DEVELOPMENT GUIDELINES MODEL OF MEDITATION ON ENVIRONMENTAL DISPUTES FOR THE RESTORATION OF NATURAL RESOURCES IN THAILAND

Jamras Laosattaya

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ABSTRACT

Title of Dissertation	DEVELOPMENT GUIDELINES MODEL OF MEDITATION ON ENVIRONMENTAL DISPUTES FOR THE RESTORATION OF NATURAL RESOURCES IN THAILAND
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This research aimed to 1) study basic data about mediation on environmental disputes for developing a model of mediation on environmental disputes for the restoration of natural resources, 2) to study and seek factors affecting the mediation process on environmental disputes affecting the restoration of natural resources in a tangible manner and 3) to prepare a model and suggestion appropriate to current situations based on development guidelines model of mediation on environmental disputes for the restoration of natural resources and environment for sustainability by means of collecting and studying data, reviewing concepts, analyzing and synthesizing documents through non-participant observation and interview of persons related to the process. The study results about development guidelines model of mediation on environmental disputes for the restoration of natural resources in Thailand, discussion based on the case study on seeking a model of mediation on environmental disputes for the restoration of natural resources in Thailand, and suggestions about mediation on environmental disputes management guidelines for the restoration of natural resources in Thailand found as follows:

1) There were several processes describe ways to resolve disputes which can be separated into dispute resolution in court that the dispute is brought to court proceeding and dispute resolution out of court which is primary dispute resolution based on negotiation to find the best solutions to the problem through civil society, organizations, and government agencies or other agencies. Currently, the mediation process on environmental disputes refers to the mediation process guidelines on general disputes, especially mediation in civil and criminal cases. Such processes and methods were not consistent with problem-solving or dispute resolution on environmental cases in an

efficient manner. Meanwhile, government policies and legal restrictions had an effect on management and models of mediation on environmental disputes that have to be changed according to restrictions of each case and details and victims had to seek guidelines to stop problems and disputes from other alternatives on their own. Finally, those disputes had to be brought to court proceeding. According to principles and belief in Thai society, a court is the last resort for people. Though the mediation process on environmental cases occurs, Thailand majorly refers to the mediation process on civil cases in which emphasis is placed on conclusion of complaints about compensation, remedies, and compensation for loss or damage caused to persons or properties. As for natural resources and environment, people have not had the rights to claim from the judicial system or mediation in a systematic system as it is considered roles and duties of the government to carry out to claim the remedial process for natural resources and environment. Legal restrictions allow the government to be the only person can claim and only some parts can be claimed such as expense related to pollution elimination not including expenses related to restoration, remediation, conservation and substitution of damaged or affected natural resources and environment.

2) Factors affecting the procedures of mediation on environmental disputes for the restoration of natural resources and environment in Thailand comprised (1) government policies and relevant laws; government policies on environment were important factors which did not facilitate the mediation process on environmental disputes to reach an achievement since there are many laws enforced by agencies and organizations and are not consistent with and encouraging the mediation process on environmental disputes for the restoration of natural resources, (2) mediators must have experience and body of knowledge about legal approaches and natural resource management for being able to understand and access problem conditions of the other party comprehensively and for being able to recommend appropriate problem-solving guidelines to the other party, (3) experts in environment and relevant interdisciplinary must perform their duties to provide suggestions, verification, inquiry method, fact finding through principles and methods including advanced technology showing any damage and impact on ecosystem and commensalism in ecology and environment to enable mutual acceptance between dispute parties unanimously, (4) environmental data and technology and (5) lawyers or

attorneys; giving lawyers and/or attorneys to participate in discovering, investigating, inquiring, finding fact and mutually seek solutions for making and specifying an agreement between dispute parties contributed to good results to the mediation process on environmental disputes for the restoration of natural resources in achieving an agreement in an easier manner.

3) Guideline models of mediation on environmental disputes for the restoration of natural resources and environment for sustainability in Thailand that the researcher proposed are Thailand needs to establish a central agency as the control center to give advice and environmental dispute mediation at a regional level and central level, receive complaints from persons having an impact of environmental damage, coordinate with relevant agencies, evaluate and verify fact, give legal advice and legal procedures for environmental dispute mediation, investigate fact to carry out remedies, substitution, and compensation for trouble or damage fairly, seek models for managing, restoring, remedying, conserving damaged or affected natural resources and environment in a systematic manner by means of RY-TW mediation model on environmental disputes which includes 2 processes as negotiation to reach a mutual agreement and dispute mediation carried out by 3 procedures as seeking major and urgent problems (Need), seeing guidelines for solving problems, impact, and demands (Want), and mutual responsibility for natural resources and environment (Wish).

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CHAPTER 1

INTRODUCTION

1.1 Background and Rationale of the Study

Country development is something that every state must implement by means of maintaining the livelihood of country's population under security and enhancement of economic prosperity. The expansion of the industrial sector that facilitates considerable demands from the growing population, which is compliant with the direction of country development, brings about an increase in migration of population, leading to changes in natural resources and environment, directly and indirectly, which can be seen from climate change and environmental deterioration in crowded community areas. Claiming the rights to access natural resources from all sectors is a major factor triggering more serious conflicts. On the contrary, country development is an important reason causing damage to natural resources and environment inevitability. Inverse expansion without a balance between natural things and man-made things contributes to environmental crisis in relation to the world population increase. The United Nations Department of Economic and Social Affairs (UN DESA) reports that the current world population is 7,660 million and is expected to reach 9,772 million in 2050, only 33 years increases by 2,112 million, averagely 64 million per year. This increased population leads to degradation of natural resources by using the evolution of advanced technology to access existing natural resources, making the world lose its balance. The objectives of social development are infrastructure development, state security and economic expansion.

Similarly, Thailand has encountered environmental problems based on the population of 66.1 million on the total area of 513,120 square kilometer. The 2016 environmental quality report of Office of Natural Resources and Environment Policy and Planning revealed that soil, water, forest, minerals, marine and coastal resources,

biodiversity, coastal water quality, natural resources and culture have been deteriorated due to community expansion, forest area invasion, threats from economic activities to habitats of wild animals and plants; for example, the increase in tourist numbers, economic expansion to facilitate an increase in consumption ratio, contributing to risk factors of the rise of environmental disputes related to failure of local resource management, failure of adjustment, climate change, and population migration. Environmental disputes are different from ordinary disputes since environmental disputes are most likely associated with groups of people in the society, culture, livelihood, everyday life, traditional beliefs, value, or feelings affected by damage of natural resources and environment, making those disputes gain much attention from the society and people considerably. Environmental disputes related to several points consist of many affected people and dispute resolution processes require specialists. Searching for factors underlying impacts and causes from affected people brings about why the processes take a long time including processes of restoration and remedy that are time-consuming may be a factor contributing to continuous effect accordingly. If the processes of problem-solving cannot seek a resolution or cannot eliminate conflicts, those conflicts will become social problems. Thailand justice system has guidelines to implement environmental cases in relation to Court of Justice and Environmental Law Division Administrative Court. Emphasis has been placed on bringing disputes to be resolved as soon as possible by means of mediation in several procedures of trials so as to open an opportunity for parties to end disputes soonest. However, the current processes adapt procedures from other ordinary cases. There is no clear-cut practice for environmental mediation while the President of the Supreme Court's recommendation in 2011 has been taken as a practical guideline at the same time.

In the past, Thailand environmental dispute resolution applied methods of dispute resolution of ordinary cases into practice. Essentially, emphasis was placed on the part of civil and commercial cases since Thailand did not have specialized environment court as a special agency but only a division established to additionally proceed environmental cases in the Court of Justice with the help of environmental litigation from the President of the Supreme Court's recommendation, making the substance of environmental dispute cases in Thailand proceeded incompletely and

incomprehensively, especially damage of natural resources whose dispute resolution has been found with a loophole. Thailand focused on problem-solving in the form of paying compensation to those who are affected based on a civil procedure. The process of returning justice to those who received damage was deprived of the part of natural resources that did not have a chance for claiming to have restoration from bad effect in a timely manner. This leads to other disputes accordingly. Environmental cases need to be considered compensation covering damage assessment, impact assessment, pollution elimination and enhancing guidelines for restoration of natural resources and environment to their healthy condition, compensation payment made to the process of restoration of natural resources and environment to their healthy condition including the process of building or improving replacement areas, compensation for depreciation of damaged natural resources from the beginning until the ending of the restoration process, etc. Natural resources themself cannot file a complaint. Therefore, opening a chance to have a representative or agency including building a system consider the restoration of natural resources and environment can help generate justice and favorable standard to manage natural resources and environment in an appropriate and sustainable manner.

The process of proceeding environmental disputes in Thailand that has not been provided with a clear pattern or method requires points to be considered in several issues, especially the issue for maintaining and conserving natural resources to achieve sustainability in a concrete manner. Mediation is an appropriate method contributing to good effect on compensation, replacement, restoration and problem-solving in the same characteristics as civil cases. However, practices or provisions related to mediation of environmental disputes have not been clarified in terms of protection benefits and restoration of effects that may happen in the future, rights reserved to amendment the judgment about actual damage and providing collateral for future problems including mental effect caused by the destruction of natural resources and environmental that are public property, contributing to effects on life, physical, emotional, mental health both directly and indirectly.

Employing the mediation process can reduce time spent on solving problems related to restoration management of natural resources in a speedy manner. Consideration of the procedure of mediation, the process of mediation must take place

at any period in the proceeding. The quorum of meditations consists of experts holding extensive experience in mediation, lawyers or those who are in law-abiding government agencies, environmental specialists, science and technology specialists, interdisciplinary team related to the ongoing cases for proof and the problem-solving process of restoration in accordance with measures related to restoration of natural resources. The state shall make a demand for expenses spent on eliminating pollution, not including restoration caused by direct damage and damages caused by the process of eliminating pollution and specifying compensation, damages to natural resources and environment that do not have a certain pattern, principle, and method for calculation. In this regard, it depends on what the Court specifies as appropriate or in some case a demand can be made in accordance with what the state carries out the implementation. The problem is that government agencies have a tight budget to cover the process of restoration. Therefore, the implementation should be clearly carried out in terms of specifying patterns or practice guidelines for damage assessment and determining compensation for damage, in a correct and appropriate manner to cover the process of restoration. A central agency in charge of natural resource restoration can carry out implementation without violating applicable laws, procedures of restoration and compensation shall be clarified in a suitable manner, and damage-doers must fully participate in the process of restoration.

In this research, the researcher is aware of the importance of the mediation process in environmental disputes in the Court of Justice to achieve a good effect on the natural resource and environment restoration process in a more efficient manner. Thus, if the mediation process in environmental disputes can help achieve the correct restoration process of natural resources and environment, it will become a guideline for managing environmental dispute mediation for natural resource restoration, enabling sustainable development in the future accordingly.

1.2 Research Questions

1) What are current status and patterns of environmental dispute mediation?

2) How much does the process of Thailand environmental dispute mediation has an effect on the restoration and conservation of natural resources and environment?

3) What should be Thailand appropriate guidelines in the process of environmental dispute mediation under current circumstances?

1.3 Objectives

1) To study and seek factors affecting the process of environmental dispute mediation that has an impact on the restoration of natural resources in an appropriate and concrete manner.

2) To study guidelines in environmental dispute resolution using mediation for restoring Thailand natural resources in an appropriate manner under current circumstances.

3) To prepare draft patterns and recommendation appropriate to current circumstances for guidelines in environmental dispute mediation for restoring natural resources and environment in a sustainable manner.

1.4 Scope of the Research

This study aims to study the connection and benefits of using the justice system on the basis of environmental dispute mediation that has an effect on the process of conservation and restoration of natural resources and environment. The scope of the research for developing guidelines in environmental dispute mediation for restoring natural resources is stipulated as follow:

1.4.1 Scope of Area

The area for conducting a study for developing guidelines in environmental dispute mediation for restoring natural resources was set as a multi-site case study. The researcher set the areas to study disputes having an impact on natural resources and the process of restoration, disputes requiring the process of restoring natural resources as a part of dispute resolution and disputes that affected people

preserve their legal rights to be treated in a safe environment. Emphasis was placed on studying significant environmental disputes as follow:

1) In relation to the study on environmental dispute management having an impact on natural resource and environmental management that does not consider the issue related to restoration and conservation of natural resources, the researcher chose to study the case of Lead Concentrates (Thailand) Co.,Ltd, the cause of lead contamination in the Klity stream that had an impact on villagers and ecosystem and many lawsuits were brought against the company since 2003. 2003. On 11 September 2017 Kanchanaburi Provincial Court read the verdict of the Supreme Court that ordered Lead Concentrates (Thailand) Co.,Ltd. to clean up and rehabilitate the polluted Klity Creek. All total lawsuits lasted 19 years and they were considered the disputes having an impact on natural resource management which currently such impacts still exist from the fact that methods to manage impacts on natural resource and environment have not been identified in terms of restoration and rehabitation of natural resources in the process of dispute resolution, making other disputes and lawsuits come after.

2) With regard to the study on managing environmental disputes having an impact on natural resource and environmental management that considers the issue related to restoration and conservation of natural resources, the researcher chose to study the case of crude oil spilled into the sea off Rayong province from a leak in the pipeline operated by PTT Global Chemical Plc. in 2013. There were 223 oil spill victims who were stall business operators, fishermen, speed boat business operators, and the 223rd plaintiff was Association of Accommodations and Hotels in Koh Samet, Rayong province. Two years after the dispute mediation was carried out in terms of restoration of natural resources, good results were obtained. However, current disputes have a point under the consideration of the justice system. They are guidelines and processes in making a comparison study of factors related to processes of dispute resolution having an impact on processes of conservation, restoration, and remedy natural resources and environment.

3) With reference to the study on preservation of people’s legal rights to be treated in a safe environment and preservation of rights to have the State manage natural resources and environment appropriate to country development guidelines, the

researcher chose to study the case of Praksa landfill dispute ere people from 12 villages were affected by the massive fire broke out at the garbage site. There were 2,349 victims being the plaintiff entering into the process of mediation since 2014. Until 17 August 2017, a compromise agreement was made which was more than 3 years. It was considered an important example for preservation of legal rights to living in a safe environment as citizens of the State.

1.4.2 Scope of Population

Key informants were specified in the study using a purposive sampling technique in accordance with the 5 parts of study guidelines as

1) The justice system: data were obtained from those who are in the process of proceeding environmental cases, i.e. judges, judiciaries, attorneys, and lawyers

2) Parties in disputes of the dispute case samples

3) Scholars in environmental field, environmental laws

4) Mediation agencies – Dispute Resolution Office, Office of the Judiciary, and Center for Prevention and Mediation on Environmental Dispute Department of Environmental Quality Promotion

5) Environmental Civil Society Organization, Environmental Independent Organization is Natural Resources and Environmental Protection Volunteer Network (NEV-NET).

1.5 Conceptual Framework of the Study

Based on the aforesaid processes, they can be summarized in diagrams showing a conceptual framework in procedures of studying patterns of dispute mediation for restoration of Thailand natural resources as follow:

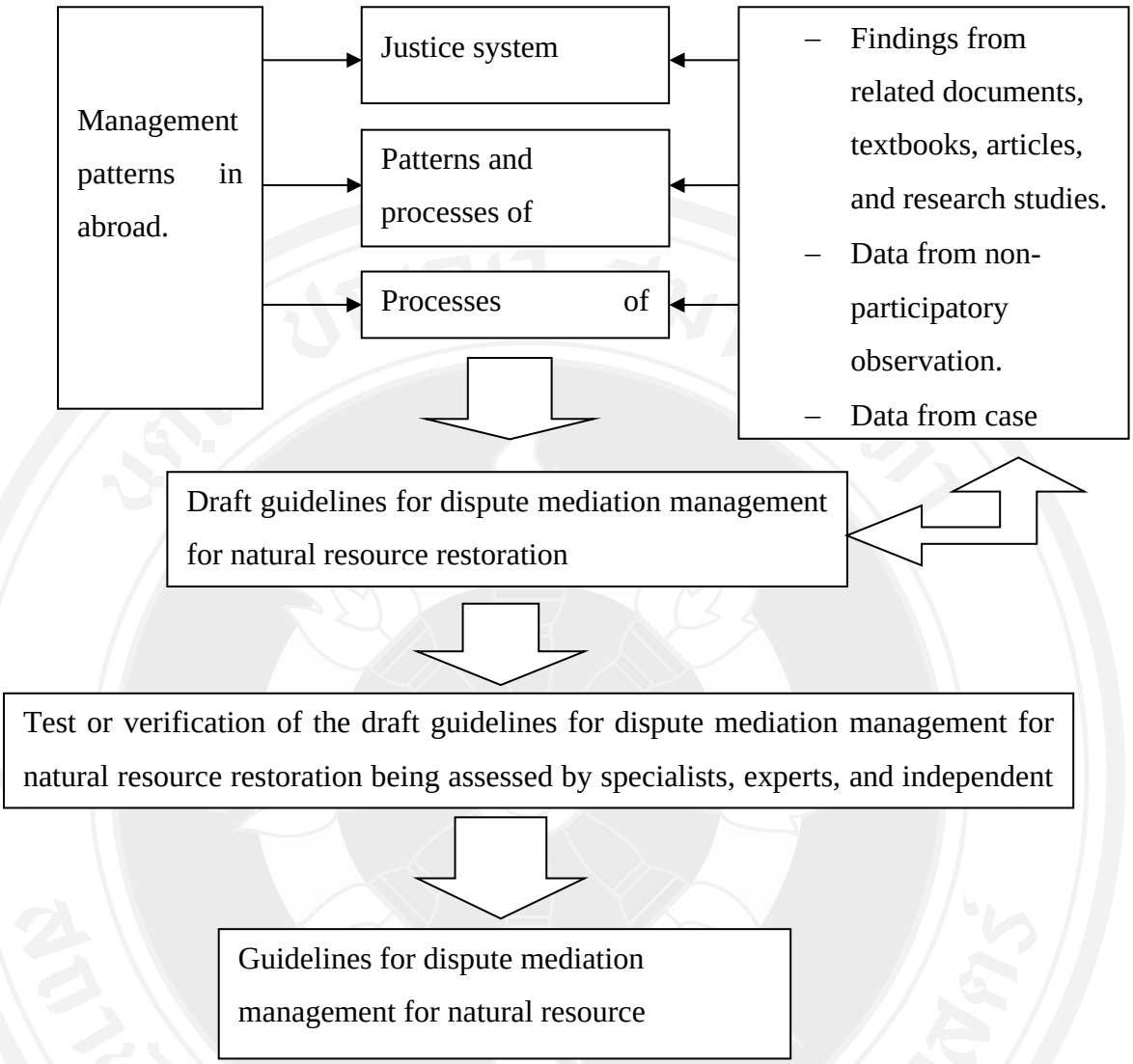


Figure 1.1 Conceptual Framework of the Study

1.6 Specific Definitions

Environment means physical and biotic factors surrounding people which can occur naturally or be made by humans.

Natural resources conservation means consuming natural resources wisely and appropriately, economically to achieve maximum benefits and value including improving waste by reusing to achieve minimum loss.

Mediation means the process of dispute resolution by allowing a third party to be a mediator to enable parties in disputes agree to negotiate or compromise that finally leads to an agreement with satisfaction of both parties.

Pattern development means development of the structure and relationship of processes, connection of processes in environmental dispute resolution using mediation processes so as to bring problems and conflicts to an end and enhance natural resource restoration and conservation.

1.7 Anticipated Benefits

1) Be able to understand factors affecting processes of environmental dispute mediation having an impact on natural resource restoration in a concrete manner.

2) Be able to know basic data related to environmental dispute mediation for developing patterns of environmental dispute mediation for natural resource restoration.

3) Be able to obtain guidelines and recommendations appropriate to current circumstances in environmental dispute mediation for natural resource and environment restoration in a sustainable and comprehensive manner.

CHAPTER 2

LITERATURE REVIEW

The research study on development of environmental dispute mediation guidelines for natural resource restoration aims to study connection and benefits in using the justice system on the basis of environmental dispute mediation that has an effect on the process of natural resource and environment conservation, restoration, and remedy. Research objectives are specified as shown below:

1) To study basic data of environmental dispute mediation for developing patterns of environmental dispute mediation for natural resource restoration.

