



## Impact of Failure of Alternative Dispute Resolution between Samin Indigenous Movement and PT Semen Indonesia (Persero) Tbk

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### **Abstract**

The existence of environmental management that is wise and wise itself has also been contained in the Constitution in Indonesia, especially Article 28H paragraph (1) and Article 33 paragraph (4). To ensure the role of human beings to the environment remains conservative, the state regulates and controls existing natural resources for the greatest prosperity of the people as stated in the Indonesian constitution. This aims to make natural resource management can be utilized not only for the current generation but also for future generations, as well as to maintain the ecosystem to remain sustainable. However, the existence of a green constitution along with recognition & respect of customs contained in the constitution (law in the books) has not yet fully built a strong interdependence (law in action) to create environmental justice. This is evidenced by the many conflicts that occur between indigenous peoples and corporations. The problem studied in this study is the impact of the failure of alternative environmental dispute resolution between the samin indigenous movement and PT Semen Indonesia (Persero) Tbk (hereinafter abbreviated as PT. Semen Indonesia). This study uses a type of socio-legal law research with a sociological approach located research in Rembang. The results showed that every problem that intersects with indigenous peoples should be resolved harmoniously and peacefully with deliberation and consensus. In addition, it is necessary to involve indigenous peoples in determining environmental policies. Then there needs to be harmonization and internalization between environmental policy and local community culture (indigenous legal community).

**Keywords:** *Dispute; Environment; Samin; PT; Semen Indonesia (Persero) Tbk*

### **1. Introduction**

Samin people are one of the local communities that existed during the Dutch colonial era in Central Java. The view of life and beliefs of samin people who are lived and lived obediently and consequently has developed certain and specific customs, so that it seems real to be a separate culture that distinguishes samin society from the wider social environment that is society instead of samin. The existence of Saminism teachings originated from non-physical resistance to the Colonial Government, namely by the rejection of all arbitrary government policies that in practice are certainly far from a sense

of fairness and incompatible with the value of local wisdom of the surrounding community (Mbah Lasio, personal communication, January 11, 2019). However, after a long time of independence and the samina community has always been *ayem tentrem*, in 2017 the movement of Samina people began to be seen again in the fight against the government's indifference at the time of the process of issuing environmental permits followed by PT's business license. Semen Indonesia is formerly known as PT Semen Gresik (Persero) Tbk. in the plan of environmental utilization in the forest sector located in Pati and Rembang Districts, Central Java Province. Deep ecology theory "however despite repeated complaints about the use of them it still enjoys wide currency, deep evidently has an attractive resonance for many who seeks to establish a new respect for the natural world", the role of traditional societies that uphold ideas, values and fairness with local wisdom, as well as maintaining ecological balance involving samina communities with the consistency of living values evidenced by rejecting the exploitation of the Kendeng mountains which are the raw materials of semen as a pt expansion plan. Indonesian Cement.

The resistance that led to the foot-grazing action in front of the State Palace also gained sympathizers from various other indigenous peoples and residents who could potentially be directly or indirectly affected by the project. Before the verdict of PK MA in 2017 which won the samina community movement advocated by Wahli and LBH Semarang against PT. Semen Indonesia, the movement of samina community previously also won a dispute in Pati Regency which was held in court against PT Sahabat Mulia Sakti (PT.SMS). Samina residents sued the plan to build a cement plant in the area and won it in a lawsuit at PTUN and MA in mid-2009.

Disputes in the forest sector experienced by indigenous peoples samina namely the resistance of indigenous peoples samina and Environmental Observers in the Supreme Court (MA) in an extraordinary legal effort namely Review, which in general declared the nullity of the Decision of the Governor of Central Java No. 660.1/17 of 2012 on Environmental Permits mining activities by PT. Semen Indonesia, in Rembang Regency, Central Java Province (Supreme Court Decision No. 99 PK/TUN/2016). The utilization of SDA is often done inefficiently and only oriented to short-term interests, resulting in the occurrence of uncontrolled draining of SDA. The utilization of SDA should be done efficiently following the provisions in Article 12 Paragraph (1) of Law No. 32 of 2009 on Environmental Protection and Management (PPLH Law) which states that "The utilization of natural resources is carried out based on the Environmental Protection and Management Plan.

