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Going Green in Urbanisation Area: Environmental alternative dispute resolution as an option

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Abstract

The paper argues that though environment court is an important development in the court system in Malaysia, settlement via alternative dispute resolution (ADR) methods can be promising options available to all stakeholders involved in urbanisation era, i.e. developers, government agencies and citizens at large. Using the comparative qualitative approach, this paper provides the methodology behind the proposed application of various environmental ADR. The paper concludes that environmental ADR provides citizens with a structured dispute settlement system that secures the developers, government agencies' and citizens' rights and mutual benefits even without going through traditional legal proceedings.

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1. Introduction

Many countries have promoted the use of alternative dispute resolution (ADR) techniques for dispute resolution due to the attractive features of ADR. Some countries use administrative ADR whereby settlement of environmental disputes is through administrative bodies related to the environment. Some countries have organized systems of internal specialization in environmental matters where ADR is applicable in some of the environmental tribunals or courts. Literatures on environmental ADR remain sketchy whereby many writings focus on ADR, development of environmental laws and policies and quantitative analysis of success rate of ADR in development disputes (Wang, C. & Lin, Z., 2010; Florin,

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M.A., 2013; Knudsen, L.F. & Balna, S., 2014). In the absence of comprehensive discussion on the usage of ADR in environmental disputes at the administration and environmental tribunal and courts, this paper is to fill the gap.

2. Methodology

Using the comparative qualitative approach, this paper provides the methodology behind the proposed application of various environmental ADR.

3. Findings

3.1. Administrative ADR

In the United States, the use of environmental ADR has steadily increased since the successful resolution of the difficult dispute over flood control measures on the Snoqualmie River in Washington State (H. Sachihiko, 1988). Over the past two decades, the U.S. Congress has encouraged federal agencies to increase the use of consensual dispute resolution processes. This movement has been accelerated by Executive Order 13353–Cooperative Conservation. The U.S. Environmental Protection Agency recently has stated that it will strongly support the application of ADR to deal with disputes and potential conflicts (United States EPA, 2000).

Unlike United States, in Europe, environmental ADR had rarely been employed (Holzinger, 2000). However, the European Commission established basic principles for its practice in October 2004 and submitted a draft directive on mediation to the European parliament and the council. The directive declared the commission's belief that mediation holds untapped potential for resolving disputes and providing access to justice for individuals and businesses (Commission of the European Communities, 2002).

South Korea uses settlement of environmental disputes through administrative bodies. The central organisation, Environmental Dispute Resolution Commissions, a quasi-judicial organisation under the Ministry of Environment, rely primarily on mediation to resolve environmental complaints in a prompt, fair, and efficient way. This is important so as to preserve the environment and to relieve national damages of health and property (Article 4 of the Environmental Dispute Adjustment Act). As of 2008, the National Environmental Dispute Resolution Commission has dealt with 2,400 cases of environmental disputes since the introduction of environmental dispute resolution system in 1991, mostly via mediation (Cho, H.S., 2007-2008). The Prefectural Environmental Pollution Councils at the local level of organisation treated 314 of 351 cases (89 percent) by mediation. The use of mediation is increasing year by year (H. Sachihiko, 1988). Korea has been providing citizens with a structured environmental dispute settlement system that secures the citizens' rights and mutual benefits even without going through traditional legal proceedings.

Between 1991 and 2003, a total of 1,345 environmental disputes was reported and recorded 1,016 success settlements. The disputes arising from noise and vibration marked 859 cases, which accounted for 84% of the total number of disputes, followed by 97 cases regarding air pollution (10%) and 47 cases regarding water pollution (5%). Among the 1,016 settled cases, 830 negotiation outcomes (approximately 83%) were mutually accepted by the concerned parties. The Commissions aim to further to strengthen the expertise of the settlement coordinators while promoting scientific and structured negotiation procedures and increasing the transparency of the decision-making processes (Ministry of Environment, Korea, 2004).

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