2) To study and seek factors affecting the process of environmental dispute mediation having an effect on natural resource restoration in a concrete manner.

3) To prepare draft patterns and suggestions appropriate to current circumstances in environmental dispute mediation for natural resource and environment restoration in a sustainable manner by studying documents, background, concepts, and theories to make a conceptual framework of the study which can be divided into several points as follow:

(1) Concepts and theories related to meaning and characteristics of environmental cases

(2) Concepts and theories related to environmental dispute resolution.

(3) Concepts and principles related to public benefits and rights to environment

(4) Principles of environmental dispute mediation

(5) Concepts of restoration of damaged natural resources

(6) Concept of stipulating compensation for damage to natural resources

(7) Measures to use the process of environmental dispute mediation in abroad

2.1 Concepts and Theories Related to Meaning and Characteristics of Environmental Cases

2.1.1 Relationship between Humans and Environment

Humans need to depend on nature for life and social existence in terms of physical, social, and economic aspects, both directly and indirectly. Depending on limited natural resources for the existence of life, economic development and social security contributes to a significant effect from uncontrolled and over consumption of natural resources. This is probably caused by increasing demands and advanced technology and a growing number of populations, triggering various natural resource problems. Once relationship between limited natural resources and human demands is viewed, awareness should be raised of conservation, restoration, planning for consumption to achieve maximum benefits based on the existing natural resources. Concepts related to protection, conservation and restoration of natural resources are shown below:

World Charter for Nature, U.N. Doc.,1982 remarkably identified that

1) Mankind is part of nature and all life depends on the uninterrupted functioning of natural systems, and that every form of life is unique and warrants respect regardless of its worth to mankind, which ensure the supply of energy and nutrients

2) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity and for rest and recreation

3) Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action

4) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources.

Man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and

ecosystems for the benefit of present and future generations since natural resources are most likely assessed economic value and development contribution and considered as factors of production for commercial use and consumption.

2.1.2 Definition of Environmental Case

Since an environmental case is provided with different practice guidelines depending on problem conditions and environmental situations in each country. Therefore, setting frameworks and measures is important and consideration criteria should adhere to environmental conservation, restoration, and protection significantly with the help of a legal mechanism as a tool for implementation.

In case environment is considered as everything surrounding people, no matter they are soil, water, air, natural things, and man-made things. According to Promotion and Conservation of National Environmental Quality Act, B.E.2535 (1992), Section 4 prescribed that “Environment” means natural things which form the physical and biological conditions surrounding man and man-made things. Such characteristics include culture, tradition, and belief associated with nature and environment.

Thus, environmental cases refer to civil, criminal disputes as well as administrative disputes having causes, factors, and impact directly and indirectly on natural resources and environment including people who use, live, and are associated with those natural resources and environment in relation to life, physical health, mental health, hygiene, way of life including public property.

Based on the aforementioned issues, it comes to the legislation of laws related to environment in accordance with the recommendation of the President of the Supreme Court with regard to proceedings of civil cases associated with environment, which specifying that

1) Civil cases proceeded in accordance with accusation, which cause damage to plaintiffs from destruction or alteration of natural resource conditions, community environment or ecosystem.

2) Civil cases that plaintiffs request defendants to do or refrain from doing something to protect and conserve community natural resources or environment

3) Civil cases that plaintiffs request defendants to pay financial compensation or pay for damage to eliminate existing pollution or restore environment or for value of the lost natural resources

4) civil cases that defendants are requested to pay compensation for damage to life, health, hygiene or any rights of plaintiffs, which caused by pollution that defendants contribute to or shall be liable for by means of law provisions that are divided into 2 groups, 24 issues as follow:

(1) Group of laws related to natural resources, 13 issues, i.e. The Canals Conservation Act R.S.121, B.E. 2445 (1902), The Forest Act B.E. 2484 (1941), Thailand National Park Act B.E.2504 (1961), National Reserved Forest Act B.E.2507 (1964), Wild Animal Reservation and Protection Act B.E. 2535 (1992), Minerals Act B.E. 2510 (1967), Petroleum Act B.E. 2514 (1971), Navigation in the Thai Water Act B.E. 2456 (1912), Royal Irrigation Act B.E. 2485 (1942), Fisheries Act B.E. 2490 (1947), Groundwater Act B.E. 2520 (1977), Energy Conservation Promotion Act B.E. 2535 (1992), and Land Excavation and Land Filling B.E. 2543 (2000).

(2) Group of environmental laws related to pollution, 11 issues, i.e. Nuclear Energy for Peace Act B.E. 2504 (1961), Declaration of the Revolutionary Council No. 28 (24 December 1971), Industrial Estate Authority of Thailand Act B.E. 2522 (1979), Arms Control Act B.E. 2530 (1987), Hazardous Substance Act B.E. 2535 (1992), Factory Act B.E. 2535 (1992), Act on the Maintenance of the Cleanliness and Orderliness of the Country B.E. 2535 (1992), Public Health Act B.E. 2535 (1992), Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992), Fuel Control Act B.E. 2542 (1999), and Land Allocation Act B.E. 2543 (2000).

Provisions of laws according to Thailand Civil and Commercial Code are law of torts such as liability for wrongful acts under Section 420, the exercise of right under Section 421, strict liability for damage caused by dangerous property under Section 437, compensation for wrongful acts under Section 438, and laws of property such as causing problems or annoyance under Section 1337, retention and drainage of water on adjacent lands under Section 1339 and Section 1340, water leakage and

sewage prevention under Section 1342, and use of water for benefits of lands on water-way under Section 1355.

Examples of provisions on environment include Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992), liability for pollution damage under Section 96, liability for damage to nature under Section 97, Hazardous Substance Act B.E. 2535 (1992), caution for producers, importers, carriers, and persons having in possession under Section 59-62, damage arising from hazardous substance in the possession under Section 63, liability for the recipient of hazardous substances under Section 64, prosecution claiming compensation for the State under Section 69, etc.

2.2 Concepts and Theories Related to Environmental Dispute Resolution

Natural resource and environmental disputes have special characteristics different from regular disputes as they are associated with value or moral feeling. They are conflicts that have been going on for a long time, there is considerable imbalance of the power between parties in disputes and there is possibility for threat and force leading to violence. Parties in disputes have an aggressive standpoint and high opponent characteristics to each other. Points of disputes are complex or involve with huge benefit sharing and threaten to uniqueness or identity of individuals or group of people. Natural resource and environmental disputes can be divided according to hierarchy of disputes (Montri Silapamahabandit and Sorawit Limparangsri, 2008, 18-25) as shown below:

Upstream dispute is a dispute triggered by policy formulation of government agencies, which may directly and indirectly have an impact on a large number of individuals.

Midstream dispute is a dispute arising from taking a policy into practice in relation to using discretion in accordance with legal power and duty or stipulating measures for natural resource consumption, permission or approval of activities.

Downstream dispute is a dispute arising from activity implementation of individuals or organizations that have an impact on environment, making individuals or groups of people have trouble or damage. (Kirk Emerson, 2003)

2.2.1 Characteristics of Environmental Disputes

Characteristics of environmental disputes have a wide range effect, complexity, and difficulty different from regular infringement cases (Varinthorn Chayawatto, 2012, 13-15). Environmental disputes, considered a part of action, have no intention to cause damage to life, body, and hygiene of recipients of pollution, which may include refraining from doing something. Characteristics of environmental disputes include the following:

2.2.1.1 Causing damage to natural resources that people jointly use

Action of wrongdoers triggers damage to natural resources and environment that are public not someone's property.

2.2.1.2 Having an impact on a large number of people

Damage to natural resources and environment is distributed with a wide scope and many people have a direct impact in different forms, people may have a direct impact or side effects related to the cause obviously. The damage may affect culture, custom, tradition, etc.

2.2.1.3 Taking time to show a consequence of damage

Ongoing damage or impact caused by wrongdoers destroy natural resources or pollute environment which later it is proved that it is a related cause from a long accumulation period to show damage though a lawsuit is now over.

2.2.1.4 Requiring witnesses and specialists to prove damage

Due to complex characteristics of environmental disputes, sometimes a clear conclusion cannot be made but it needs scientific, technological, or medical process to help prove different forms of impact including identifying what will happen next in the future in a systematic and widely accepted manner. Therefore, it is necessary to use special techniques or specialist to prove or give their opinions.

2.2.1.5 Corrective and remedial measures must be available and up-to-date

It is unavoidable that damage to natural resources will have an impact on ecosystem and other systems continuously. In case of severity, it is necessary to fix the problems hurrily and restore for a better outcome so as to suspend and reduce destruction and prevent an impact on related systems. Damage may be too severe to restore and problems can be more complicated. Therefore, it is needed to seek

corrective methods so as to speedily suspend the problems by means of legal measures, social measures, etc.

Environmental disputes not only share the same basic characteristics with other disputes in the society, but also have special characteristics different from other disputes (Sorawit Limparangsri, 2007, 151-170) as follow:

1) Associated with value or fundamental moral feeling (Fundamental or deep-root moral conflict). Environmental disputes are associated with value or fundamental moral feeling of local people who are affected by changes in utilization of natural resources. Such effect does not cause damage only to money but also way of life and beliefs of local people as well. Change may occur to their way of life and old beliefs related on natural resources or environment.

2) A conflict has persisted for such a long time (the length of time a conflict has persisted). Environmental disputes may arise and can be resolved. However, in some cases, those disputes have persisted for a length of time and become permanent disputes; for example, a case of a factory releasing toxic substances dangerous to environment and people living nearby that led to a conflict. Such of this dispute or conflict still exists as long as a factory being the cause of the problem keeps operating the business. (Cambell, 2003)

3) Severe power imbalance between disputing parties. Considerable environmental disputes have a significant characteristic in being a source of problems. That is difference in power of parties in disputes. A party is a State authorized persons having laws and regulations as a power base to fight against the other party; for example, disputes between State enterprise agencies that use legal power or regulations to implement changes in conditions or characteristics of utilization of natural resources or environment to respond to the tasks that a certain State agency or State enterprise agency is in charge such as building dams, laying gas pipelines or petroleum pipelines, new road construction. Considered legal aspect, those State agencies or State enterprise agencies are more likely in the status that they can do anything that can cause an impact on people involved with the areas the state or state enterprise agencies utilize. The other source of power is economic power. This can happen when a party is a company or a person having economic prosperity. Though such party cannot legislate a law or regulation to respond to his/her demand

like State agencies do, he/she can use the prosperity to seek and acquire natural resources to respond to an economic demand; for example, filing requests for concessions from State agencies so as to obtain the rights to make benefits and utilize available natural resources or buying sources of natural resources from people or other private sector. Besides, economic power is employed even a dispute arises. Those prosperous parties in disputes have advantageous status to mobilize all forms of their power as a tool to fight against with the other parties such as hiring consultants to provide them recommendation for making contact with State agencies to agree with their excuses or collecting witnesses and evidence used to defend a cance once prosecution is brought to court.

4) Potential for coercion or escalation to violence. When parties in distputes have power to specify a direction or implementation of natural resources and environment unequally, especially a case associated with State agencies and facilitated by laws to be able for implementation as mentioned earlier, once they cannot persuade affected people to agree with an impact, sometimes they probably use their existing legal power to force something to happen in the way they wish. In this regard, there is possibility of coercion or escalation to violence between State agencies and affected people, especially a case related to changes that considerably affect their way of life or beliefs. People will feel that they are under pressure and accumulate dissatisfaction and once it reaches a certain level and finally it may become a violent conflict. Even a party in dispute is private sector having higher economic power, he/she may use the power to force the other party to agree with his/her wish. Coercion can be employed in various forms; informal power and formal power through the justice system. If coercion occurs at a certain level, it may enable the other party to use violence as a tool to counteract. Once violence occurs, it can escalate easily and is difficult to control, considered numbers of people who are affected by the conflict in using natural resources.

5) Rigidity of position, high level of hostility. Once a dispute occur, a party in dispute often ask the other party to act something. In negotiation to seek dispute resolution, a party makes a great effort to convince, persuade, or threaten to make a demand of the other party flexible as expected as much as possible. To lay down a guideline to solve problems as close as the guideline of the other party

depends on various factors such as power of negotiation, discussion techniques including surrounding factors that more or less help support a demand of either party. Sometimes, demands of each party are developed until they become “standpoints” being a core in making a demand and effort to persuade and bring problem-solving guidelines to meet standpoints that they believe to be the most correct way.

To solve disputes or conflicts, “standpoints” seem to be a significant obstacle making considerable disputes cannot be solved. Benefits associated with such disputes are not available only in the form of money that each party assesses as compensation for damage or amount of money that they have rights to claim from the other party, but also other important and complex benefits such as benefits associated with society, economy, culture, and value. These effects may change the old fashioned way of life, contributing to personal and public feelings. Standpoints that these people mutually share are difficult to be flexible or persuaded to meet standpoints or demands of the other party and sometimes it is not possible at all. How to change such strong standpoints needs to adjust ideas of all people or the majority of them who experience the effects, which is very difficult.

Such strong standpoints also have a high level of opponent characteristics as standpoints of each party are believed to be a method that can solve problems correctly and fairly while they are highly different. This difference comes from changes in using natural resources and environment which turns to be the cause of disputes. Changes are rapid and significant. If changes had occurred gradually and reasonably taken time and the scope of changes was not that much, disputes would not have occurred in the first place because affected people had time to adjust themselves to be in harmony with arising changes. However, those who wish to take advantage from natural resources and environment more likely require themselves to have benefits worth their investment, being able to receive returns and profits in a very short time.

6) Complexity of issues. When disputes consist of many issues to be solved, problems seem to be more complex. In some cases, each dispute has some points connecting to each other and some points may be associated with technical and scientific information which the other party does not have any basic knowledge, making their points of view or attitude different. In addition, this enables

dispute characteristics are more complex. To solve problems, other than seeking resolution for such technical problems, components in communication should be added to ensure that information and understanding about problems of parties in disputes are at a similar level. In such case, if parties in disputes or people are not open-minded to accept or understand, problem-solving will be more difficult.

7) High-stakes distributional questions. Action contributes to an impact on natural resources and environment shall have an impact on a large number of people. An impact on an individual is not that high but once all impacts on people are combined, the total impacts increases. In terms of those who cause impacts on natural resources and environment, they have to spend a large amount of money on investment to implement projects bring about impacts on natural resources and environment. Once it combines with profit that investors will receive from the projects, it will be the total of huge gain and loss. When both parties have a large sum of gain and loss and a direction of problem-solving is stipulated in a way of a party, the other party will have a large sum of loss. A problem-solving method being coordination of each party will be quite difficult to carry out as the stipulation of a problem-solving direction, no matter what the actual direction may be, shall make the other party has loss unavoidably because an amount of gain and loss that each party has is quite high, making problem-solving quite difficult accordingly.

8) Threats to parties' individual or collective identities. In some case, environmental disputes have an impact on identity that indicates a symbol of individuals or groups of individuals, making the symbol like places, objects, or way of like disappear or have an impact on significant parts for not being able to maintain its identity or an important part. The value of affected things is probably not high but sentimental value of individuals of groups of individuals is priceless. Such disputes are difficult to be remedied. (Marcia caton Cambell, 2003)

2.2.2 Objectives of Environmental Dispute Resolution

Once environmental disputes occur, a consequence that can be clearly seen is conflicts between parties that can be expanded to other people since environment is public property belongs to all humans. In the event that natural environment is damaged and polluted, people who do not participate as a party may have a direct and

indirect impact. Environmental dispute resolution is carried out to eliminate or bring the existing environment disputes to an end. It is a search of an exit for parties in disputes and helps stop the destruction of natural environment, enabling the existence of natural environment conditions. There are 4 major purposes of environmental dispute resolution (Sunee Mallikamarl, 1998, 66) as follow:

2.2.2.1 To have compensation for damage

Most environmental disputes are caused by consequences of activities or industrial structures that contribute to polluted environment. When people have toxins in their bodies or properties are destroyed or damaged, it leads to demanding those who cause damage to pay compensation. When those who cause damage do not accept that their actions or operations are the cause of damage, disputes occur. Even though those who cause damage accept their wrongdoing, disputes are probably concerned with an amount of compensation they have to pay for damage. Once parties in disputes cannot make an agreement, disputes arise accordingly. The way that those who receive damage will have an amount of compensation is a remedy of damage that those who because environmental pollution needs to be liable for.

2.2.2.2 To enable suppression, cessation, or correction of environmental destruction any longer

Another objective of environmental dispute resolution is claiming the right to suppression, cessation, or correction of environmental destruction.

2.2.2.3 To mitigate damage

Sometimes the arising damage does not have characteristics harmful to health, hygiene or property of victims but it is a cause of trouble and annoyance; for example, factories release bad smell and smoke to environment, causing trouble and annoyance to people living nearby. It is not harmful to life but causes trouble and annoyance. Such damage can use mediation to resolve the dispute so as to mitigate damage without brining prosecution to the court.

2.2.2.4 To restore environment to be back to its healthy condition

When environment is destroyed by nature itself or humans, it will be dangerous for humanity. Dispute resolution then aims to demand the restoration of environment to be back to its healthy condition. Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992), Section 97 prescribed that any

person who commits an unlawful act or omission resulting in the destruction, loss or damage to natural resources shall be liable to make compensation to the State and restore natural resources that are destroyed, lost or damaged by such and unlawful act or omission.

2.2.3 Qualifications of good Environmental Dispute Resolution

Dispute resolution as mentioned by Professor Wichai Ariyanantaka in the article titled “The resolution of disputes in international trade contracts” (Wichai Ariyanantaka, 1997) consists of the following qualifications:

2.2.3.1 Fair

Creating fairness, no matter from parties in disputes make an agreement of a mediator is involved with the implementation of mediation, shall have balance in all aspects, be impartial, and give satisfaction to all parties, leading to reconciliation and dispute resolution regarding to the past, present, and the future. In terms of mediation, it looks like the court invites parties in a lawsuit to play “hoop takraw” instead while plaintiffs, defendants, and lawyers use their skills to play takraw as they used to do but this time they play together in a circle with the intention to help one another kick takraw into a hoop. Therefore, plaintiffs, defendants, and lawyers have to voluntarily play, if anyone receives takraw and kick it away from a hoop, the game will not get any score. Mediation then is a matter of voluntary and cooperation. With regard to a judge who is a mediator shall perform his/her duty to just help adjust the hoop. If anyone keeps on kicking takraw out frequently, the judge cannot help adjust the hoop to match takraw.

Based on the above-mentioned comparison, a picture of dispute resolution is simply seen and realized which way can bring fairness more or less.

2.2.3.2 Speedy

Justice delayed is justice denied and justice cannot be denied or delayed”. This message appeared in the period of Ancient Rome and is immortal until today. Delay enables witnesses, no matter in the form of persons, documents, objects, and information, to disappear, even people’ s memory will be blurry as well due to a long time spent on a trial. Meanwhile, time, damage including interest will increase accordingly. Consequently, speed in dispute resolution plays a vital part in detecting a

point and solving problems precisely and accurately because once a problem occurs and it is immediately solved, the problem will be addressed in a clear, timely, up-to-date manner, and would help reduce expenses spent on dispute resolution at the same time. In terms of a macro perspective, it helps solve economic and social problems, minimize too many cases pending in courts and is beneficial to business considering time is precious.

2.2.3.3 Cheap

Cheap refers to timesaving and cost saving for parties in disputes to implement dispute resolution for protecting interest of parties in disputes to have less damage and be worthiest. Preventing disputes to arise is the cheapest way of dispute resolution as no dispute arises. However, as a matter of fact, it has never appeared that any lawyer in the world has been successful in drawing a contract that can prevent disputes. Thus, when a dispute arises, the cheapest method of dispute resolution is a new alternative other than court litigation.

1) Effective enforcement mechanism

An enforcement mechanism comes after dispute resolution is finished and the enforcement shall be compliant with the agreement of dispute resolution. Namely, the parties in disputes shall follow the agreement made in the dispute resolution while the sanction must be possible and agreed by all parties which can result in reliability in practicing the agreement.

2) Confidentiality or Measure against bad publicity

The best dispute resolution is to ensure confidentiality of parties in disputes by not causing any damage to the reputation of individuals or businesses and loss of future negotiation power, especially a trade secret as once it is disclosed, it may cause trade damage or trade disadvantage as well reputation or goodwill may be less recognized.