Environmental disputes resolved in judicial institutions that tend to be unfair to justice seekers will have an impact on the environmental sacrifice from generation to generation, but it turns out that the process of resolving disputes outside the court is also rarely successful. To solve the problem, field research is needed in analyzing the impact of alternative environmental solutions between the Samina indigenous movement and PT. Indonesian Cement.

## **2. Methodology**

This study uses a type of socio-legal law research with a legal sociological approach that is conceptualized as actual behavior as an unwritten social symptom, which is experienced by everyone in a social life relationship. The location of the investigation is in the Central Java Rembang regency. The primary data in this study is obtained from direct facts of the field, while secondary data is in the form of legislation relevant to the research. The sociological approach is used because analyzing the impact of alternative failure settlement is very suitable in describing the legal culture in the community concerned.

### **3. Discovery and Discussion**

Legal System Theory divides the three main elements of a legal system which include Structure, Substance, and Culture. The Structure of Law according to Friedman is "The structure of a system is its skeletal framework; ... the permanent shape, the institutional body of the system." This means that the structure of a system is its framework; a permanent form, the institutional body of the system. The Substance of Law is "The substance is composed of substantive rules and also about how institutions should behave". This means that the substance of the law consists of substantive rules and also how institutions should behave (M.Friedman :1975).

Legal Culture according to Friedman is "Is the element of social attitude and value. Behavior depends on judgment about which options are useful or correct. Legal culture refers to those parts of general culture—customs, opinions, ways of doing and thinking—that bend social forces toward or away from the law." This means that legal culture is an element of social attitudes and values. Behavior depends on an assessment of which options are useful or correct. Legal culture refers to parts of the general culture—customs, opinions, ways of doing and thinking—that deflect social power toward or away from the law.

#### **3.1 Settlement of Samin Community Dispute with PT Semen Indonesia in Rembang**

The plan to establish a cement factory in the limestone mountains area of Kendeng, Rembang Regency, Central Java got a variety of resistance from the residents of drum repellent cement factory establishment. the conflict was started in 2006 by sukulilo residents who are known as adherents of Samin teachings strongly rejected the exploration study plan for the establishment of the cement plant by PT Semen Gresik (PT Semen Indonesia) in Sukulilo Subdistrict, Pati Regency, Central Java. Residents who refused through the Network of People Cares Kendeng Mountains (JMPPK) then filed a lawsuit to PTUN Semarang to revoke this exploration study and win, then PT Semen Indonesia appealed to the Surabaya District High Court and won until JMPPK appealed again to the Supreme Court (MA) in mid-2009 and won, while PT Semen Indonesia had decided to exit before any ma decision.

Some residents of Gunem Rembang who oppose the establishment of the factory blocked the road to the mine site, causing a community riot that most mothers with police and TNI officers guarding the site. The action demanding the rejection of the cement plant continued by setting up tents and holding prayers together on the factory site. One of the factors triggering the conflict is the planned construction of cement plants that are unknown to residents. The plan to build a cement plant is known only by the government and tends to be done in secret. In addition, there is also no socialization about the plan to build a cement plant so that residents do not know about the plan to build the cement plant.

The Issuance of the Decree of the Governor of Central Java No. 660.1/17 the Year 2012 which gives permission to PT Semen Gresik (Persero) Tbk to conduct limestone mining activities, clay, to build factories, production roads, and mine roads located in the CAT Watuputih area can cause environmental damage. The indigenous people of Gunem Sub-district who refused to build cement factories received support from the NGO JMPPK (Network of People Caring for The Kendeng Mountains) Pati and the residents of Pati. Local residents admit to learning a lot about the impact of cement plant construction on environmental damage from pati residents.

For residents who mostly work as farmers, the construction of cement plants is feared to change the function of existing agricultural land, so that residents will lose their jobs. Although PT Semen Indonesia (Persero) Tbk provides jobs for residents, not all citizens can work in factories because of the low level of education of citizens. Poor communication often leads to conflicts within the organization. Communication factors that cause conflicts, such as distortions, information that is not freely available,

and the use of language that is not understood by the parties who communicate. In addition to the lack of socialization about environmental permits and plans for the construction of cement plants, conflicts are also caused by jurisdictional ambiguity. The ambiguity of jurisdiction occurred because of the environmental permit issued by the Governor of Central Java, namely Decree No. 660.1/17 the Year 2012 overlaps with the prevailing laws and regulations. The Supreme Court of Indonesia as the legal institution authorized to carry out the review later on October 5, 2016, then issued a warning of the decision to revoke the Decree of the Governor of Central Java No. 660.1/17 of 2012 concerning environmental permits for mining activities for PT. Semen Gresik in Rembang Regency.

