follow the legal gateways supposedly leading to ‘environmental justice’. Environmental litigation rates are extremely low, even if a precise number is difficult to establish. Probably the the best indication available to date is the number provided by Nicholson, who (based on a search of scholarly writings, national newspapers and weeklies) gives a total number of 24 civil and administrative environmental

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court cases for the whole of Indonesia between 1982 and 2002.\(^3\) Based on a search of the internet, newspaper clippings and ‘grey literature’ I found an additional ten cases for the period until 2003.\(^4\) Whilst there has been a clear increase in cases since the demise of the New Order and the enactment of the 1997 Environmental Management Act (EMA) (from 13 between 1989 and 1998 to 21 between 1998 and 2002), the number has remained low.Apparently, the Indonesian judiciary is not particularly effective in resolving environmental disputes.\(^5\) Nor are there many genuine mediation procedures (for a definition see below). Nicholson gives a number of 17 from 1982 until 2002, with a slight relative increase from 10 between 1991 and 1998 to seven between 1998 and 2002. The low number of court cases thus cannot be ascribed to the availability of effective mediation procedures.

This Chapter seeks to explain the paradox of so many disputes and so few litigation and mediation cases. The first part will show that the Indonesian judiciary’s record in environmental cases has improved over the past years, and that despite a number of shortcomings the legal framework for environmental citizens’ suits is adequate. The second part does the same, though less elaborately, for environmental mediation. In the final part I will attempt to explain why

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\(^3\) Nicholson, above n. 2, at 311–4.

\(^4\) Nicholson’s low number finds some support in studies that are more restricted in scope. In their study of water pollution in the Surabaya area, Lucas and Djati list 31 disputes where communities protested against factory pollution, with only two leading to a civil action in court: Lucas, A. and Djati, A., *The Dog is Dead so Throw it in the River: Environmental Politics and Water Pollution in Indonesia*, (Clayton, Monash Asia Institute, 2000), 112–122). I myself did a thorough search in the archives of the Bandung District Court (1989–2000) and the Bandung Administrative Court (1992–2000), which yielded one civil and one administrative environmental law case for this city with its three million inhabitants and huge environmental problems. The other cases are two administrative court cases about a car repair shop and a gasoline station (1992), the compensation cases against PT Suparma Tbk. (1997), Oton Bangun (2001), Nur’aini Ginting (2001), Government of North Sumatra, Bupati Deli Serdang, and a class action against the Government of North Sumatra (2002). Cases in 2003 are the administrative court cases about the Land Reclamation Project in North Jakarta (Jakarta Pantura), the building of an Electricity Plant at Lovina, and the civil cases against PT Nasional Panasonic Gobel, Banjarmasin Park, Bupati Karo Sinar Peranginangin.

\(^5\) Although certainly not all cases receive press coverage, one should bear in mind that the press has generally paid much attention to environmental issues, and is likely to have written on any environmental court case that came to their attention, even under Suharto’s New Order regime (cf. Lucas, A., ‘River Pollution and Political Action in Indonesia’, in Hirsch and Warren, above n. 2, at 199; Warren, C., ‘Tanah Lot: The Cultural and Environmental Politics of Resort Development in Bali’, *ibid.*, at 231); and certainly since the early 1990s (cf. Eccleston, B. and D. Potter, ‘Environmental NGOs and Different Political Contexts in South-East Asia: Malaysia, Indonesia and Vietnam’, in Parnwell and Bryant, above n. 2, at 64.)