3) Preservation of relationship

Preservation of relationship means dispute resolution that enhances good relationship between parties in disputes in conjunction with creating casual, simple, and friendly atmosphere without any pressure but all parties should adhere to compromise to allow all parties to have good relationship and be able to follow the agreement or deal business with each other further. Therefore, creating an

opportunity to have an independent agreement, not strictly adhere to laws, shall enable the parties to make decision on dispute resolution easily, giving positive outcomes to society in enjoying peace and helping build strength to society and communities at the same time.

2.2.4 Dispute Resolution Methods

Today's society is a place comprising the combination of many types of people different in race, culture, custom, tradition, religion, belief, as well as opinion. All of them are factors contribute to conflicts among people in the society. Conflicts or disputes are not something strange or rare but what everyone can see generally in the society as if it is something normal in life, provided that levels of violence are more or less differently. Once individuals have conflicts or disputes, how to manage those conflicts and disputes will come after with the purpose to suppress or bring them to an end. There are various methods of dispute resolution (Prapot Klaisuban, 2008 cited in Varinthorn Chayawatto, 2012, 21-29) as follow:

2.2.4.1 Compulsory dispute resolution

One of a compulsory dispute resolution method that is clearly seen is litigations by asking a court to consider and judge which one is right and which one is wrong and whether they owe each other any obligation or not and how. The reason that the court litigation is deemed a compulsory process is once a dispute arises, a party who claims that he/she has the right to request from the other party has the right to bring a case to a court immediately without requiring any consent from the other party. Though in the prosecution of the case the other party may not participate in, making him/her lose any right such as the right to hearing of evidence or witness to defend a case and enabling he/she to lose the case, such consequence will be a factor forcing the parties in dispute shall join a trial to preserve their right and as soon as the court announces a verdict, there will be a compulsory process for achieving a consequence according to the judgment. (Macki K., Miles D., March W., & Allen T, 2000)

Using the right to access justice is most likely not specifically stipulated in the laws but the laws prescribe to guarantee any right and in case there is violation or loss of one's right, the right holder shall use the right to access to court to

protect or remedy his/her right. However, many laws may specifically stipulate a process of implementation that if there is any action not compliant with the stipulated laws, there shall be administrative implementation to agencies in charge and there will be a legal proceeding and order accordingly. Such laws will be provided with an appeal process to examine the legitimacy of orders. The mentioned appeal process is a systematic appeal and a process of administrative division. In case internal legal action of the administrative division is complete, the parties in dispute shall use the right to access to court to argue an administrative order of the administrative division. The internal legal proceeding of the administrative division is a part that a party in dispute can carry out according to the laws grant the right and power without asking for any consent or voluntary from the other party, which is considered another form of the compulsory method.

Dispute resolution using the right to access to court encounters problems and obstacles (Punyong Putthipat, 2007) such as delay in legal proceedings since the way that a court shall finally judge a dispute requires hearing of evidence and witnesses that takes much time including the growing number of cases each year and restriction in manpower of judges. In addition, disputes going to be ceased by a final verdict shall take much time since parties probably file an appeal or petition. Moreover, processes and procedures for proceeding cases must be strictly compliant with civil and commercial procedure code such as filing a lawsuit in court, submission of answers, etc. With regard to expenses incurred during a case proceeding, In addition to court fee, parties in disputes may have to pay other related expenses such as lawyer fee. Furthermore, there are problems related to knowledge and skills of judges who are going to perform their duties to arbitrate disputes related to complex techniques, though parties in disputes are able to take witnesses who are specialist to give testimony, problems related to technical communication to have the same understanding are found. A problem is also found in terms of keeping confidentiality of parties in disputes since normally court litigation must be implemented openly. In case a dispute is associated with trade secret of parties in the dispute, their business competitors may listen to the judgement and know information easily while mass media may present news giving bad effects on the business image of the parties in disputes. Moreover, keeping relationship between parties in disputes is quite difficult

since the atmosphere of court litigation is confrontation making parties in disputes are opponents to each other as each party make a great effort to win a case.

Dispute resolution using court litigation consists of legal procedures and principles as prescribed by laws. Finally, disputes shall be resolved by final court judgement.

2.2.4.2 Alternative dispute resolution (ADR)

Another method of dispute resolution different from the compulsory one is called “alternative dispute resolution” The reason it is called the alternative resolution since it is a method that parties in disputes can chose to or not to participate in the process. Though parties in disputes do not choose to use the alternative resolution, there is no bad effect on the parties. In such case, it must not be a case that parties in disputes made an agreement to use the alternative dispute resolution before and change their mind not to participate in the process later. Alternative dispute resolution can be carried out by many methods and each method has different characteristics, depending mainly on parties in disputes and methods similar to court litigation. It is difficult to say that which dispute resolution method is good since each method has both good and bad points differently.

Which method will fit which dispute depends on not only characteristics of arising disputes but also parties in disputes since alternative dispute resolution needs cooperation and participation of parties in disputes. Therefore, the parties play an important role to enable a dispute resolution method has success or failure. In the event that parties in disputes do not give cooperation or willingness to jointly solve problems, a method for dispute resolution by not using cooperation of parties may be in use. To understand methods in order, the big picture of alternative dispute resolution is mentioned as follow: (Sorawit Limparangsri, 2007)

1) Conflict assessment

This method is perhaps not a direct process of dispute resolution but it is a preliminary method for conflict management to help all related parties in disputes able to plan and stipulate implementing guidelines appropriate to disputes they are confronting. The major purpose of this method is to help parties in disputes able to identify points of dispute that need to be remedied from all related persons, seek groups of stakeholders affected by all disputes so as to assess all

impacts correctly and get to know individuals should participate in problem-solving, and seek methods or measures appropriate to resolve arising disputes.

Conflict assessment guidelines start from a discussion meeting among stakeholders of arising problems to jointly assess causes or the origin of problems and assess who will be affected by those problems, especially individuals or groups of individuals probably have an impact from any guideline or measure stipulated among related persons so as to solve and remedy the ongoing problems. If people who may be affected from future measures do not attend the discussion, though in the meantime related persons who join the process of problem-solving can seek any resolution, the agreed resolution brings about a new impact on any group of individuals who do not have participation, they will become a new obstacle for problem-solving accordingly. Even though the arising impact is not huge, especially in the opinion of related persons who make a discussion together and perhaps assess the impact in the way that significantly meets their benefits and assess bad effects on other people less than they should be, those groups of individuals will feel hostile towards and oppose any action that may cause damage to them, regardless of how much the damage would be, in particular when they consider overall benefits that will occur as they feel that they do not have participation and they are not “the owner of the problem-solving idea”, and sometimes they may feel that they are given a burden of effects for the benefits of others.

Once the preliminary information about causes and affected people is adequately obtained to know the scope of problems, the next step is to have a discussion to search for benefits and demands of stakeholders which way each party wishes to have a consequence or what they need the stipulated guidelines to respond to so as to know if the alternative dispute resolution can be used or not. For example, in case parties in disputes wish to have interpretation of right and duty that each party has in accordance with the provisions of laws and require “norm” for members in the society or communities to serve current and future disputes. The alternative dispute resolution may not be a suitable method since it focuses on solving problem together rather than seeking correct principles in accordance with the provisions of laws.

The following step of conflict assessment is collecting points of dispute that all parties in disputes has to mutually consider searching for a way to

solve problems. The points of dispute that all parties have to mutually consider will act as a “frame” of implementing a guideline to be stipulated and carried out in the next step. In this regard, it enables parties in disputes know how many burdens they have to deal with. Those points of dispute will have effect on what they need to do in the next steps. That is assessing the possibility of using the alternative dispute resolution for arising problems. Based on all perceived and collected information at the beginning, no matter they are causes of problems, affected people, benefits, and demands from each group of affected people, and points of disputes to be considered, it is appropriate or not to use the alternative dispute resolution to solve the problems and how many opportunities are there for the alternative dispute resolution to be successful. In case it is expected there is possibility, people who may have an impact should be informed and information should be provided to them as much as possible about processes or methods that can be implemented to help them make decision whether or not they should participate in the implementation using the alternative dispute resolution.

The last step is after the related persons who wish to use the alternative dispute resolution to solve the arising problems are available, planning should be made together to determine, or it can be called “design” alternative dispute resolution methods appropriate to the arising problem conditions. The procedure of this design may require “a mediator” to help guide a discussion or give recommendation about appropriate alternative dispute resolution methods. A mediator probably perform his/her duty by interviewing to find information about points of view of parties in disputes and benefits of each party until the problem conditions are adequately understood before informing “recommendation” about alternative dispute resolution methods that parties in disputes should consider for problem-solving.

2) Facilitation

Facilitation is a process of a participatory dispute resolution that allows a mediator known as “facilitator” to help stakeholders in making a discussion about dispute problems. The roles of a facilitator range from preparing a meeting; a facilitator may perform his/her duty to talk with each party in disputes to ensure that all stakeholders shall have a role and participation in solving dispute problems and to specify an agenda of matters to be discussed. Once a meeting to

discuss between parties in disputes takes place, the facilitator shall oversee the discussion to be compliant with the determined plan or agenda. With regard to communication for making understanding of problems, the facilitator shall monitor to ensure that parties in disputes understand the communicated information in the same direction and the discussion is in the way that can achieve the purpose of problem-solving.

3) Conciliation

Conciliation has pretty similar characteristics to dispute mediation since both processes allow a mediator to perform the duty similarly. The difference between these two methods is too small to say that they are interchangeable methods. In abroad, difference can be seen but sometimes it is about theoretical difference only. In some countries, the scope of conciliation focuses on developing relationship between parties in disputes significantly. A conciliator shall make an effort to help parties in disputes to correct all misunderstanding that happen between them and try to reduce suspicion and distrust between them and make communication between parties in disputes to be in a creative way for solving arising problems rather than alleging each other of something or trying to oppose or overcome for wrongdoers. Sometimes, the roles of conciliators are set as persons who give opinions or recommendation about an exit for problem-solving to parties in disputes. In some case, the conciliation as mentioned earlier can be used as a preliminary tool for preparedness to parties in disputes who are going to enter the process of dispute resolution using other methods accordingly.

4) Mediation

Mediation is a dispute resolution method that allows a “mediator” to help parties in disputes to find a way to solve arising problems to be accepted by all parties in a dispute. A mediator does not have power to force or determine “an outcome” that is going to happen to be in one way or another without approval or agreement of all parties in a dispute. Mediation is a method that has been for such a long time in Thai communities or society, providing that patterns and implementation are possibly different depending on communities or societies that disputes occur.

The major duty that a mediator has to perform is taking charge of orderliness of a discussion process between parties in disputes. A mediator shall help parties in disputes to be able to communicate and share information and opinions between each other as much as possible so that they can mutually learn about arising problems. Once parties in disputes have adequate information about disputes, they can analyze a problem condition correctly and distinguish points they need to mutually consider and find an appropriate guideline or problem-solving method to operate and is accepted by all parties in disputes. Since a mediator has no power to stipulate or force for using a method or guideline to solve a problem, the mediator shall help parties in disputes develop or create a method or guideline for problem-solving by themselves. By the way, the mediator shall recommend a possible method or guideline to supplement the parties' consideration. However, for countries distinguishing difference between mediation and conciliation, the roles of mediators may be limited by being unable to give their opinions about how to solve dispute problems.

Generally, there are not many persons who participate in dispute mediation. A small number of participants can seek a resolution that all parties accept rather than a large number of participants as the more participants, the higher difficult in finding a resolution. However, currently a mediation method is used in different context increasingly and in some cases a number of people participating in mediation are quite large compared to the number of participants in normal cases.

5) Negotiated rulemaking or Negotiation or Reg-Neg

This is a dispute resolution method playing an increasing role, especially in the context related to exploitation of natural resources and environment. An important role of the negotiated rulemaking increases in terms of preventing dispute problems that may arise from issuing rules and regulations enacting people who are stakeholders as it allows a chance to those stakeholders to participate in setting rules and regulations to enforce them in the first place so as to bring all doubts of the stakeholders to supplement consideration of setting the rules and regulations accordingly, enabling the enacted rules and regulations do not have an impact too much or the future impact shall be in the criteria that all stakeholders are able to accept. At least, it enables all related people to perceive and able to have preparedness

to follow the new rules and regulations. As a consequence, the new rules and regulations do not deal with a problem in enacting, no matter in the form of opposition or legitimacy as people who are stakeholders play a part in setting them at the beginning. The way that the set rules and regulations are considered by all stakeholders that they are in a level that everyone can follow, smaller obstacles can be seen when they are taken into practice.

6) Policy dialogues

A policy dialogue is a form of conflict resolution that is quite new. The main purpose is seeking and collecting arising points of problems to consider if mutual suggestion can be found between stakeholders to propose to persons having power of making decision for using in stipulating various policies. The difference between policy dialogues and other methods of dispute resolution is the output from this method is not necessary to be measures or guidelines for problem-solving in details in which all methods or practices are clearly identified but the objective is to acquire mutual suggestion or recommendation among all parties with no obligation for proposing to related agencies to consider and supplement decision-making. At least, mutual discussion in this process enables to assess possibility to use other methods of dispute resolution to help solve arising disputes. The guideline of policy dialogues is similar to the negotiated rulemaking as mentioned earlier.

7) Early neutral evaluation

General characteristics of this method are similar to a legal proceeding since a specialist holding extensive knowledge and experience in dispute problems is appointed to perform his/her duty to listen to excuses, defences, evidence and witnesses of parties in disputes. No matter arising disputes are involved with legal problems or technical problems, after listening to information completely, the mediator who is appointed shall prepare a report showing weak points and strength of the excuses and defences of each party, possibility of advantage that may occur in case parties in disputes cannot resolve problems or disputes by themselves and court litigation is required. Besides, the report may try to limit points of disputes that are important problems and suggest important information that a party should consider during an agreement is made. This method does not make a dispute to be ceased but

the obtained information shall enable a party to use for supplementing consideration of a scope of agreement to be discussed or made between the other party. Once a party perceives an important point of problem and possibility of advantage that may arise, this shall play a part to make a discussion easier.

8) Minitrial

This method is close to court litigation as it is full of implementation such as taking evidence and witnesses in front of a mediator who is appointed but the number and scope of taking evidence may not be specified in details and comprehensively covered as what will happen in a court when a trial is conducted. After that, the appointed mediator shall give his/her opinion about a consequence of the case based on excuses, defences, witnesses and evidence presented up front. As soon as the mediator's opinion is received, a representative of each party shall make a discussion again to make an attempt to settle the arising dispute with the help of the obtained opinion to supplement consideration.

9) Fact finding

"A fact finder" will be appointed in this method to gather information and listen to opinions of parties in a dispute. If information obtained from a party is not enough, the fact finder shall check information from other sources as appropriate to ensure that information related to points of a dispute is adequate for further implementation. Once the required information is obtained, the fact finder shall asses the information, witnesses, and evidence to prepare a report showing the opinion towards the fact arising in the dispute. In some cases, suggestion is given to how to solve a problem as well. A fact finder's report shall inform informal opinion and there is no obligation to parties in a dispute to follow.

10) Arbitration

It can be said that arbitration is the most similar method to court litigation since the important characteristic of this method is appointing a mediator known as "arbitrator" to identify and give final judgement of arising disputes and the consequence of identification that is called "an arbitral award" being a legal obligation that the other party shall follow. In case either party does not follow the final judgement, they shall request the court to give enforcement in accordance with the arbitral award by applying a request to the court. The process of arbitration

shall start when parties in disputes agree to make an “arbitration agreement” to submit an arising dispute to the process of arbitration. The arbitration agreement is a starting point of the process and an indicator showing the scope of the power of an arbitral tribunal in making identification or final judgement for a dispute. Besides, it is something used to stipulate a legal proceeding in terms of significant components or procedures. (Nitithorn Wongyean, 2005)

As soon as a dispute arises as stipulated to be in the scope of the power of arbitral tribunal making arbitral award, a party who wishes to claim for the right to something shall start implement arbitration as specified in the agreement which most likely submitting a “statement of claims” to the arbitration center specified in the agreement or submitting to the other party while any arbitration center is not specified. After the process of submitting documents is finished, a party shall start the process of appointing an arbitrator who shall identify and give final judgement for the arising problems. The process of appointing an arbitrator shall be implemented as specified by an arbitration agreement in terms of a number of arbitrators and procedures of arbitrator appointment. In case a stipulation is made in the agreement, all parties shall strictly follow the agreement.

After the number of arbitrators is complete as specified in the agreement, arbitral tribunal shall stipulate, an arbitral tribunal shall stipulate a legal proceeding until there is arbitral award. Regularly, all parties in disputes are granted an opportunity to propose their excuses and defences and bring witnesses and evidence to show for supporting their excuses and defences. When all parties bring all evidence to present to the arbitral tribunal, the arbitral tribunal shall hold a meeting for casting their votes to make an arbitral award for determining how parties in the dispute shall have the right and duty to each other. This arbitral award shall have obligation to the parties as mentioned above and may be brought to the court to enforce the compliance to be in accordance with the arbitral award.

2.3 Concepts and Principles Related to Public Benefits and Rights to Environment

Natural resources and environment are considered public properties that everyone in the society jointly use in a systematic manner. If anyone possesses and holds them to be private properties or destroys them, this will result in widespread damage to people and society. Environmental disputes are associated with having effects from damage-doers or direct and indirect destruction of public properties. Therefore, public benefits or benefits of all people are mutual benefits of people or members in a society. The important characteristics of public benefits are response to the need of the majority of people in a society and they are something that the administrative sector has to manage worthily and appropriately (Fire Senachai, 2009).

2.3.1 Rights to Environment

Human rights are sometimes associated with environment (Varinthorn Chayawatto, 2012) since environment is the surrounding in which humans live and a factor for living a healthy life. Therefore, States need to protect, monitor, and supervise people and environment to live together in an appropriate manner by legislating laws or making mutual agreements to allow people to access and understand the rights they are holding, which shall be deemed protection of human rights to environment.

2.3.1.1 Rights to healthy environment

Rights to healthy environment (Tanapan Sangphongsanont, 2014) are rights to living or having standards of life in quality environment and safe environment for a person to live a life in a society in accordance with international rules, regulations, agreement, laws and rights directly associated with human rights as a basic standard of people that each State has to implement. A significant principle of rights to environment (Namtaeh Meeboonsalhang, 2007) is environment is important and necessary for life and well-being of humans. When the quality or normal condition of natural resources and environment are threatened and destroyed, causing damage or pollution, every individual shall have the rights to conserve and control the quality of environment for serving their happiness. Rights of individuals include

rights to environment. Constitution of the Kingdom of Thailand B.E.2560 (2017) prescribes the rights and liberty of Thai citizens in the chapter 3 according to the following sections:

Section 41: A person and community shall have the right to (2) present a petition to a State agency and be informed of the result of its; (3) take legal action against a State agency as a result of an act or omission of a government official, official or employee of the State agency.

Section 43: A person and community shall have the right to

(1) Conserve, revive, or promote wisdom, art, culture, tradition, and good custom at both local and national levels

(2) Manage, maintain, and utilize natural resources, environment, and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law

(3) sign a joint petition to propose recommendation to a State agency to carry out any act which will benefit the people and community, or refrain from any act which will affect the peaceful living of the people or community, and be notified expeditiously of the result of the consideration thereof, provided that the State agency, in considering such recommendation, shall also permit the people relevant thereto to participate in the consideration process in accordance with the procedures as provided by law

(4) Establish community welfare system. The rights of a person and community under paragraph one shall also include the right to collaborate with a local administrative organization or the State to carry out such act.

Section 50: A person shall have the following duties

(2) To defend the country, to protect and uphold honor and interests of the nation and public domain of the State as well as to cooperate in preventing and mitigating disasters

(8) To cooperate and support the conservation and protection of the environment, natural resources, biodiversity, and cultural heritage.

Section 57: The State shall

(1) Conserve, revive, and promote local wisdom, art, culture, tradition and good customer at both local and national levels, provide a public area for the

relevant activities including promoting and supporting people, communities, and administrative organizations to exercise the rights and to participate in the undertaking

(2) Conserve, protect, maintain, restore, manage, and use or arrange for utilization of natural resources, environment, and biodiversity in a balanced and sustainable manner, provided that the relevant local people and local community shall be allowed to participate in and obtain the benefit from such undertaking as provided by law.