The difference in objectives triggers a conflict between the pros and the counter-camps. The government aims to increase PAD through local taxes and levies, reduce the unemployment rate and improve the welfare of the community, and meet the need for national cement availability. For the initiator, in this case, PT Semen Indonesia (Persero) Tbk aims to expand its business area and increase domestic cement production. Unlike the government and the initiators, residents who mostly work as farmers think the construction of cement plants can reduce agricultural land and increase the unemployment rate. Existing farmland will be converted into mining areas and factories so that people will lose their jobs as farmers.

Amar Supreme Court Review Decision No. 99 PK/TUN/2016 states that the panel of judges ordered the annulment of the Central Java Governor's Decree No. 606.1/17 of 2012 concerning Environmental Permits for Mining Activities to PT. Semen Gresik (Persero), Tbk in Rembang Regency. This refers to Law No. 32 the Year 2009 Article 40 which states that the cancellation of environmental permits means the cancellation of businesses or activities related to natural resource exploration. The content contained in the Governor's Decree of 2017 above clearly states that the cancellation is only on the Governor's Decree of 2012 only, instead of the absolute cancellation of business licenses or mining business activities conducted by PT. Semen Gresik (Persero), Tbk which operates in Rembang Regency.

Form of delik or violation committed by the Central Java Provincial Government through the Governor's Decree No. 606.1/4 The year 2017 can be referred to as a form of obstruction of justice. Referring to articles 17 and 18 of Law No. 30 of 2014 on Government Administration. This article states the prohibition of government officials from acting by abusing and exceeding their authority. If there is a decision or policy that is contrary to the Court's Decision that has a fixed legal force then it includes delik or violation. The appeal decision of the Supreme Court No. 99 PK/TUN/2016 is a court ruling of permanent legal force, and therefore as a state institution, the Central Java Provincial Government through the Governor must not issue decisions or policies that are contrary to the warning of the ruling.

Good legislation is a law that is not contrary to the above regulations. This is based on Hans Kelsen's theory of the hierarchy of legislation in which he argues that legal norms are tiered and multilayered in a hierarchy of arrangements, where a lower norm applies, is sourced, and is based on a higher norm, a higher norm applies, is sourced and is based on a higher norm, so on to a norm that cannot be traced further and is hypothetical and fictitious, namely the Basic Norm (Retno Saraswati: 2013). Then in article 39 paragraph (1) UUPPLH, it is also mentioned that the Minister, governor, or regent/mayor in accordance with his authority must announce every application and decision of environmental permits. Furthermore, in paragraph (2) it is also stated that the announcement as referred to in paragraph (1) is done in a way that is easily known by the public. The explanation in article 39 paragraph (1) of Law No. 32 of 2009 on environmental protection and management states that the announcement contained in this article is the implementation of information disclosure or transparency. The announcement is very possible for the participation of the public in controlling government policy. For example, in using opportunities in the procedure of objection efforts, hearings, and so forth in the decision-making process. Because in reality, the community has never taken advantage of the opportunity to file an objection to the plan to grant environmental permits to PT. Semen Gresik (Persero), Tbk. Thus, the participatory principle

contained in the UUPPLH is not applied in the process of granting environmental permits pt. Semen Gresik (Persero), Tbk. Therefore, it should be a pt environmental permit. Semen Gresik (Persero), Tbk should not be given.

The failure of alternative environmental settlements that occurred between the movement of indigenous legal peoples samin with PT Semen Indonesia resulted in the settlement process conducted on a litigation basis in the State Administrative Court. In principle, the mediation process has been conducted by PT. Semen Gresik, however, is not based on the principle of justice and values that put forward ecocentric aspects. Then the failure of the settlement resulted in public distrust of the Government, the onset of resistance to corporations and unjust government, the disintegration of indigenous peoples samin (pro-cons), the investment climate so bad, the government had a precept that indigenous peoples impede development, settlement through dynamic judicial channels and take a long time.