Section 58: With regard to any undertaking by the State or that the State will permit any person to carry out, if such undertaking may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment, the State shall undertake to study and assess an impact on environmental quality and health of the people or community and shall arrange a public hearing of relevant stakeholders, people, and communities in advance in order to take them into consideration for the implementation or granting of permission as provided by the law.

A person and community shall have the rights to receive information, explanation, and reasons from a State agency prior to the implementation or granting of permission under paragraph one.

The State shall take precautions to minimize the impact on people and community, environment, and biodiversity and shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.

Section 68: The State should organize a management system of justice process in every aspect to ensure efficiency, fairness, and non-discrimination and shall ensure that the people have access to justice process in a convenient and swift manner without delay and do not have to bear excessive expenses.

The State should provide protective measures for State officials in justice process to enable them to strictly perform their duties without any interference or manipulation.

The State should provide necessary and appropriate legal aid to indigent persons or underprivileged persons to access justice process, including providing a lawyer thereto.

Section 72: The State should take action relating to land, water resources, and energy as follow:

(1) To plan the country's land use to be appropriate to the area conditions and potential of the land in accordance with the principles of sustainable development

(2) To undertake town planning at every level and to enforce such town planning efficiently, as well as to develop towns to prosper and meet the needs of the people in the area

(3) To provide measures for distribution of landholding in order to thoroughly and fairly allow people to have land for making a living

(4) To provide quality water resources which are sufficient for consumption by the people, including for agriculture, industry, and other activities

(5) To promote energy conservation and cost-effective use of energy, as well as to develop and support the production and use of alternative energy to enhance sustainable energy security.

2.3.1.2 Right to life

Right to life as prescribed in the article 3 of Universal Declaration of Human Rights 1948 that "everyone has the right to life, liberty, and security of person.", and the article 25(1) that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing...". Thus, the mentioned right is associated with the context of natural resources and environment. Namely, a person surrounding by environment shall need quality and safe environment. If there is a person or a group of persons make environment polluted which affects the right to life and healthy living of other people, affected people shall have the rights to claim for stopping such action, conservation, protection, maintaining, restoring including claim for damage, compensation, and remedy in accordance with cause and effect as appropriate thereto (Varanuch Bhuvarak, 2012).

2.3.1.3 Right to health and sanitation

Right to health and sanitation is the right to have physical and mental completeness to be able to live a life in the society healthily. It is accepted and agreed at an international level as seen in the International Covenant on Economic, Social, and Cultural Rights 1966, with reference to Article 12, that "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 2. The step to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for....". In Thailand such of this right is prescribed in National Health Act B.E. 2550 (2007). It can be noticeable that people need to live in healthy environment to achieve healthy physical and mental health which the State had duty to maintain good environment for promoting good health and sanitation of people. (UdomsakSitthipong, 2001)

2.3.1.4 Right to being free from housing and property nuisance.

Based on the principle stating that a person lives in any place or finds any property, he/she shall wish to occupy and maintain that property to be safe and happy. Environment encompasses all living and non-living things occurring naturally to enable humans to relax and live by. However, once environment is destroyed, humans living in the environment will have an impact. (ACHR protocol,1988)

2.3.2 Using the State's Power to Protect People's Benefits

This concept considers the State holds the right to supervision people's benefits (Fire Senachai, 2009) and the State has power to file a lawsuit against those who cause damage to public domain of the State on behalf of affected people. (Rachot Boonsinsuk, 2002). Once the State holds the right, the States is then violated and has the power to bring a charge against damage-doers. Such prosecution is called public interest litigation. The concept of using the State's power to protect people's benefits by stipulating the State to own the right is probably suitable for problem-solving in some situation; however, in some situation such as environmental problems, the State has the sole right and power to the supervision while the State has various restrictions to carry out undertaking in accordance with the mentioned right and duty. Though measures for supervision and examination are available, an obstacle is found since the

court sets the principle of prosecution that a person who has the right to take legal action shall be the one who directly has benefits associated with that public domain or his/her right is affected from an omission of a State agency, otherwise prosecution cannot be carried out (Sunee Mallikamarl, 1998).

People's participation in environmental management allows people a chance to play their role in managing natural resources and environment in conjunction with State agencies with regard to notifying cases, monitoring cases, filing a lawsuit, claiming in case State agencies fail to perform their duties. Based on political science, this principle is considered authentic participation that leads to the mass of victims or affected people who mutually learn continuously for problem-solving, protection, restoration, and conservation.

Therefore, conservation of natural resources and environment using people participatory process is a guideline to raise awareness of people and the society by increasing their ability to access news and information and play their part in making decision on various processes that will have a direct and indirect impact on the society. In this regard, the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992) prescribed and endorsed certain rights of people for law enactment by State officials accordingly and perhaps for those who violate orders of the State, State agencies, and State officials. However, this law has not opened an opportunity to general people or private organizations who are not directly affected or damaged to file a lawsuit against violators of in case of an omission of the State. Only direct affected or damaged people can file a lawsuit. In case of unclarity, it is necessary to prove that a plaintiff has the right due to being directly affected or damaged. That is considered a weak point in natural resource conservation.

Actio popularis (Busisiwe Mqingwana, 2001) is the principle used for filing an environmental lawsuit in the interest of public as a whole regardless of whether or not a person is directly affected by that damage. When it is taken into consideration, it looks like class action, but the difference is class action is a procedural device that permits one or more plaintiffs to file and prosecute a lawsuit on behalf of a larger group or class. The consequence of judgement shall enforce all affected people or just a certain group while the action popular is allows individuals in the society, without

being proved to be affected or damaged persons, to file and prosecute a lawsuit by adhering to public interests significantly.

2.4 Principles of Environmental Dispute Mediation

Dispute mediation is a method of dispute resolution (Jatuporn Intarajao, 2011, 32-44) having a “mediator” to help parties in disputes to seek a way to solve arising problems, who is the one accepted by all parties in the disputes. A mediator shall not have power to enforce or stipulate “an outcome” that is going to occur to be in one way or another without an approval or agreement from parties in disputes. Mediation has been used as a method to settle disputes for such a long time in Thai communities or society but its form and undertaking may be different depending on communities or society where disputes arise. In general, the purpose of mediation is not only to recommend an agreement to parties in disputes, but also help both parties to go into negotiation more easily and bring convenience of contacting and discussion between dispute parties until they have a mutual agreement or see an exit of problems. Mediator is a person who makes an effort to lead dispute parties to meet a problem solution that all parties are satisfied with.

The important burden of a person acting as a “mediator” is taking responsibility for making the discussion process between parties in disputes to be in a good order. A mediator shall perform his/her duty to help parties in disputes to be able to share information and opinions between each other as much as possible so that they can mutually learn about an arising problem. As soon as the parties in disputes have enough information about the disputes, they will be able to analyze a condition of problems correctly including distinguish points to be mutually consider as well as seek an appropriate guideline or problem-solving method for operating while it is accepted by all parties in the disputes. Since a mediator has no power to stipulate or enforce to use any specific method or guideline to solve the arising problems, he/she has to help the parties in disputes to develop or creative a problem-solving method or guideline by themselves. Meanwhile, the mediator shall propose a possible method or guideline to supplement the consideration of the parties in disputes. However, for those countries that separate difference between dispute mediation and dispute

conciliation, the role of a mediator shall be limited not to be able to give his/her opinions about how to solve the arising dispute problems.

2.4.1 Meaning of Mediation

Mediation simply means a discussion in which there is a mediator as a third party who is accepted and has no interests, no power in decision-making to help parties in disputes to solve problems with understanding to mutually achieve an agreement by themselves (Wanchai Wattanasap, 2001). Besides, the term "dispute mediation" has been defined by many persons as follow:

PrachayaYuprasert (2008) defines "conciliation or mediation as the way that parties in disputes agree to allow a third party who is a mediator having independence and neutrality but does not have power to make final judgement of disputes to help negotiate and mediate disputes by enabling both parties to agree to alleviate conflicts to a level that they can make a conciliation agreement for dispute resolution accordingly."

PhanuRangsisahassa (2017) defines dispute mediation as a dispute resolution process that allows a third party to help parties in disputes to negotiate conflicts successfully. It is a product caused by failure in negotiation, but it is not something that replaces negotiation.

Assoc.Prof.Dr. Anan Chantara-opakorn (2005) defines "dispute mediation as a process that parties in disputes ask a third party or many third parties to help parties in disputes to make an attempt for an agreement to suppress disputes in a friendly manner while a mediator has no power to stipulate the parties in disputes to accept a proposal for dispute resolution."

Marian Liebmann (2000) gives a definition of "dispute mediation as a process that allows a third party who has neutrality to assist the two parties in disputes or many parties in disputes to seek a solution of conflict problems. Parties in disputes shall make their decision to achieve a mutual agreement and normally dispute mediation is interesting in the way it will be undertaken in the future rather than in the past."

Based upon the above-mentioned definitions, dispute mediation refers to a method to find a dispute resolution by having a third party called a "mediator" to

assist and propose a guideline to parties in disputes to have a resolution of disputes and assist all parties in disputes to achieve a mutual agreement. The mediator shall encourage, persuade, interpret or recommend a possible way to solve dispute problems to all parties in disputes while the mediator does not have power to stipulate an agreement for the parties in disputes like arbitrators or judges can. Whether or not an agreement shall be achieved depends on decision-making of the parties in disputes.

The actual purpose of dispute mediation is helping parties in disputes make negotiation more easily and providing convenience for discussion between parties in disputes, creating friendly atmosphere in discussion until parties in disputes can achieve an agreement or problem solution. A mediator is a person who makes an attempt to lead parties in dispute to find a problem solution to the satisfaction of all parties.

Dispute mediation consists of simple processes and procedures confidential between parties in disputes, helping the disputes not known by people outside. The system of dispute resolution using mediation shall give a chance to parties in disputes to reconcile with each other by coordinating benefits of both parties during a discussion to find a way to resolve disputes in a systematic manner.

Thus, dispute mediation is a matter requiring willingness of both parties in disputes significantly. Either party shall cancel mediation at any time similar to a mediator who shall withdraw from mediation. Intention of parties in disputes to have mediation is a key to success that a mediator shall keep noticing and utilize it for mediation accordingly (Pattarat Niyomsujarit, 2007: 26-27).

2.4.2 Principles of Environmental Dispute Mediation

Due to delay in the judicial proceedings and strict processes, they cannot respond to demands in remediation of damage to environment in a timely manner. Therefore, there is an idea to develop processes of alternative dispute resolution for people to choose that shall be appropriate to each dispute so as to achieve a resolution in a speedy manner with more efficiency. The idea of environmental dispute mediation (Jatuporn Inarajao, 2011) consists of 3 principles as follow:

1) Voluntariness of parties in disputes to enter into the process of dispute mediation is very much important to the process of dispute resolution using

mediation. If parties in disputes are not voluntary to enter into the process, the procedures of mediation cannot occur since the process of dispute mediation is undertaking that requires voluntariness and mutual agreement to resolve disputes. An agreement may be made by not bringing right or wrong legal points as an essential content as parties in disputes has to spend their lives in the same society while damaged environment need remediation quickly. Therefore, in case either party does not wish to enter into the process of dispute mediation, the mediation cannot occur. As a consequence, before the process of dispute mediation shall start, it should be certain that parties in disputes make an agreement to have dispute resolution using mediation. Such agreement shall be made prior to the arising of disputes of after disputes occur and there is no law stipulating formal outlines of such contract or agreement. Therefore, parties in disputes are able to make a verbal agreement. (Anan Chantara-opakorn, 2005)

2) Dispute mediation is dispute resolution that mainly requires an agreement of parties in disputes. Therefore, the process of dispute mediation is a simple method and confidential between the parties in disputes. A mediator shall be a person who coordinates the parties in disputes to reconcile with each other by collaborating to maintain and protect their interests to achieve dispute resolution in an efficient manner. (PattaratNiyomsujarit, 2007)

Characteristics of dispute mediation are not formal but flexible while emphasis is placed on participation of parties in disputes to propose their requests or demands, both the highest and lowest demands for learning to adapt by not having people outside to participate in a judgement. Parties in disputes shall bring everything related to disputes to propose during a meeting is holding, no matter they are documents, pictures, etc. to ensure that all parties perceive fact, have the same understanding, and be able to specify points to be discussed or negotiated.

3) When a dispute arises, both parties in the dispute most likely make an attempt to protect themselves and maintain their interests, making them not able to understand and relay or describe a message to the other party to understand which leads to feeling angry that their rights are violated. Naturally, parties in disputes most likely adhere to their standpoints that they should be in the way they think or expect and they have never agreed though the other party try to negotiate. Based on such

circumstances, serious conflict can arise when either party considers that they are the right person rather than the other party and it is difficult for making a discussion or negotiation. In this regard, if there is a person who can be a coordinator and receives trust from all parties in disputes and that person really has intention and neutrality, he/she will be able to reduce a standpoint of each party to be softer to meet an agreement and finally problem resolution can be found, reaching a conciliation agreement finally. Therefore, a mediator is considered an important person in dispute mediation.

Bringing a participatory dispute resolution as an important component in problem-solving based on the 3 principles as mentioned above by having a persons related to eliminating dispute mutually find points or stipulate points being an essential content of conflict and find dispute resolution accepted by all parties in disputes is considered an appropriate method for dispute resolution. Important principles of the participatory dispute resolution that enables such methods to be successful are. (Montri Silpmahabandit,)

(1) consensus decision-making – namely, stakeholders who participate in the process are the ones who jointly make decision to accept an agreement, not a majority vote.

(2) participation of all parties (inclusiveness) – namely, persons having benefits related to disputies shall have the rights to participate in a negotiation process or dispute mediation or at least giving approval to this process;

(3) acceptance of status of participatory persons (accountability)- namely, persons who participate in a dispute resolution process are normally representatives of a group of people or related benefits who are accepted by those groups of people or benefits including being accepted during the process of dispute resolution is carried out

(4) facilitation – namely, persons who have neutrality and are accepted by all related parties shall perform their duties to implement and control the process of dispute resolution as well as maintain atmosphere of discussion, negotiation, and communication between each other to be in a smooth manner to finally reach an agreement.

(5) flexibility – namely, persons who participate in the process to stipulate points of problems to be discussed which all parties think that they are suitable for problem-solving.

(6) shared control – namely, all parties participate in the process shall have joint duty to stipulate basic rules and regulations to control the dispute resolution process to be carried out in a smooth manner; commitment to implementation – namely, persons who participate in the process and persons or groups of persons having related benefits or interests shall accept an agreement and follow the agreement.

2.4.3 Type of Mediation

Dispute mediation (Pattara Niyomsujarit, 2007: 26-27) is a process brought to find voluntary dispute resolution between parties in disputes on the basis of mutual problem-solving in a compromising manner which ends up with making a conciliation agreement to resolve the arising dispute. The implementation of a conciliation agreement can be carried out in all civil and criminal cases that are compoundable offences or civil cases associated with criminal cases. The dispute mediation process can be implemented in 2 characteristics as before a case is brought into court and while a case is in court proceedings as follow:

1) Dispute mediation outside the court system: Dispute mediation outside the court system is mediation in case a dispute has not been a case brought into court which parties in disputes agree to have outside persons or organizations to carry out mediation. After disputes are resolved by mediation and both parties can make a settlement, a mediator shall prepare a conciliation agreement with the consent of both parties. Enforcement shall follow the conciliation agreement.

2) Dispute mediation inside the court system: It is dispute mediation occurring during a case brought into court. The court shall persuade parties in disputes to enter into the process of mediation or parties in disputes state their desires to enter into the process of mediation by themselves. In this regard, a mediator shall prepare a conciliation agreement with the consent of both parties and enforcement shall follow the conciliation agreement.

In case the parties fail to follow the conciliation, agreement prepared after the process of dispute mediation is finished, the party who is violated shall file a lawsuit in court to request the court to issue an order for enforcing the party who violates to follow the conciliation agreement. In case the mediation is carried out in the court system, the party who is violated shall request the court to enforce the other party immediately as the case is in the middle of proceeding.

2.4.4 Advantage of Dispute Mediation

Since environmental dispute has specific characteristics different from other disputes, the process of environmental dispute mediation is brought to resolve such disputes so as to fill a gap of problems in proceeding cases in court and arbitration. Bringing the process of environmental dispute mediation in use gives good effects in many aspects (Pattarat Niyomsujarit, 2007, P.42-45).

1) Dispute resolution using mediation is dispute resolution beneficial to parties in disputes. Meanwhile, it is beneficial to a legal proceeding in court as mediation enables disputes to be resolved with satisfaction of all parties in disputes as it is caused by mutual discussion and negotiation of all dispute parties. A mediator just only recommends or gives a way that allows dispute parties to make a mutual discussion. Besides, mediation gives a chance to dispute parties to reconcile with each other to make a discussion. Though a discussion is not successful in the first place, it initially helps reduce stress or disagreement to some extent. Dispute mediation focuses on solving dispute problems by looking into the future to mutually find a dispute resolution that can be accepted by parties in disputes, not only looking back in the past to stipulate liability of either party.

2) It is a better method for cost-saving than court litigation. Currently dispute mediation in the court system allows parties in disputes not to pay any expenses in mediation with regard to court fee or expenses for dispute mediators (Office of Judicial Affairs,2004) except expenses for dispute mediators who are not listed in the registration or in case outside people are brought to the implementation for the benefit of mediation. Therefore, dispute mediation in cases with court

litigation, in case the mediation is successful, shall considerably be a cost-saving method.

3) It is a dispute resolution method that can be used for civil and criminal cases at the same time, different from a legal proceeding in court that civil cases need civil case proceeding and criminal cases need criminal case proceeding unless civil case litigation associated with criminal case litigation that can be proceeded in the same court. In terms of arbitration, dispute resolution can be carried out only civil case disputes.

4) Dispute mediation has a more simple and speedy legal proceeding than a proceeding in court and is confidential since outside people are not able to participate in the process of dispute mediation, except in the case that all parties in disputes agree, especially in the process of a split meeting of each of dispute parties. Parties in disputes are able to fully vent their feelings and demands and do not need to worry that the other dispute party shall know such matter. (Court of justice, 2001)

5) Dispute mediation is able to absolutely resolve disputes because both parties in disputes are satisfied with an agreement that they mutually make. appealing and petition rarely occur, and legal execution is not carried out because both parties consider that they can follow the agreement. Though either party shall file a lawsuit, they can do in the case that follows the Civil Procedure Code Section 138 on the following grounds: where there is an allegation of fraud on the part of any party; where the judgement is alleged to infringe a provision of law involving public order; or where the judgement is alleged not to be in accordance with the agreement or compromise. (Suvit Theerapong, 1995).

2.4.5 Disadvantage of dispute Mediation

Though the process of dispute mediation is a popular tool to manage environmental dispute problems, there are some obstacles considered weak points in the process of dispute mediation as follow:

1) when dispute mediation is not focused on which party is right or wrong. Therefore, dispute mediation does not respond to the demand of a party who

needs clarity about legal rights and duties in case a dispute is in existence. (Anan Chantara-opakorn,2005).

2) dispute mediation depends on an agreement and willingness of dispute parties who enter into the process of mediation. In addition, it needs honesty of parties in disputes to intentionally solve problems together, not to delay time spent on court litigation or arbitration which affects the process of restoration, remediation, and conservation of natural resources to be delayed accordingly. (Prachaya Yuprasert, 2005).

3) The outcome of dispute mediation may not follow the intention of parties in disputes in case a lawyer participates in the mediation and requires to protect interests of his/her party too much. much (Pramote Worawatanachai, 2002).

4) dispute mediation does not have clarified rules and regulations for implementing. As of today, it relies on civil case law enforcement related to making a conciliation agreement, making legal enforcement has not been thoroughly complete; for example, limitation of cases in the process of environmental dispute mediation that there is no provision prescribing limitation of cases to be ended. In this regard, when dispute mediation is not successful, dispute parties shall have a controversy about time and the expiry of limitation period.

2.4.6 Comparison of the Process of Environmental Dispute Resolution

With regard to legal proceedings, arbitration, and dispute mediation as guidelines for dispute resolution(Wannachai Boonbumrung, 2005, P.46), each method has different advantages and disadvantages depending on characteristics of disputes and which methods shall be used to resolve the disputes appropriately.

A legal proceeding is a factor affecting the process of environmental dispute resolution as it is associated with time conditions. Court litigation takes time as it requires taking evidence for fact finding. Arbitration is similar to a trial, but its process is more concise. Parties in disputes play their role in selecting accusatorial procedure or inquisitorial procedure by means of judiciary approach for supervision. Court litigation and arbitration significantly emphasize fact findings and legal rights while mediation does not have an exact form but focuses on making a discussion to seek mutual benefits and problem-solving that parties in disputes have the rights to

claim or propose according to their demands by adhering to good relationship of dispute parties.

In terms of persons related to legal proceedings, courts and judiciary have a duty to supervise the process to be compliant with the law. The duty to start the process is a burden of parties in disputes. Meanwhile, parties in disputes play their roles to disagree with a judgement or oppose an award in each point of disputes until there is a final judgement or withdrawing a legal charge based on fact finding by courts or arbitration. With regard to the process of mediation, a mediator shall start the process by agreement of parties in disputes or parties in disputers propose to enter into the process. During the proceeding is carried out, a mediator shall perform his/her duty by coordinating benefits or interests, giving recommendation or guidelines, controlling atmosphere of discussion and acting as a middleman to prepare a conciliation agreement. However, parties in disputes shall ask to terminate the mediation at any time.

The consequence of enforcement on parties in disputes is a conclusion having an effect on dispute parties from the different forms of dispute resolution. That consists of a judgement from a trial, a final judgement from arbitration and an agreement between parties in disputes. In case of a judgement, parties in disputes shall strictly follow. If either party fails to follow, the other party shall make a request to the court to execute the case and order that party to follow. For a final judgement or an agreement, in case either party fails to follow, the other party shall present a petition to the court to make consideration according to the final judgement or agreement and shall file as a new lawsuit.

2.5 Concepts of Restoration of Damaged Natural Resources

2.5.1 Meaning of Natural Resource Restoration

Restoration (Tipchanok Ratanosot, as cited in Wasinee Jaijam, 2013, P7) means the action of returning something to a former condition. Environmental restoration or natural resource restoration is newly made on the basis of biological, structural, and functional systems while ecological restoration is intentionally made to start or accelerate the ecosystem to return to its former condition in terms of health,

security, and sustainability. Undertaking shall be in the form of controlling soil erosion, forest planting, improving habitats of animals, etc. Generally, restoration brings ecological theory to restore ecosystem while restoration ecology is the scientific study supporting the practice of ecological restoration, which is the practice of renewing and restoring degraded, damaged, or destroyed ecosystems and habitats in the environment by active human intervention and action.

2.5.2 Concept of the Public Trust

In the group of African countries, the concept of environmental rights is identified in "African Charter on Human and People's Rights, 1981" in Article 24 that "all people shall have the right to a general satisfactory environment favorable to their development." However, this charter having characteristics as a law used to control member States is unable to enact violating States in a concrete manner. The importance of this charter is only a tool stimulating the government of each country to see the necessity to seriously protect environmental rights of their citizens by legislating internal laws to enact more clearly (Supaporn Natekien, 1991, as cited in Wasinee Jaijam, 2013).

In United States of America, environment is public interests and the State shall have the obligation to protect, maintain and conserve environment for affected people. Public trust doctrine is the principle is a legal principle establishing that the government (Trustee) owns and manages certain natural and cultural resources for public use. If there is any impact on environment and quality of life of people, people who need to protect and conserve environment shall have the rights to file a lawsuit in court against the State. It is consistent with a research study on analysis of a judgement on administrability case of an administrative court in abroad that concluded that in the past a State was not liable to any problems related to public policies such as an environmental policy as it is State's privilege. Later, such idea was changed making administrative sector has to liable to an act or omission having an impact on public interests. (Thammasat University Research and Consultancy Institute, 1991).

Protecting and conserving environment or filing a lawsuit of people who are affected and damaged from environmental problems to enable the administrative

sector to be liable for was previously the proceeding of cases about nuisance and trespass which was a mechanism to maintain private interest only, not giving importance to environmental problems in the form of public interest, and to give rights to people to file a lawsuit in court against the State or State officials as an administrative case related to environment. As a consequence, affected or damaged people from environmental problems filed a civil or criminal lawsuit in court against the private sector triggering pollution. Later, many lawyers supported by bringing the public trust doctrine from the common law system prescribing properties and resources belonging to public to use in environmental cases such as protection of air, water, forest, and nature that the government as the trustee owns and manages for public use. Once public interests are affected, people can gather together to protect and conserve environment by filing a lawsuit against State agencies to be liable for damages, especially in the United States of America. Some states are provided with a law allowing people to file an environmental lawsuit against administrative agencies or State officials so as to ensure that the State is unable to ignore to protect, maintain, and conserve natural resources and environment considered public properties (Pichet Maolanond,1990).

The reason why some states in the United States of America allow people the legal right to file a lawsuit against State agencies is American people are the ones who love and cherish environment very much. They expect to live in healthy and abundant environment. Public trust doctrine is requested to use, making the State to be liable for protecting and conserving natural resources and environment to be in a good condition sustainably. It is equal to legalizing environmental rights of American people by using the justice system to file a lawsuit against the State. This concept views that environmental cases are administrative disputes aiming to protect and conserve natural resources and environment; they are not civil case dispute related to damage resulting from violation or criminal case dispute giving importance to punishment. The right to access the administrative justice system or filing a lawsuit against anyone who violates environmental laws as the author mentioned above is one of people participatory principles allowing people to access the justice system to jointly enforce environmental laws. The United States of America has advancement in this matter by giving people opportunities to file a lawsuit against State agencies that

ignore to protect and conserve environment and file a lawsuit against business operators who violate environmental laws, known as “citizen suits” or filing a lawsuit by people. Such principles enable people to file an environmental lawsuit though they are not directly affected. The purpose of the principles is to open an opportunity for people to audit the operation of State agencies or State officials to be compliant with environmental laws such as protection forest areas or wetlands. Based on the concept that environment is a matter related to public interest and the State shall protect, maintain, and conserve environment for affected people. The public trust doctrine is a principle describing that environment is not a matter associated with people living in the area of conservation only but the State has duty to oversee natural resources and environment since people assign the State to be the trustee or ruler who has to protect and conserve natural resources and environment for people. When this concept is employed for natural resource restoration; the State then has duty to be in charge of the implementation of natural resource restoration so as to protect public interests.

2.5.3 Concept of Polluter Pays Principle

When technologies have been considerably developed to facilitate humans’ today ways of life, many types of resources are spent extravagantly regardless of limitation of natural resources that are going to be deteriorated and degraded. With regard to economic thought that adheres to an important principle that expenses considered costs should be minimized (minimize cost) by utilizing resources to gain maximum return (maximize profit), resources have been considerably used regardless of maintaining quality of environment which can be seen from factories that release wastes from their manufacturing process such as polluted water and polluted air to environment without controlling the amount of dirt. As a consequence, environment has been gradually deteriorated since manufacturers try to reduce costs of production to be at the lowest level that they are irresponsible for the waste they release to environment. However, it is accepted today that natural resources are limited. If they are used carelessly like in the past or even at present, in the near future environment will be degraded, toxin will be widely distributed and natural resources will be depleted respectively. (Phanus Thatsaneeyanon, Thawatchai Boonyachot, & Kamontip katikarn, 1990).

Based on the causes mentioned earlier, there is development of a principle on duties and responsibilities of polluters to have persons in charge for damage to environment. The origin of this principle was from the meeting of environment ministers of a group of member countries that discuss and develop economic and social policy (Organization for Economic Co-Operation and Development or OECD) in November 1974. The member countries consist of Australia, New Zealand, Austria, Belgium, Germany, Luxembourg, Netherlands, France, Italy, Spain, Portugal, Turkey, Greece, Switzerland, Great Britain, Ireland, Sweden, Finland, Denmark, Iceland, Canada, United States of America, and Japan. Currently, there are additional 7 member countries, totally 30 countries, i.e. The Czech Republic, Hungary, Republic of Korea, Mexico, Norway, Poland, and The Slovak Republic. (Kobkul Rayanakorn, 2006).

The basic principle of polluter pays concept is making prices of goods and services reflect the whole costs of production including costs of the entire resources used in the production. In case resources are used but costs are partially calculated, it shall affect failure of the price system and market system (Market failure). Price calculation includes expenses spent on preventing and controlling environmental pollution including restoration of natural resources and environment. (Suthat Thongsatit, 2006).

In this regard, costs of utilizing environment are put into cost accounting of polluters so as to use resources in the most economical and efficient manner, making goods or services reflect the actual environmental costs (Environment and Social Costs) as much as possible to reflect the actual costs.

In 1974, OECD prepared additional recommendation about methods to adopt the polluter pays principle. That is using economic tools to have the inclusion of environmental costs into a production process and environmental tax in various forms; for example, pollution discharge fees and taxes collected from types of business causing environmental hazards, etc. However, other measures may need to be supported such as government subsidies to the private sector in some situations like when strict regulations are placed on pollution control that the private sector has to follow rapidly or when motivation is built to have an experiment and development of new technologies or devices for pollution control. Such government subsidies or

assistance must be chosen when it is necessary only and considered a temporary measure. Though OECD's recommendation and practice are not legally enforceable, the polluter pays principle has been widely accepted. The principle has been cited in various conventions such as the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992, the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1992, the Convention on Oil Pollution Preparedness, Response and Co-operation 1992, the Convention on the Transboundary Effects of Industrial Accidents, and ASEAN Agreement on the Conservation of Nature and Natural Resources 1985. (Kobkul Rayanakorn, 2006).

This principle has been increasingly publicized when the Earth Summit was taken place in Rio de Janeiro in 1992 mentioning the polluter pays principle as a sustainable guideline for development by employing tools like technological devices and economic tools to manage environment. Besides, the summit had a summary to encourage the member countries to adopt the PPP for action. This principle was agreed by all countries including Thailand. Thailand adopted this principle to write in the 7th National Economic and Social Development Plan (1992-1996) which identified that it shall develop the quality of environment in conjunction with the economic and social development. Emphasis shall be placed on development and management mechanisms of water pollution, air pollution, waste and hazardous substances in an efficient manner. In accordance with the principle, polluters shall be liable for remediation and elimination of pollution. Besides, goals and practice guidelines related to natural resource and environment development are set in a concrete manner increasingly such as reduction of water pollution, noise levels, the amount of lead, carbon dioxide, sulfur dioxide, etc. Any person is considered being a polluter, he/she shall be liable for compensation for damage. One of the reasons that polluter shall be liable for damages since they are the one who can provide the best remediation since they have knowledge and understanding of all procedures in the operation. Moreover, it helps raise awareness of people to jointly conserve environment as properties of people in the next generation according to sustainable development. Polluters shall be liable for paying compensation for damages to natural resources which can be divided into 2 cases as

1) Damages that victims claim polluters to pay compensation and

2) Restoration of polluted environment.

However, such principle faces a law enforcement problem as sometimes polluter cannot be identified. Therefore, the definition of “polluters” is expanded widely as it does not mean only causing pollution to environment, but also activities that cause natural resources deteriorated, both directly and indirectly. Meanwhile, economic tools are brought to solve problems such as environmental tax collection, pollution management fee, etc. State may bring the collected taxes to be a budget for spending on restoration of damaged natural resources; for example, United States of America brought the tax collected from hazardous chemicals business operators to be a part of the Super Fund scheme as this fund is for restoring natural resources damaged from hazardous waste. (Udomsak Sitthipong, 2001).

The principle of polluter pays for liability for natural resources damaged from their action can be divided into 2 cases as follow:

1) Consideration of Thai laws finds that the polluter pays principle that enforces polluters in case natural resources are damaged by toxic contamination, owners or possessors of the sources of pollutants that leak or distribute from their activities causing damages to natural resources considered the country’s property and public domain or in case State-owned properties are damaged is shown in Section 96 of Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) as if leakage or contamination caused by or originated from any point source of pollution is the cause of death, bodily harm or health injury of any person or has caused damage in any manner to the property of any private person or of the State, the owner or possessor of such point source shall be liable to pay compensation or damage therefore. However, as soon as this Section is interpreted, it shall not include expenses spent on restoration of damaged natural resources caused by other causes. Section 97 of Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) prescribes that any person who commits an unlawful act or omission by whatever means resulting in the destruction, loss or damage to natural resources owned by the State or belonging to the public domain shall be liable to make compensation to the State representing the total value of natural resources destroyed, lost, or damaged by such an unlawful act or omission. This Section brought the concept of polluter pays principle for prescription by stipulating the State as the

victim in filing a lawsuit against any person who commits an unlawful act. With regard to the stipulation of the value of damaged natural resources, currently Thai laws do to have a clear standard. The stipulation of the value of natural resources should include expenses spent on restoration of natural resources to enable polluters to participate in remediation of damages to natural resources caused by their own action.

2) Specifying sources of financial fund for restoring damaged natural resources. A budget is partially from pollution discharge fees and taxes for businesses have a risk of causing destruction to natural resources. In order to enable the polluter pays principle to comprehensively cover general people as much as possible since today it is generally accepted that everyone uses natural resources for living a life in one way or another, they should deserve to be responsible for using natural resources as well based on various forms such as tax collection (Taxation). That is an attempt to use a tax system to help maintain the quality of environment by collecting taxes from those who are involved in causing pollutants.

(1) Natural resource users such as collecting national park entrance fees, persons who discharge waste into water resources.

(2) Consumers such as collected taxes from consumers of things that cannot be reusable at a high rate including collecting pollution charge

Which means collecting fees from polluters in accordance with the ratio of arising damages. Namely, if polluters cause a lot of damages, they must be charged a hefty fee. However, in order to make the polluter pays principle possible for practicing, it is appropriate to bring the money from natural resource using to restore natural resources that are used as it enables everyone to participate in restoring natural resources.

2.5.4 Applying Strict Liability in Environmental Cases

For civil tort cases, victims who wish to claim for compensation shall prove relationship between the action and damage they receive. This is a concept from a theory on action and consequences of action. This theory is used to prove liability for wrongful act by considering conditions and rationale of causes and effects of that action. It is a duty of a victim that shall prove that his/her excuse is true, there is

illegal action, and the damage is a direct consequence from intention wrongful conduct or carelessness of a defendant in that case. In environmental cases, how to prove to gain the whole components is a big burden and very difficult; for example, a case of communities living nearby a factory with leakage of toxic substances. In case there is sickness caused by toxic environment, victims shall prove that the cause of sickness is a direct effect from the factory's activities. In this regard, it is such a big burden and very difficult for the plaintiff to take evidence of those who conduct wrongful act and damage they are receiving. Meanwhile, the defendant is naturally be able to better prevent and hinder the proof of that damage, especially in the society where changes in science and technology is considerably available at all times. To specify damage-doers to be liable for intentionally wrongful conduct or negligence only is not enough for proving the damage from environmental problems as different aspect of damages are available such as violation, trouble or annoyance that can clearly specify victims and prove damage. Victims in environmental cases shall have public damage. Namely, there are a large number of victims and damages are from the accumulation of problems that take such a long time to prove the clarity of damages, except damages caused by rapid effects of environmental problems.

However, an attempt has been made to stipulate a standard to prove damages in environmental problems by adopting theories or principles to use appropriately to characteristics of environmental cases so as to specify persons in charge and damages accurately and fairly. One of principles is strict liability which is developed from the Common Law system of England. The principle aims to have remediation or compensation to damage regardless of whether or not pollution damages are from intentionally wrongful conduct or negligence. The concept of strict liability was originated before the 19th century by considering that once damage occurs, there must always be compensation and remediation.

Based on the strict liability, it shall cover the scope of liability of damage-doers more widely than liability principles of other torts since the strict liability does not need to consider liability of wrongdoers which can be called liability without fault. Namely, strict liability is the imposition of liability on a party without finding of fault (Punjaporn Kosolkitiwong, 1998) (such as negligence or tortuous intent). The

claimant needs only prove that the tort occurred, and that the defendant was responsible (Charonchai Salyapong, 1985).

The case being the progenitor of the doctrine of strict liability took place in England. That is Rylands v. Fletcher case in England. Rylkands company sued Fletcher company on the case for tort of nuisance. The fact is that "the defendant owned a mill located in the land adjacent to the plaintiff's land. Later, the defendant employed contractors to build a reservoir. With negligence of the contractors, the water broke through the filled-in shaft of an abandoned coal mine and flooded connecting passageways into the plaintiff's active mine nearby causing extensive damage". The trial court judged that the defendant was strictly liable for the damage caused by a non-natural use of land (Keatthai langkapim,2000). The rule of law is if a person brings, or accumulates, on his own land anything which, if it should escape, may cause damage to his neighbor, he does so at his peril. If it does escape and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage. It can be seen that the court used the strict liability with general people who brings or keeps on his land anything which may cause damage to adjacent lands and that thing is non-natural use. The principle in this case was used as a norm of other environmental cases later. The strict liability can be concluded that if a person commits an act or conducts any business that may cause damage to other persons, that person shall be liable for the consequences though such act or business are provided with prevention of danger and the action is without negligence or intentionally wrongful conduct as it is deemed to be a strict duty of the doer to be careful and protect other persons from receiving danger from his/her action or the action of his/her attendants. Therefore, the doer has to be liable for failure to protect the community (Danaiyos Saralamba,1982) Thailand environmental law has adopted this principle by prescribing in the Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) Section 96.

In this regard, when it is used with the restoration of damaged natural resources, damage-doers shall be strictly liable for compensation for expenses spent on restoring natural resources, making the damage-doers compensate for actual damages in accordance with the principle of compensation.

2.5.5 Problems of the Restoration Process of Damaged Natural Resources in Thailand

Based on the enforcement of the laws which are Thailand Civil and Commercial Code, Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) or other laws, they have not supported the restoration process of damaged natural resources in an efficient manner. (Sinee Jaijamp, 2013)

1) stipulation of compensation for damage to natural resources and environment which the provision of stipulating compensation in accordance with Thailand Civil and Commercial Code has been used mutatis mutandis. Many parties have different points of view; thus, there are no clear and appropriate guidelines for overseeing, conserving, restoring, and remedying the destruction of natural resources. Expenses spent on the process or restoration and remediation of damaged natural resources in accordance with Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992) may be asked from polluters for elimination of toxin but the problem is the State is able to ask for as much as they are actually paid in the process of toxin elimination. Meanwhile, expenses spent on the restoration coming after the elimination process of pollution to enable natural resources to return to their former conditions or equivalent cannot be claimed. Moreover, the process of eliminating pollution takes so much time in the case of toxin accumulation in the sources of natural resources. This may bind with prescription that its duration is not associated with the process of pollution elimination, making the claim is not complete. The value of damage to degenerated natural resources, though it is prescribed in the Section 97, is stipulated in some points which cannot cover the calculation of the destruction of natural resources in all aspects in terms of commercial aspect, conservation of ecosystem, balance of nature for security and sustainability of art, culture, custom, tradition, way of life of the society under the same benefits related to certain natural resources and environment.

2) problems related to the enforcement of laws to encourage the process of restoration and remediation of natural resources and environment as prescribed in the Hazardous Substance Act B.E.2535 (1992) in Section 69 that in case where the hazardous substance causes injury to persons, animals, plants, or

environment, the Public Prosecutor shall have the power to conduct prosecution claiming compensation for the State including Minerals Act B.E. 2510 (1967) prescribing that the holder of a Prathanabat shall have a duty to compensate expenses for restoring land to recover to its former condition. It is a pity that both laws did not identify details of bringing the requested compensation to restore the damaged natural resources and environment in a concrete manner, making the shortcoming of budget and delay in restoring natural resources as the obtained compensation shall go to the State revenue in the form of budget which needs to enter to the allocation process with other matters. By doing this, it may not have a direct effect on the process of restoring natural resources as it depends on the budget allocation in each time. Consequently, the problems related to laws that have not been prescribed with details related to the process of restoring damaged natural resources and environment contribute to disadvantage in protection, conservation, and restoration natural resources and environment in an efficient and sustainable manner.

3) problems related to the objectives of the environmental fund that do not comprehensively cover the process of restoration, conservation, and remediation of natural resources but focus on the process or protection and maintaining the quality of environment and not measures for remediation and restoration of damaged or destructed natural resources, which actually they should be implemented parallelly. In practice, money from this fund cannot be used for natural resource and environment restoration.