### **3.2 Impact of Alternative Failure Environmental Settlement between Samin Indigenous Movement and PT. Semen Indonesia (Persero) Tbk**

In Samin society, there will be some problems that are constrained as revealed by Unger (Roberto Mangabeira Unger:1977):

*All traditionalistic societies have dual structure, often sharply divided between the modern and the non-modern sector, and in all of them "traditional" institutions serve more or less effectively as instruments of "modernization", and with effects that ultimately overflow the economic and the technological sphere and contribute to the transformation of the culture and the social structure".*

Therefore, there needs to be harmonization and internalization between environmental policy and local communities (indigenous legal communities). Both are in the process of mapping the direction of development or dispute resolution, which of course scatters the approach of local wisdom. In terms of Samin and PT. Semen Gresik which cannot be completed based on the approach of local wisdom, namely the settlement of deliberations outside the court, there are some impacts that are very influential so as to cause enormous resistance. The impact of failure to resolve disputes that cannot be directed outside the court in accordance with the traditional values of local wisdom is:

#### *1. The Threat of Sustainability of People's Water Resources*

Kendeng Mountain Area because the mountainous area only hangs water sources on underground rivers that appear to the surface as well as PDAM. This is because when the residents make wells there is never water that is accommodated because everything flows into the lowland.

The cement plant certainly requires a very large water capacity so it is very potential for drought. In addition, the soil conditions in the Kendeng mountains are also relatively no fruits that grow because of limited water and hot weather, let alone the soil on the mountain kendeng contains lime. In addition to the threat of drought, around the cement plant settlements also felt a bit hot differently before the existence of PT. Indonesian Cement.

#### *2. Land Grabs and Social Conflicts*

The area around cement that should be used as the center of agrarian reform and/or agricultural center of the surrounding community that can support his life now and for the next generation is finally lost because some of the surrounding areas have been purchased by PT. Indonesian Cement. This will potentially have a social impact on future generations because those who are accustomed to living with

nature and dependent on nature are forced to become industrial societies or rather cement factory workers.

And this will gradually create a social gap because not all residents can be affected by the economic increase. After all, only a few residents are absorbed by the workforce.

### *3. Public Distrust of the Government*

On August 2, 2016 - a few weeks after the first leg-up action - President Jokowi accepted kendeng farmers and ordered the Presidential Staff Office with the Ministry of Environment and Forestry to make a Strategic Environmental Review, and requested the postponement of all mining permits in the Kendeng Mountains. At the same time, on October 5, 2016, the Supreme Court issued a Review Decision No. 99 PK/TUN/2016 that granted kendeng farmers' lawsuit and revoked the Environmental Permit for The Construction and Mining of PT Semen Indonesia Plant in Rembang Regency. Central Java Governor Ganjar Pranowo, stated that in compliance with the ruling of the Supreme Court, but on February 23, it issued another new development permit, with a slight change of territory. Central Java Governor Ganjar Pranowo's move to issue a new permit for the construction of a cement plant in the Kendeng mountains is a 'legal smuggling' by circumventing the Supreme Court's decision. The Supreme Court's review ruling prohibits mining and drilling over the Groundwater Basin (CAT) in the mountainous region of Kendeng. This makes the absence of benefit from the product of the decision of the MA because it is not obeyed by the government as a representation of the politics of will.

### *4. The Onset of Resistance to Corporations and Unjust Government*

This leg-tying action, according to Raynaldo Sembiring of ICEL, came under pressure for President Joko Widodo to immediately take decisive action by canceling the new permit granted by the governor of Central Java (Ging Ginanjar:2017). Even the emergence of resistance in the fight against corporations resulted in the criminalization of Joko Priyanto for alleged violations of Article 263 of the Criminal Code on falsification of documents (zaenal, personal communication, March 20, 2021).

### *5. The Disintegration of Indigenous Peoples Samin (Pro-Cons)*

The emergence of conflict is based on differences of opinion between the pros and cons of the plan to establish a cement plant in the Sukolilo kars area, as one of the prioritized areas has quality cement raw materials.