2.6 Concept of Stipulating Compensation for Damage to Natural Resources

2.6.1 Meaning of Value of Natural Resources

The value of natural resources is possibly interpreted and identified with a wide scope, depending on points of view of specialists in each field. However, in economic field, emphasis is placed on economic value or benefits humans are going to receive. With regard to ecology, importance is given to value of natural resources based on benefits triggering from the existence of those natural resources. The value

of natural resources can be divided into 3 types (Laddawan Laung-ard, 2012) as follow:

1) Use value is a concept viewing utilization of natural resources by holding humans as a center, which can be divided into subparts as direct use value; use value from using natural resources directly leads to the deterioration, reduction of quantity and value of natural resources. Value of natural resources is a factor according to demands and quantities of certain resources. Direct use value is value from indirect utilization in which benefits can be obtained from the existence of certain natural resources and utilization does not cause deterioration or depreciation, being beneficial to all aspects in accordance with the principle of balancing in ecosystem. Therefore, value of natural resources in the form of non-consumptive uses is higher than consumptive uses (Frank B., 1989).

2) Existence value or value of non-use. The concept is originated from holding humans as a center of environment by adding points of view about benefits from human indirect use and points of view about non-use or avoiding to use natural resources, which will have an effect in the future. Therefore, value of natural resources shall occur for maintaining an opportunity to use in the future and conserving for people in the next generation as it is not necessary to use currently or benefits are so small right now, maintaining for natural balance or maintaining for existing forever.

3) Instrinsic value is a concept viewing humans as a part of nature (Jumpot Saisuntorn,2007).

2.6.2 General Principles of Evaluating Value of Natural Resources.

Evaluation of natural resource value is preformed using economic valuation to consider economic benefits that humans shall mainly receive from natural resources or it means benefits humans lose from natural resources that are destroyed or damaged with reference to evaluation of market value of resources or estimation of expenses spent on restoration. However, none of methods is appropriate to stipulate value of natural resources. Thus, guidelines for estimating value of natural resources are available (Frank B., 1989) as follow:

1) Market value approach

This is a method to evaluate natural resources bought and sold in market by adhering to market price as evaluated value because the market price system indicates satisfaction with value of things, making less disagreement. In case natural resources do not have market price, a comparison is employed by measuring decreasing value to specify value of damage. However, this method has a limitation since natural resources consist of individually special value, making the evaluated value using the market value approach lower than it should actually be.

2) Value evaluation from expenses spent on restoration and replacement.

A study on restoration of environment that is destroyed, damaged, depreciated with serious human intervention to accelerate or encourage the ecosystem to restore itself while the intervention must stay at an appropriate level is not creating a new ecosystem. It includes undertaking consistent with the existing ecosystem that encourages stability of the ecosystem to be speedily complete. Processes that take time, resources, and others shall give compensation to value of various aspects in relation to use value, existence value, and intrinsic value. In this regard, value of damage is equal to expenses spent on restoration of natural resources.

In case those natural resources cannot be restored, creating comparable natural resources to replace or specifying replacement areas can help remedy damages to natural resources but it cannot cover natural resources having special characteristics.

3) Contingent valuation method

This method evaluates non-use value of natural resources or indirect use value by considering various benefits that humans shall receive from nature with the help of prices to reflect value of the willingness to pay of those who utilize natural resources. An opinion survey is conducted with related people on if he/she needs to use these natural resources, how much he/she is able to pay to acquire the right to use or an opinion about how much the price of the natural resources he/she is seeing should be or if that natural resource is not available, what kind of effects people are thinking about and how much the value of the natural resource would be. Above all, this method is full of many limitations (Douglas W. Lipton, 1995).

4) Behavioral use valuation

Economists have developed an evaluating process of market value of public goods for evaluating natural resources by using a human point of view, known as anthropocentric. Natural resources shall whether or not have value depends on humans think whether or not natural resources are important. Evaluation is conducted from those who utilize natural resources that they are willing to pay. Behavioral use valuation analyzes behaviors of consumers from using goods. Evaluation is conducted using prices instead of goods. Outcomes from the evaluation may not give accurate details to be able to evaluate an impact in areas with slight changes and when an area has changes in conjunction with pollution, there might be deviation in outcome evaluation. (Orapan Na bangchang and Ittipon Srisaowaluk,1997).

5) Habitat equivalency analysis (HEA)

HEA is service to service scaling compensation with a hypothesis that general public is willing to accept something that will replace another thing; that is the amount of compensatory restoration starting from the time natural resources are damaged until they are completely restored. Evaluation of total value is equal to current value of benefits obtained from natural resources is calculation of future benefits shall be obtained from natural resources and compensation for damage is developing new areas to replace old areas. The replaced areas shall have similar characteristics to the old ones that are damaged (Habitat Equivalency analysis, 2000).

6) Benefit transfer approach

Benefit transfer approach is the use of value of environment evaluated from other sources, other agencies, other places to adjust according to difference of environmental or social circumstances. This method can be used for all types of valuation as it does not require a survey of field data collection. Therefore, it is a useful method in case environmental problems occur suddenly and data is urgently required to make a decision on implementation, in particular the time constraint as a study on evaluating an impact on environment with a direct method requires much time and a huge budget (Orapan Na bangchang and Ittipon Srisaowaluk,1997).

2.6.3 Problems and Obstacles in Stipulating Compensation

The best natural resource conservation is to stop causing damage to natural resources. Nevertheless, humans cannot stop invading natural resources due to their ways of life still rely on natural resources and environment. Thus, helping restore environment is significant to enable natural resources to be in a balance condition as much as possible, tangibly and intangibly. That is the quantity, beautifulness, completeness, and nature of natural resources. With regard to the stipulation of compensation to comprehensively cover the entire damages, Thailand has not had an appropriate calculation method, making the country cannot enforce the laws on stipulation of compensation for damages to natural resources. Thailand laws do not have the provision of principles and methods for remediation of damages in a specific manner. To stipulate compensation, guidelines for implementation (Laddawan Luang-ard, 2012) as follow:

2.6.4 Guidelines for Solving Problems Related to Natural Resource Restoration.

The State has duty to take care of and conserve natural resources and environment. Due to the limitation of claiming for remediation and restoration in accordance with the Enhancement and Conservation of National Environmental Quality Act B.E.2535 (1992), the State is able to only ask for actually paid compensation in the process of eliminating pollution. Truly speaking, the restoration after the process of pollution elimination to encourage natural resources to recover to their former or relevant condition requires expenses that cannot be claimed. Therefore, the laws should have provisions that enable the State to have duty to implement the pollution elimination, remediation and restoration of natural resources, and evaluation of damages to natural resources. A central agency should be established to take charge of studying, evaluating, restoring, remedying damaged natural resources including issuing regulations related to evaluation and restoration. Standardized details should be stipulated but it is not necessary to be prescribed in the organic laws. A framework of damage evaluation should be appropriately created and compensation should be directly used for remediation and restoration of natural resources and environment only.

2.6.5 Recommendation of the Supreme Court Related to Environmental Case Proceeding.

According to the recommendation of the Supreme Court (Piyawat Kunavetchakij, 2014) related to natural resource and environmental problems, the essential contents of environmental cases are prescribed in 4 characteristics as

Characteristics 1: civil cases relating to the damages to plaintiffs resulting from destruction or impact on natural resources, social environment or ecosystem.

Characteristics 2: civil cases relating to act or refrain from any act by the defendants to protect natural resources or community environment.

Characteristics 3: civil cases relating to compensation for damages by the defendants to eliminate pollution, restore environment, or compensate the value of the damaged natural resources.

Characteristics 4: civil cases relating to compensation for damages by the defendants affecting life, body, health or other rights of plaintiffs resulting from the pollution that the defendants pollute or the pollutants that the defendants are liable for.

With regard to court proceeding of environmental cases according the recommendation of the President of the Supreme Court, it is prescribed in article 2 and article 3. According to the principle, a civil case shall be firstly considered power to file a lawsuit. Any person has authority to bring the case to court or propose accusation to court when an argument arises related to the right of a person who shall have benefits from natural resources and biodiversity including the right to live a life in a normal condition and continuously in good environment or resulting from violation of order or legal provisions.

In terms of environmental dispute mediation the recommendation of the President of the Supreme Court in article 8 to article 10 as the essential content of taking evidence plays an important role as a practical guideline for the court to implement fact finding for supplement consideration including seeking remediation and restoration of natural resources and environment by using recommendation of specialists that the court can appoint as panel to help fact finding in terms of causes, effects, damages, guidelines for restoration and remediation that are correct and possible.

2.7 Measures to Use the Process of Environmental Dispute Mediation in Abroad

Currently the structure of environmental dispute resolution systems in abroad consists of patterns that can be developed and improved to be consistent and beneficial to guidelines to implement activities in the process of environmental dispute mediation.

2.7.1 Japan

The process of environmental dispute resolution in Japan (Varinthorn Chayawatto, 2012) is prescribed in the law on environmental dispute resolution in which there are two parts of operation. They are the part of judicial organization and the other part is environmental dispute resolution committee, which can be divided into subparts at a national level as a central agency and at a regional level as a provincial part including organizations that play their roles to oversee environmental aspects. The important process for environmental dispute resolution can be divided into 4 types as discussion, conciliation, dispute mediation, arbitration, and arbitral award for the speed and fairness benefits.

Environmental dispute coordination commission (EDCC) (Yongyut Anukul, 2009) takes charge of environmental dispute mediation, inquiring fact, and listening to fact from parties in disputes from situations with severe characteristics such as effects on health and sanitation of a large number of people, value of damage is not less than five hundred million yen, or disputes that have an effect at a national level on a large number of people, or disputes that have an impact on many areas, starting from two areas onwards. The commission shall be appointed by Prime Minister with approval of 7 persons in the parliament. The commission shall consist of no fewer than three lawyers and no fewer than one physician and office of the secretary provides assistance with ministerial officials. The judgement of the commission is considered appropriate recommendation and solution for parties in disputes to make consideration. During disputes are in the process, prescription shall be suspended temporarily. If parties in disputes accept and agree with a problem solution, a memorandum of agreement shall be made which will have legal enforcement. In case

either party does not agree with the proposed solution, the process of dispute resolution shall be ended immediately.

Prefectural pollution examination commission (PPECs) has duty to take charge of environmental dispute mediation. The commission members are appointed by a governor with the approval of local council, consisting of 3 persons being lawyer, physician, and experts. The judgement of the commission is just an appropriate recommendation and solution for parties in disputes shall make consideration. During a case in the proceeding, its prescription will be suspended temporarily. In case parties in disputes accept and agree with a problem solution, a memorandum of agreement between the dispute parties shall be made within 30 days which will enforce the parties in disputes. In case either party does not agree with the proposed solution, the process of dispute resolution shall be ended immediately.

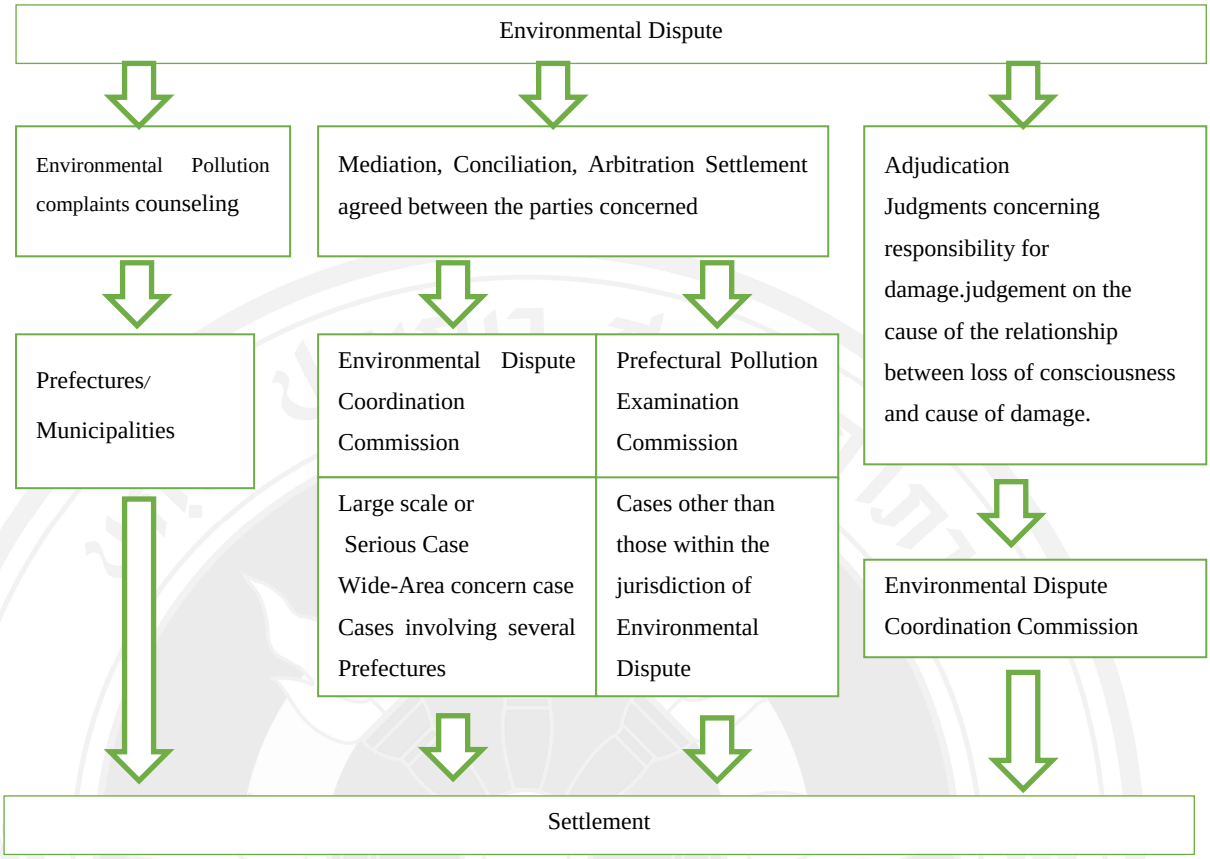


Figure 2.1 The process of envirionmental dispute resolution in Japan (Suppentary documents for academic lecture related to environmental processes: Experience of Japan and Thailand)

The prefectural pollution examination commission (PPECs) and the environmental dispute coordination commission (EDCC) do not have power to be the commission in supreme court and court of first instance. Though parties in disputes are not satisfied with the PPECs's solution, they cannot submit further the issue to EDCC.

To enter into the process of dispute resolution, either party or both parties in disputes shall file a complaint to enter into the dispute resolution process. Meanwhile, a chance is open for other affected people to file a complaint to enter into the process of dispute resolution. Though the process has carried out by an approval of both parties, a condition shall be pursuant to the scope of roles and duties of the commission.

2.7.2 United States of America

United States of America has the process of environmental dispute resolution (Pattarat Niyomsujarit, 2007) that has been developed to facilitate problems resulted from rapid country development and continuous changes, causing environmental issues are so outstanding to become a factor that the country has to adjust a concept to manage environmental problems. In addition to eliminating conflicts, emphasis has been placed on conflict prevention through United States Environmental Protection Agency (EPA). The Administrative Dispute Resolution Act 1996 is a law enhancing and stipulating federation level agencies to create and use the process of dispute resolution to establish the conflict prevention and resolution center in conjunction with the Alternative Dispute Resolution Act 1998 that supports various forms of alternative dispute resolution which include facilitation, convening, early neutral evaluation, consensus process, co-operative problem solving, interest base process, mediation, ombudsmen or ombuds, mini-trial, and arbitration.

The important role of United States Environmental Protection Agency is create and enforce standards in environment protection and conservation to be appropriate to the country development, study and conduct research, and collect data related to pollution and guidelines to protect and conserve natural resources and environment including methods and tools in the conservation, fact finding to assist the

environmental quality control commission. There are central office and regional office, totally 10 offices performing their duties to evaluate environment, conduct research studies and educate through 27 experimental laboratories nationwide scattering. Their major responsibility is stipulating and enforcing national level standards under various environmental laws by seeking advice and making discussion with states, ethnic groups, and local governments in some cases. EPA shall empower the duties of granting permission, inspection, monitoring to states and local American people and exercise the power by adjustment, enforcement, and others.

The conflict prevention and resolution center (CPRC) play its role to support the mission of EPA who issue standards and guidelines for natural resource and environment protection. However, arising problems may have an effect on enforcement and cause environmental disputes. Alternative dispute resolution is provided to state agencies in charge by using experts to resolve those disputes and specialists to build appropriate networks of alternative dispute resolution for the central office and 10 regional offices of EPA. Experts who make a contract preventing conflicts and problem solving of CPRC shall assist EPA and stakeholders to be able to share their opinions and information, identify concerned points and mutual benefits, cooperatively develop recommendation, prevent and overcome dispute and achieve an agreement. All EPA offices can access this contract to employ experts and neutral mediators to assist prevention and reduction of disputes related to their environmental projects.

To enter into the process of dispute resolution, parties in disputes shall file a complaint for entering the process to State and private agencies that provide such service and are standard certified. The dispute resolution process majorly adheres to alternative dispute resolution by using mediators to maintain and protect interests of dispute parties as well as reduce conflicts with several techniques such as facilitation, convening, early neutral evaluation, consensus process, co-operative problem solving, interest base process, mediation, etc. Once an agreement is achieved, a memorandum of agreement agreed by both parties shall be made as a legal obligation. In case either party does not agree with the resolution, the process of alternative dispute resolution shall be ended. During the process is carried out, the prescription shall be temporarily

suspended, and all processes shall be considered confidential between the parties in disputes and mediators shall keep this confidentiality.

2.7.3 Canada

Canada's points of view towards environmental disputes lead to stipulation of measures by using issues for considering environmental disputes and problems focusing on utilizing natural resources worthily. A party's utilization can make the other party lose his/her interests, causing a problem but if there is worthy utilization, worthy sustainability shall be achieved. The driven development of environmental dispute resolution enables the State to use people participatory process developed to be a method called a roundtable discussion that opens a chance to criticize and debate between the public and private sectors about environmental issues related to methods and policies. Canada prescribes many environmental laws, triggering problems related to no unity of law enforcement and being unsystematic. Laws are improved in 2 types as specific laws on dispute resolution and laws on methods of alternative dispute resolution. One of important laws is law on environment assessment. Environment assessment is enforced in all projects implemented by the State to ensure that the project implementation shall not have an impact on environment or natural resources are utilized worthily as much as possible and to ensure that the public section shall have an opportunity in the process of environmental impact assessment. Environmental dispute mediation is a part of the forms of environment assessment in Canada to prevent environmental disputes. In case environmental disputes occur afterwards, the process of dispute mediation using one mediator is most likely employed since the content of the arising conflict is not much complicated.

2.7.4 Netherlands

Netherlands (Fire Senachai, 2009) has an environmental trial system with civil and commercial approach that focuses on any action that violates many laws on environment such as the Environment Protection Act. An important issue for consideration is expenses spent on filing a lawsuit are quite high and those who lose the cases shall be liable for expenses of the other parties. Meanwhile, a burden related to fact finding makes people or environmental organizations are deprived of

preparedness to enter into the dispute resolution process. Furthermore, it has to be clearly shown that a claimant is a stakeholder who receives a direct environmental impact from an unlawful act committed by that person. Netherlands establishes Legal aid service center performing its duty to enhance, recommend, and assist the access to the justice system of people and organizations being deprived of preparedness. However, Netherlands give the right to filing civil environmental lawsuits for private organizations only. Therefore, the process of alternative dispute resolution is widely accepted by people for dispute resolution. In the meantime, courts play their roles to manage an agreement of parties in disputes by mediation. The obtained outcome shall have legal binding between parties in disputes or related persons. The outcome from the mediation process to be taken as evidence in a case shall be approved by the other party in case the mediation is not successful.

CHAPTER 3

METHODOLOGY

This research aims to conduct a comparison study and develop patterns of the process of environmental dispute mediation for restoration of natural resources. Research procedures are specified to be consistent with the research objectives using a qualitative research technique.

3.1 Research Process

3.1.1 Research Tools and Data Collections

In respond to the research objectives, the researcher collected data to acquire in-depth information related to environmental dispute mediation for restoration of natural resources to use as basic data for analysis. Multi-method approach (Multiple methodologies) is employed in this qualitative research which can be summarized as follow:

3.1.1.1 Documentary research

Data were collected and studied by reviewing concepts, analyzing and synthesizing documents (Documentary analysis) from textbooks, articles, research papers, individual educational reports, theses, and theoretical concepts to make a comparative model study on the process of environmental dispute mediation for restoration of natural resources in abroad and the mediation process in Thailand including retrieving information through internet networks. Triangulation (Data triangulation) was used to facilitate verification of research data to ensure data were more reliable.

3.1.1.2 Non-participant observation

Interviews were not specified with rules and regulations of questions and sequences of interview in advance. The interviews were conducted in a natural way using the same pattern of questions to gather fact, concepts, attitudes, estimation, operational procedures, problems, obstacles, and reactions related to environmental dispute mediation for restoration of natural resources for better give additional information obtained from other methods. A chance was open to interviewees to reflect their perspectives, concepts, attitudes, estimation, operational procedures, obstacles, and reactions for developing and improving guidelines of environmental dispute mediation for restoration of natural resources. This study relied on data from the samples in group 2 and group 3 (explained in 3.1.2) who are judges, attorneys, lawyers including scholars, barristers, agencies associated with dispute mediation, mediators, and independent organizations. There were 33 key informants who are 10 persons of judges, attorneys, lawyers from a dispute case sample, 12 persons of scholars in environmental and environmental law fields, 5 persons of mediation chiefs or representatives, 3 persons of chiefs of related government agencies or authorized persons, 3 persons of registered mediators, 5 persons of independent organization executives or representatives. The study method can be summarized in a diagram as seen in Figure 3.1In-depth interview.

An interview was not specified with rules and regulations of questions and sequences of interview in advance. The interview was conducted in a natural way using the same pattern of questions to gather fact, concepts, attitudes, estimation, operational procedures, problems, obstacles, and reactions related to environmental dispute mediation for restoration of natural resources for better give additional information obtained from other methods. A chance was open to interviewees to reflect their perspectives, concepts, attitudes, estimation, operational procedures, obstacles, and reactions for developing and improving guidelines of environmental dispute mediation for restoration of natural resources. This study relied on data from the samples in group 2 and group 3 who are judges, attorneys, lawyers including scholars, barristers, agencies associated with dispute mediation, mediators, and independent organizations. There were 33 key informants who are 10 persons of

judges, attorneys, lawyers from a dispute case sample, 12 persons of scholars in environmental and environmental law fields, 5 persons of mediation chiefs or representatives, 3 persons of chiefs of related government agencies or authorized persons, 3 persons of registered mediators, 5 persons of independent organization executives or representatives. The study method can be summarized in a diagram as seen in Figure 3.1.

3.1.1.3 Semi-structure interview

Interviews were not specified with rules and regulations of questions and sequences of interview in advance. The interviews were conducted in a natural way using the same pattern of questions to gather fact, concepts, attitudes, estimation, operational procedures, problems, obstacles, and reactions related to environmental dispute mediation for restoration of natural resources for better give additional information obtained from other methods. A chance was open to interviewees to reflect their perspectives, concepts, attitudes, estimation, operational procedures, obstacles, and reactions for developing and improving guidelines of environmental dispute mediation for restoration of natural resources. This study relied on data from the samples in group 2 and group 3 (explained in 3.1.2) who are judges, attorneys, lawyers including scholars, barristers, agencies associated with dispute mediation, mediators, and independent organizations. There were 33 key informants who are 10 persons of judges, attorneys, lawyers from a dispute case sample, 12 persons of scholars in environmental and environmental law fields, 5 persons of mediation chiefs or representatives, 3 persons of chiefs of related government agencies or authorized persons, 3 persons of registered mediators, 5 persons of independent organization executives or representatives. The study method can be summarized in a diagram as seen in Figure 3.1.

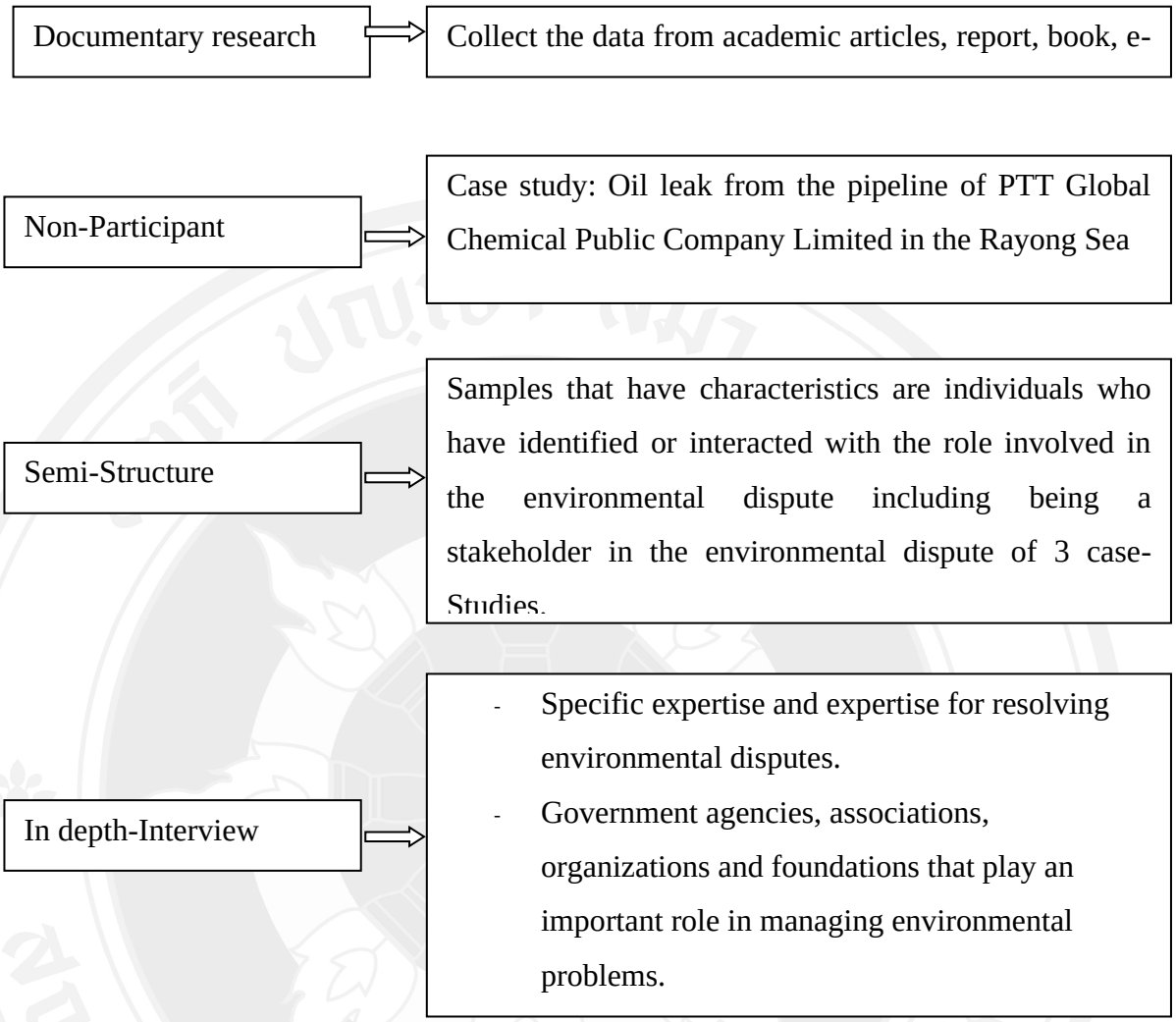


Figure 3.1 Tools and data collection diagram

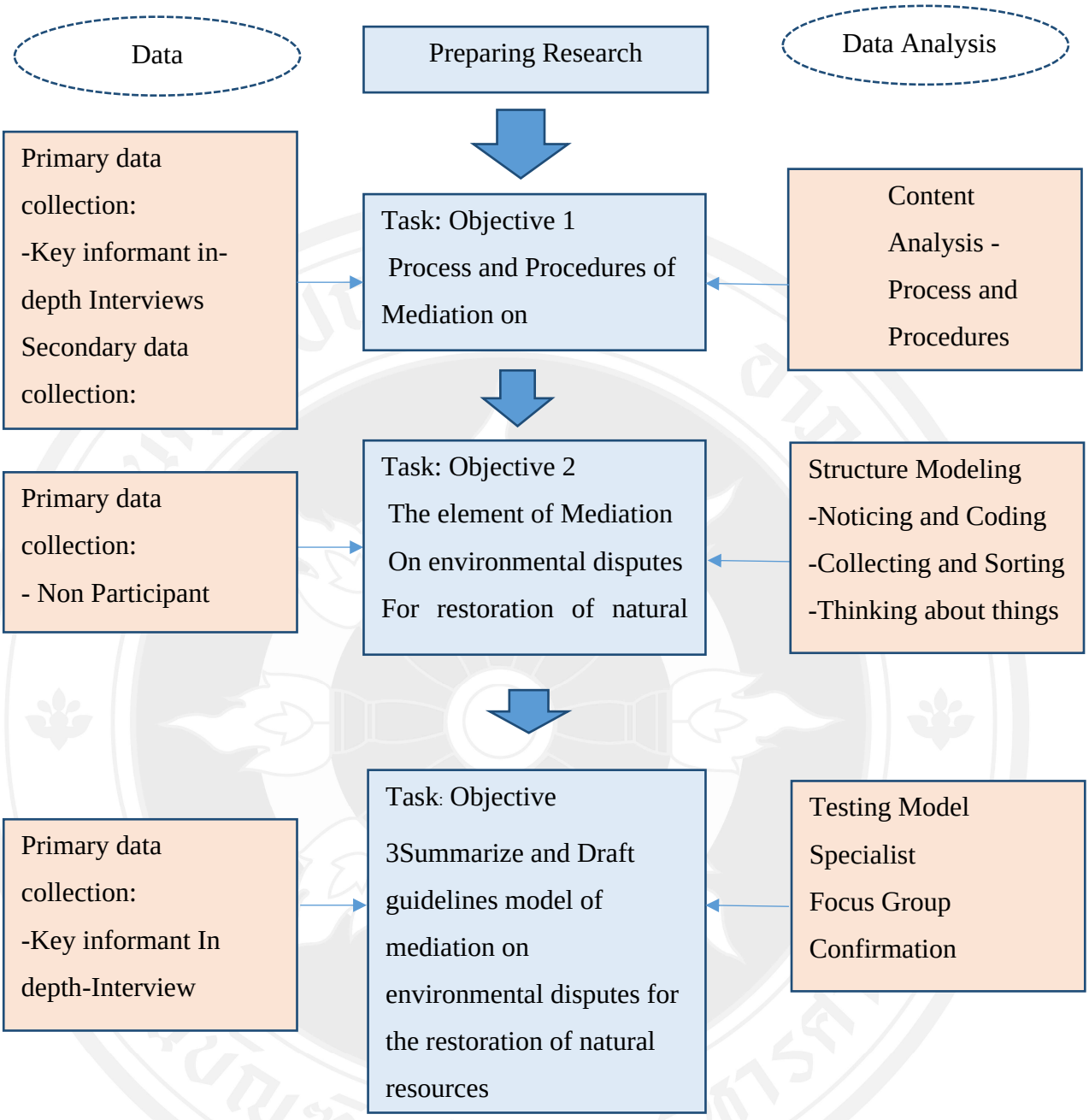


Figure 3.2 Methodological framework

Figure 3.2 shows research methodology using the review of concepts, documentary analysis and synthesis from textbooks, articles, research papers, individual educational reports, theses, and theoretical concepts including an in-depth interview so as to know the process and procedure of environmental dispute mediation. Non-participant observation and interviewing related persons were used to

categorize and divide data to obtain factors affecting the process of dispute mediation. Two parts of data and the recommendation from experts were used to improve the draft pattern of environmental dispute mediation for restoration of natural resources and environment in Thailand.

3.1.2 Populations and Samples

Population and sample in this study were persons associated with the process of environmental dispute resolution including experts and scholars in the field of environmental dispute mediation management for restoration of natural resources. A purposive random technique was used to select the sample. Population and sample for an in-depth interview including experts and scholars were selected by the following criteria:

Being persons who express themselves or have interaction with the roles related to environmental dispute including being stakeholders in environmental disputes.

Being persons who have knowledge and understanding of environmental dispute resolution or have experience in environmental dispute resolution.

Being opinion leaders by being able to motivate or persuade to have connectivity of thought among people in communities or society. The sample for interviewing was based on 3x3 data triangulation as shown below:

Group 1: Persons having the role involved with or being direct stakeholders of dispute cases; they are 6 persons being representatives of claimants and defendants.

Table 3.1 stakeholders of dispute cases

Dispute cases	Claimants	Defendants
Klity creek dispute	Mr. Surapong Kongchantuk	Mr. Kongsak Klipbua
Oil pipeline leakage dispute	Victim representatives	PTT Global Chemical Public Co.,Ltd.
Praksa landfill dispute	Mr. Suchart Naknok	Mr. Klomphon Samutsakorn

Group 2: Persons who have knowledge and expertise in environmental dispute resolution

Judges and judicial officers	3 persons.
Lawyers taking charge of cases	6 persons.
Experts/scholars in the environment field.	
Experts in environment	3 persons.
Experts in laws on environment	3 persons.
Experts in environmental economics, social science	3 persons.
Experts and scholars in environmental dispute resolution	3 persons.

Group 3: Opinion leaders who are abel to motivate or persuade to have connectivity of thought among people in communities or society:

Chiefs of agencies responsible for environment at	3 persons
Department of Pollution Control	
Department of Environmental Quality Promotion	
The National Environmental Fund	
Leaders of organizations, associations,	3 persons
juristic persons in environment	
Thailand Environment Institute Foundation.	
ENLAWTHAI Foundation.	
Ecological Alert and Recovery Thailand.	
Chiefs of promotion and enhancement organizations of dispute mediation process	5 persons
Division of Dispute Settlement, Office of the Judiciary	
Rights and Liberties Protection Department	
Law Center, Thammasat University	
Lawyers Council	
Department of Legal Aid and Civil Rights Protection	

3.1.3 Data Verification and Analysis for Preparing Dispute Guidelines.

Data verification and analysis is brought to possess and analyze for preparing guidelines of environmental dispute mediation for restoration of natural resources in

accordance with a semantic model, a model use a language as media to lecture or explain studied circumstances through languages, charts, or pictures to see concepts, structures, components, and relationship of components by summarizing points to be clearly seen so as to stipulate a problem structure, surrounding components, principles, and methods in management, directing process, and decision-making process. Triangulation was used to facilitate verification of the data:

Data triangulation is focused on verifying data obtained from various sources to see if they are consistent or not and how investigator triangulation is focused on verifying and analyzing data from research studies related to consistence and possibility for making a conclusion.

Theory triangulation is focused on possibility to bring related theories theoretical theories to adapt in an appropriate manner and gain consistent discovered points.

3.2 Testing and Verifying Patterns

Based on the data stipulating draft patterns, they shall be tested by the testing process of dispute mediation guidelines for restoration of natural resources through opinion giving of experts and specialists in assessing chances and possibility in bringing the patterns of environmental dispute mediation for restoration of natural resourcs in Thailand by using the related processes as seen in Figure 3.3

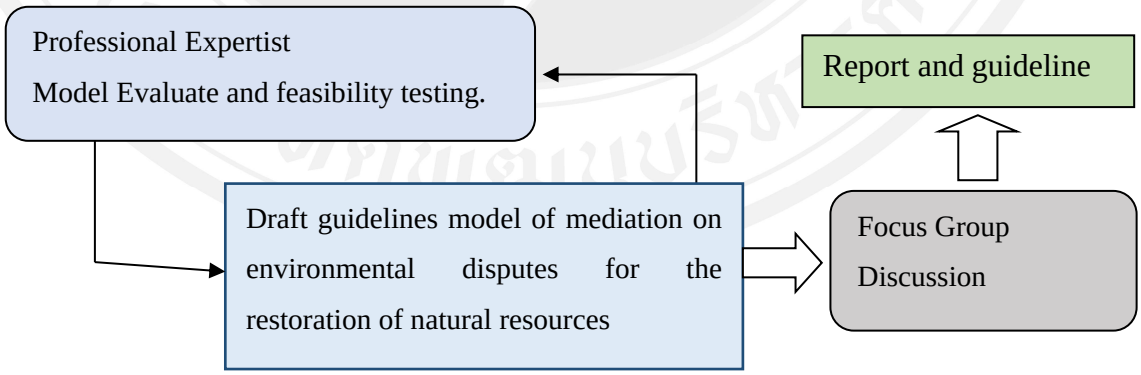


Figure 3.3 The testing process of dispute mediation patterns

3.2.1 Testing Patterns by Experts

Assessing, testing appropriateness and possibility of application were performed by 5 experts as assessors and testers, i.e. environmental law division supreme court judges, attorneys, deans of environmental law faculty, director-general of Department of Environmental Quality Promotion, secretary-general of Lawyers Council so as to certify the quality of patterns before brought to the critic of dispute mediation for restoration of natural resources and made a conclusion accordingly. The assessment shall stipulate the objectives of consideration as follow:

Consideration of possibility of application, correctness and appropriateness of the process and guidelines, benefits and worthiness of natural resource and environment restoration to achieve sustainability.

Consideration of the environmental dispute mediation process to see if it has process consistency and components in implementation are complete for restoration of natural resources and environment.

Assessment of results of implementation in accordance with the draft pattern of environmental dispute mediation for restoration of natural resources that enable management of natural resources and environment of Thailand in a more efficient manner.

Assessment of effects and consistency of implementation under the enforced laws.

3.2.2 Critic of Guidelines of Dispute Mediation for Restoration of Natural Resources

The critic is conducted in the form of a focus group discussion. Participants were judges, lawyers, scholars, stakeholders in environmental cases, civil organizations, and environmental foundations as well as people who are interested so as to verify and assess alternative dispute mediation patterns for restoration of natural resources and to jointly listen to opinions, recommendations, and to publicize knowledge in implementing the newly prepared guideline. Meanwhile, civil organizations had a chance to participate in developing implementation guidelines to be more complete.

3.3 Presenting Analysis Results and Preparing Reports

Results of the comparison study is presented in the form of a lecture with examples and quotation of important points to gain clarity in terms of the possibility of the patterns of environmental dispute mediation for restoration of natural resources and environment and roles of organizations in charge that reflect basic factors and important components for environmental dispute resolution through the process of dispute mediation. The researcher shall propose discovered points and analysis results of comparison information to show the patterns of environmental dispute mediation for restoration of natural resources so as to apply and provide appropriate benefits to Thailand including concepts and recommendations beneficial to the process of solving environmental disputes. Emphasis is placed on enabling natural resources and environment considered public domain to have the right to protection and existence in a prosperous manner for the existence of various processes such as conservation, restoration, maintenance, and replacement to be close to good ecosystem and healthy environment including conservation of art, culture, custom, tradition, living a daily life consistent to Thainess that can pass on to people in the next generation. The patterns shall be used as a fundamental for natural resource conservation and environmental dispute resolution, bringing about less destruction of natural resources and being beneficial to the conservation process of natural resources for achieving sustainability in the future.

CHAPTER 4

FINDING AND RESULTS

The study on guideline models of mediation on environmental disputes for the restoration of natural resources was purposively conducted to seek connection and benefits of the use of the judicial system in the form of environmental dispute mediation affecting the process of conservation, restoration, and remediation of natural resources and environment. The objectives of the study were 1) to study basic data about mediation on environmental disputes for developing a model of mediation on environmental disputes for the restoration of natural resources, 2) to study and seek factors affecting the mediation process on environmental disputes affecting the restoration of natural resources in a tangible manner and 3) to prepare a model and suggestion appropriate to current situations based on development guidelines model of mediation on environmental disputes for the restoration of natural resources and environment for sustainability. The study was conducted using qualitative research method by means of mix method data collection, namely, data were collected and studied by concept review, document analysis and synthesis, non-participant observation, and interview. There were 3 groups of the sample. A semi-structured interview was used to collect data from a group of people who played their roles in or had interaction with environmental disputes including stakeholders of environmental disputes. An in-depth interview was used to collect data from a group of people who have knowledge and specific expertise in environmental dispute resolution, opinion leaders who are able to persuade or motivate people to have thinking connection among people in communities or societies, totally 38 persons. Data analysis results were presented in the view of PDCA implementation, the mediation process on environmental disputes for the restoration of natural resources, the processes and procedures of mediation, evaluation of alternatives, guidelines to problem solutions

that are acceptable to both parties so as to resolve disputes by implementing the restoration of natural resources and environment in a systematic manner and controlling, enforcement to reach a consequence according to an agreement that both parties negotiated or made in advance including the roles in follow-up and inspection, appropriate cooperation for management of affected natural resources respectively.