### *6. The Investment Climate is Bad*

Minister of Industry Airlangga Hartarto stated that the sealing of PT Semen Indonesia's factory in Rembang Regency by cement plant repellents will harm the business and investment world in Central Java. The operation of this cement production facility will be one way to realize a one-price cement plan following the proclaimed by President Joko Widodo (Jokowi). This rejection of the existence of cement plants in Rembang gives a bad stigma of distrust in environmentally sound and sustainable investments in Indonesia made by businesses. From this stigma will affect investors and can affect the value of shares that go public, in achieving the sustainable Development Goal (SDG) which is a concern of the United Nations in realizing Go Green.

### *7. The Government has a Precept that Indigenous Peoples Impede Development*

The paradigm of industrialization is based on the ideology of capitalism that relies on the paradigm of modern science that considers that tradition is a problem and an impediment to development.

### *8. Settlement through a Dynamic Judicial Path and Takes a Long Time*

Instruction of the Chairman of the Supreme Court of the Republic of Indonesia on March 13, 2014 has issued a Circular Letter of the Supreme Court of the Republic of Indonesia No. 2 of 2014 concerning The Settlement of Cases in the First Court and The Level of Appeal on 4 (Four) Judicial Environments on the subject of circular letters, among others, the settlement of cases in the First Court no later than within 5 (five) months including the settlement of *minutasi*. However, in practice it can be protracted even when there is a legal effort of Appeal, Cassation and Review (PK).

Lawrence M. Friedman's theory of the legal system mentions that the legal system consists of a set of legal structures, legal substances (legislation) and legal culture or legal culture. These three components support the running of the legal system in a country. In social reality, the existence of the legal system in society changes as a result of influence, so-called modernization or globalization both evolutionarily and revolutionously (Saifullah: 2007).

Therefore, there needs to be harmonization and internalization between environmental policy and local community culture (indigenous legal community). Both in the process of mapping the direction of development or dispute resolution, which of course scatters the approach of local wisdom.

In the harmonization can be used a variety of alternatives ranging from choices of environmental disputes appropriate or create new concepts that can solve the problem effectively and fairly. This is necessary to make the policy direction more effective and efficient because the factors that greatly influence the success of a legal or political act of legal legislation are determined to the legal culture of the community. So that what is arranged suits the needs of the community and provides benefits for many people according to what is conveyed by Jeremy Bentham that is greatest happiness for the greatest number (J. H. BURNS, 2005). Friedman's theory shows that legal culture is the deciding factor in a policy's success. From the results of the study several legal behaviors are accepted in the community into a variable determining the direction of the law in force in the community. The legal behavior is configured against the resolution of environmental disputes and raises factors that influence its success.

### **Conclusion**

Settlement of disputes *samin* indigenous people movement with PT Semen Indonesia in Rembang namely the utilization of resources in an area including natural resources is the authority of the region to manage it that is implemented fairly and in harmony, it is worth noting that every policy must pay attention to environmental sustainability both physical, biotic and social as well as local wisdom including the values that live in the surrounding community. The movement of resistance *samin* community arises based on their concern for the environment around Mount Kendeng to be exploited by the company, which will be potentially catastrophic and other threats both from nature and social communities that always depend on natural resources.

Out-of-court settlements need to be optimized to realize accommodative settlements and avoid the impacts that arise if settlements and approaches are not done wisely such as the threatened sustainability of citizens' water resources, land grabs and social conflicts, public distrust of the government, the onset of resistance to corporations and unjust government, the disintegration of indigenous peoples *samin* (pro-cons), the investment climate so bad, the government has a precept that indigenous peoples impede development, settlement through dynamic and relative judicial channels takes a long time. Friedman's theory shows that legal culture is the deciding factor in a policy's success. From the results of the study several legal behaviors are accepted in the community into a variable determining the direction of the law in force in the community.

Therefore, the best step is the government in making environmental decisions must include indigenous peoples and the values of life in it. To minimize the occurrence of prolonged conflict. Because so far, every development or new policy from the Pati District Government almost always reaps ongoing conflicts. This can be estimated the lack of proximity (miscommunication) between decision makers and society. There should always be a more intense dialogue space, because so far there is still a lack of moral values and self-awareness and political will. Pati District Government and Central Java Provincial Government that side with the future welfare of the nation become an important bet. So that the realization of the program that has been mutually agreed into an actual and tangible quality in improving the welfare of the people of Central Java.

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