4.1 Results from Concept Review, Document Analysis and Synthesis.

The concept review, analysis and synthesis of related literature found that the process of environmental dispute resolution in Thailand was restricted though development has been made respectively in each point of problem solving while natural resource and environment management has been very slightly developed or improved. It means emphasis of environmental disputes was placed on compensation and remediation for damages in a civil case. Laws, rules, and regulations in the mediation on environmental disputes were unclear, relevant persons performed their duties independently without systematic relations. In this regard, the judicial system related to environmental issues having specific characteristics of problems has not been solved appropriately and it means that natural resources and environment have not taken care of completely and comprehensively.

Environmental dispute can be divided into 3 levels that affect mediation management and become a factor in choosing a mediation model appropriate to levels of dispute problems (Montri Silpmahabandit & Sorawit Limparangsi, 2008), namely,

1) upstream dispute is a dispute caused by the formulation of government policies that probably have an impact both directly and indirectly on a large number of people.

2) midstream dispute is a dispute caused by turning policies into practice, exercising discretion according to legal authority, determination of measures for utilizing natural resources, permission or approval of activities.

3) downstream dispute is a dispute caused by implementing activities by people or organizations which probably has an impact on environment, making people or a group of people experience trouble or damage.

Dispute resolution can be implemented in 2 characteristics as compulsory dispute resolution and alternative dispute resolution (ADR). Methods of dispute resolution depend significantly on dispute parties who will be an indicator measuring whether or not a dispute shall reach successful or failed resolution. Alternative dispute resolution can be done by several methods and each method has different characteristics. The process of dispute mediation can be implemented in 2 characteristics as mediation before court proceeding and mediation during the proceeding:

4.1.1 Dispute mediation Out of Court

Dispute mediation out of court; it is dispute mediation that a case has not moved through the court system and a dispute party agrees to have a person or external organization to carry out mediation whereas the dispute is mediated both parties agree and make a settlement. The mediator shall make a conciliation agreement with consent of both parties. Enforcement shall follow the conciliation agreement.

4.1.2 Dispute Mediation in Court

Dispute mediation is carried out during a case proceeds in court. The court shall persuade a party to enter a mediation process or a party shall express his/her intention to enter the mediation process. A mediator shall make a conciliation agreement with consent of both parties. Enforcement shall follow the conciliation agreement. Considered the current process of mediation, it has been found that entering into environmental dispute mediation can take place in various period starting from when a claim is filed to a relevant agency, after fact is verified and truth is found, the process of negotiation to find resolution shall be carried out in conjunction with fact finding so as to specify a mutual agreement. Laws, rules, and regulations may be employed to cease a primary problem. In case dispute resolution cannot be made through negotiation, a case will enter into a mediation process accordingly. Figure 4.1 shows steps in a mediation process in addition to complex negotiation; a problem arises and becomes a dispute difficult for negotiation; a dispute becomes a case moving through the court system and probably is brought to

mediation according to the court's opinion or willingness of both parties. Models and steps to enter into a mediation process can occur any time in the judicial system similar to management of other disputes.

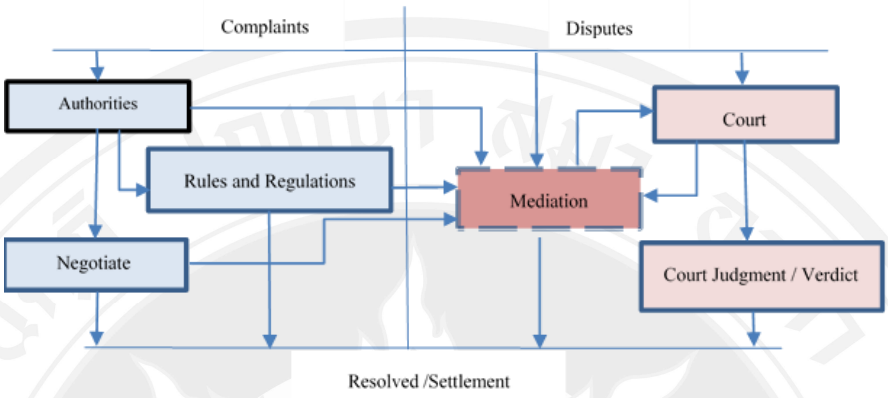


Figure 4.1 Process and steps entering into dispute mediation.

It can be seen that entering into a mediation process allows both parties a chance to negotiate and make an agreement as well as better understanding of each other. That is an important reason why the process of mediation has been employed for resolve environmental disputes so as to reduce time spent on the process of court proceeding significantly. Though the process of environmental dispute resolution can be assisted by several processes, in foreign countries such as United States of America, Japan, Canada, Australia, etc., based on searching, it has been found that each country gives importance to employing the process of mediation to resolve environmental disputes in which emphasis is placed on

1) To have compensation for damage having an impact on life and property.

2) To have suspension, cessation, or correction of destruction of natural resources and environment.

3) To alleviate damage in case that damage is not severe and does not give a huge impact.

4) To restore environmental conditions.

The main elements of mediation are dispute parties, a mediator or conciliator who is a person or a group of persons. As for dispute mediation in court, there will be

a person who directs the mediation and is appointed by the judge and mediation is carried out by the mediation center of the court or dispute resolution office. With regard to dispute mediation out of court, there is a central agency or organization who perform its duty to coordinate mediation to ensure that claims and demands of dispute parties can meet mutual agreement as much as possible. In summary, 2 types of environmental dispute mediation shall have a mediator who plays his/her role to facilitate negotiation (Facilitative approach) to assist dispute parties to identify their actual demands and find mutual problem solving through the following major elements: 1) willingness to participate, 2) Dispute parties shall withdraw from the mediation process, 3) Direct participation, 4) a mediator does not have decision-making power, 5) Dispute parties determine methods to solve problems and consequences of the process on their own.

Typically, a reliable, trusted and neutral person is chosen to be a mediator. Experts or relevant agencies or organizations may be asked to give advice or guidance to ensure the completeness of data. As for dispute parties, they are dispute parties who are willing to enter into the process of mediation by themselves or they authorize their representatives who are lawyers, attorneys as summarized in Figure 4.2. The process of problem solving depends on demands and problem conditions that dispute parties are encountering. In terms of environmental disputes, demands are focused on restoration, remediation, rehabilitation, and conservation of destructed natural resources and environment to have healthy conditions or be back to the same conditions as much as possible before they are damaged.

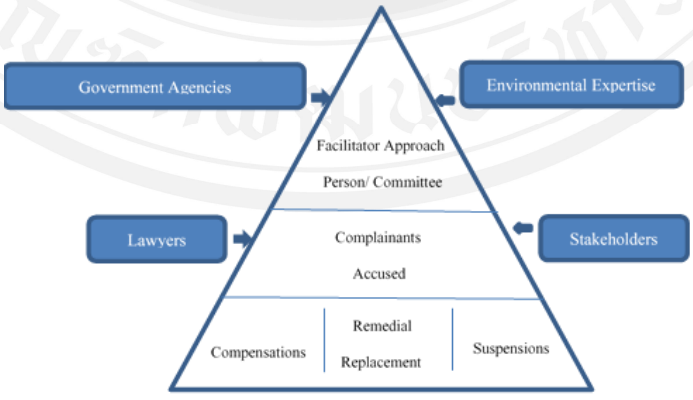


Figure 4.2 Elements of environmental dispute mediation.

4.2 Outcomes from Non-Participant Observation

With regard to non-participant observation of the process of environmental dispute mediation of a case study of the incident of oil leaked from PTT Global Chemical Plc's pipeline in Rayong Bay in 2013. There were 223 victims being stall vendors, fishermen, operators of speed boats and the plaintiff number 223 was Association of Accommodation and Hotel Operators in Koh Samed, Rayong province. It was the first case that emphasis was placed on natural resource restoration. In this regard, the researcher noticed roles and behaviors of persons having participation in the process of dispute mediation. It was the mediation in court by means of alternative dispute resolution. Outcomes from the observation were found as follow:

4.2.1 Roles and Behaviors of the Mediator

The mediator in this case study was established as a mediator panel appointed by the court and the judge acted as the panel consultant. Both parties were allowed to nominate mediators to participate in the panel and the judge nominated the other mediators consisting of experts in environment and relevant government officials. The roles of the panel from the nomination of each party would have more or less data informed and proposed by dispute parties differently. Based on such characteristics, the panel of mediators comprised academics who did not have clear perspectives and understanding of legal proceedings, conclusion of resolution, preparation of documents and procedures of dispute mediation. Emphasis was placed on expressing attitudes towards the process of natural resource management including the process of seeking problem solving guidelines. The judge was the panel consultant but was reserved to give opinions, giving recommendation and facilitation to the operation of the dispute mediation committee without expressing opinions towards the process of mediation for not to be guidance from the person having a major role and being trusted by the legal proceedings. Though there was the appointed mediator panel, some panels did not participate in the proceeding due to their mission and lack of

details for performing their duties. In addition, roles and duties of the experts were not adequately supported by the legal proceeding data for seeing changes from impact on natural resources and environment. The data used to make comparison before the destruction took place were not outstanding including unclear remuneration that the committee and experts would receive, making some part of the mediator panels did not participate in the process. Sometimes, the major mediator panel failed to participate in the processes of the panel continuously, affecting the understanding of the incident and situation of the dispute. Having experts in the mediator panel or having persons who were invited to give advice as persons to participate in seeking data or impact or damage of dispute cases can make clarity for making a conclusion of problem issues and damage increasingly. However, data were a part of seeking guidelines for dispute resolution of dispute parties. Proposing processes may be out of scope and ability that dispute parties could carry out since the process of restoration, conservation, substitution of natural resources and environment need to be implemented under the laws, rules and regulations governed by government agencies. That means opinions of experts or the panels of mediators given to dispute parties for seeking mutual solutions may not have an effect on natural resource and environment management comprehensively as they should do.

In terms of experts and the number of experts appointed to be the mediator panel including persons giving advice, environmental dispute is a special case that opinions, fact verification from different perspectives related to rising impact need to be listened to. Some cases required experts in various fields and numbers of experts to confirm the fact including the use of advanced technology to find a problem conclusion, conclusion of the fact of rising impact to ensure acceptance of both parties. That means a large number of experts are required. Delay may occur and a conclusion is difficult to make, contributing to the reliability of the mediation process.

4.2.2 Dispute Parties (in Case being Victims or Affected Persons)

There were a large number of affected persons from the mentioned above case study. Claimants demanding compensation for damage were affected persons but not considered direct victims from the pipeline leakage and the dispersed crude oil in the sea of PTT Global Chemical Plc as the direct victims were natural resources and

environment damaged by oil spill that contaminated sea water and ecosystem as well as the process of pollution elimination and cleaning up the oil spill out of Rayong sea. The affected persons being the cause of the environmental dispute were stall vendors, fishermen, operators of tourism business and high-speed boat and Association of Accommodation and Hotel Operators in Koh Samed, Rayong province who focused on the rising problems, impact on their careers, way of life connecting to sources of marine resources and environment, both in a tangible and intangible manner. However, most of the affected persons did not understand of roles, duties and rights pursuant to environmental laws including responsibilities for the restoration process of natural resources and environment in a systematic manner. In relation to the process of dispute mediation, the affected persons stressed on demanding compensation and remedies for damage caused by the crude oil leakage. They had little understanding of the process of dispute mediation regarding to the restoration of natural resources and they were deprived of information related to the process of correction and implementation of pollution elimination while they lacked continuous follow-up of data regarding damage and survey, making the participation in the process of natural resource and environment management for systematic restoration delayed. Moreover, access to information of relevant persons may be discrepant by the periods of damage and the process of problem-solving. Stakeholders were deprived of preparedness and understanding of information beneficial to the process of problem-solving and dispute mediation for the restoration of natural resources.

4.2.3 Dispute Parties (in Case being Damage Makers or Impact Makers)

The dispute party who was the impact maker in the case study was a company conducting a business having a policy for incident and risk management at a certain level. Enterprises having good business profile including government agencies, agencies directed by the government, multinational companies involving in the process of mediation more likely express their primary responsibilities and manage impact information of the damage according to the process. Though the rising impact cannot be avoidable, the implementation of companies by a specific division for handling disputes and impact according to the process of coordination and responsibility for problem-solving is quite fast and follows a correct direction since

those companies and agencies have scientists and experts who give them advice about such work characteristics. Expression for awareness of healing and preventing damage to and impact on natural resources and environment has been exercised by a proportionate process that can predict and expect damage at the step of elimination or disposal of pollution. Furthermore, the process of environmental dispute mediation has been clearly seen that understanding of and access to information related to environmental laws, the process of pollution elimination, the process of natural resource restoration and the acceleration process of remedial measures and substation between dispute parties who are villagers and small sized private organizations had difference in preparedness and presentation of information for making mutual understanding between processes and procedures in a systematic manner, resulting in guidelines for seeking a conclusion in the problem-solving process. As for the operation of giant organizations like PTT, it has been noticeable that the company would prepare human resources and budget management to facilitate risk incidents related to their business operation. Therefore, they are ready to handle primary problems immediately. Expression for taking responsibility came out in a good direction and had an effect on guidelines for natural resource and environment restoration and management. However, the assigned roles and management can be considered as follow:

4.2.4 Lawyers and Attorneys

Lawyers or attorneys played an important role in the mediation process of the case study, especially in the process of dispute resolution for determination of a mutual agreement. Lawyers needed to change their operational role to seek a mutual way other than coordinating benefits including making a chance for restoration and conservation of natural resources and environment. However, the working style of lawyers possessing a lot of tactics towards maintaining advantages for defending the case and demanding had an effect on the atmosphere of environmental dispute mediation. Each party focused on maintaining benefits of their clients to the maximum level or receiving the lowest level of damage. Therefore, if lawyers express their opinions in the process of mediation, though consideration is taken into reasons and guidelines for problem-solving for natural resource and environment restoration,

they make an attempt to persuade people to see consistency with a point in the dispute that each party seriously demanded, contributing to negligence in a point regarding the restoration of natural resources and environment which sometimes a dispute party has to reduce their restrictions or agree to lose an opportunity in some case proportionately. Lawyers of each party would initially evaluate. Lawyers had some restrictions about making understanding of information and methods to conserve and restore natural resources according to principles comprehensively. Lawyers need to have understanding of the process of restoration and conservation of natural resources in a more clarified and detailed manner for the benefits of communication, clarification, follow-up of the mediation process and outcomes of guidelines for mutual problem-solving with good cooperation of the other dispute party to their clients, especially communication with common people.

4.2.5 Public Sector and Private Sector Supportive Organizations

The process of environmental dispute mediation for the restoration of natural resources of the case study is considered a role model case that its impact and perceived news were widely known. Nevertheless, the presented guidelines and process of problem-solving through demands of the dispute party could not be implemented. The process needed to be carried out according to the provisions of laws and regulations governed by government agencies such as Ministry of Natural Resources and Environment, Ministry of Industry, Ministry of Public Health, Ministry of Interior, etc. As far as the implementation of conservation, restoration, remediation of natural resources and environment obtained from discussion and agreement at the operation level required cooperation of public sector and private sector agencies in addition to the implementation of the dispute party, the rising restrictions were several operational procedures and processes for implementation and decision-making process under various restrictions of the agencies such as restrictions on human resource, budget, tools, technologies including inflexible rules and regulations, making most representatives attending the process of mediation who were attorneys of public sector agencies acknowledge and give advice about operational guidelines related to the roles and duties of original affiliation but they could not make their decision on management and support of the implementation of natural resource

restoration in a clear manner. In contrast, private sector organizations such as environmental foundations and organizations had perspectives reflecting problems of various systems through working experience of each part that correct and appropriate processes could not be implemented in real situations, triggering incomprehensive planning and guidelines for problem-solving of damaged natural resources and resulting in a delayed opportunity of natural resource management of cessation in the steps of seeking mutual problem-solving guidelines for the mediation.

4.2.6 Process of Fact Finding and Problem Issues of Disputes

As for the process of the environmental dispute of the case study on the pipeline leakage and the dispersed crude oil in Rayong sea of PTT Global Chemical Plc, the mediation committee entered the process of fact finding by inquiring the affected dispute parties who gave verbal information so as to specify a point of problems with the help of information from research studies on the impact conducted by academics and experts and compared to a survey and inspection in the real scene. However, damages were not outstandingly concluded since there was no information identifying the quality and amount of natural resources and environment of the damaged areas before the incident occurred to be used as confirmation and comparison of the amount and quality of natural resources and environment in the areas after being damaged and affected. Therefore, mutual fact finding of dispute parties shared the same direction and had conflict in some parts including a problem issue related to society and economy that was not clarified since Rayong sea area had a rate and chance of damages caused by pollution released by factories, tourism, and agricultural sector, making the determination of necessary problem issues take a long time. Factors affecting conditions of natural resources and environment probably comprised other associated issues having an effect on conservation, restoration, and remediation such as water pollution, pollution caused by tourism activities, waste, chemicals from agricultural sectors, consequences from industrial sector in the area, etc. Thus, the model of fact finding requires technological information or specific knowledge from various fields that are consistent and appropriate. Moreover, there were differences regarding references of reliable information between dispute parties for making a conclusion of the fact finding related to the rising impact.

4.2.7 Problem-Solving Guidelines and Determination of Mutual Agreement

Determining problem-solving guidelines is an interesting issue since the affected areas have been monitored and directed by various government agencies such as Town Municipality, affiliated Sub-district Administrative Organizations, Department of Provincial Administration, Ministry of Interior taking care of beach areas, provincial offices related to economy and society, provincial offices related to natural resources and environment such as Department of National Parks, Wildlife and Plant Conservation, Department of Forestry, Department of Fisheries, Department of Marine and Coastal Resources, Department of Pollution Control. As restrictions and regulations did not allow governmental implementation to be flexible, impact assessment carried out by each agency depended on different restrictions. For example, impact on beaches was monitored and directed by municipalities of each area but their roles did not cover the sea areas away from the seashore under responsibility of other agencies or the case of impact of coral bleaching in the overlapping territorial areas supervised by Department of National Parks, Wildlife and Plant Conservation, Department of Marine and Coastal Resources, Department of Forestry, etc. Budget allocation for area supervision was also limited. Thus, the consideration of differently obtained budget was an issue for implementation, triggering problems related to delay in remediation, alleviation, and compensation for damage and impact on natural resources and environment.

4.2.8 Systematic Restoration and Remediation of Natural Resources and Environment

Based on the mutual fact-finding process, it was seen that damage was incurred to the area. Though the research studied found changes really occurred and natural resources and environment were affected, damage assessment could not be identified so clearly enough that the cause of the problem was from the pipeline leakage and crude oil spill. Therefore, it was necessary to assign relevant agencies to monitor and follow up but activities were organized to maintain benefits of protection and remediation of impact that may happen in the future and alleviation of damage during self-restoration of the ecosystem. Practically, restrictions were seen in the

process of mediation regarding rules and processes of the implementation that were obstructed in some procedures of relevant agencies.

4.2.9 Continuous Monitoring Control Measures of the Mediation Process

Though the environmental dispute mediation was provided with the problem-solving guidelines approved by both parties, the implemented projects or processes required to be monitored and inspected to ensure performance of problem-solving and continuous monitoring was carried out to see any impact from the dispute that may take time to show the result. As for the case study of the pipeline leakage and crude oil spill of PTT Global Plc in Rayong sea, the finished mediation process resulted in discontinuity of monitoring and inspection, making the process of restoration incomplete. This is in the same direction of the determination of social and mental damage. The panel of conciliators or mediators offered periodical monitoring and inspection and assigned the dispute parties to coordinate for making a progress report to be widely known.

4.3 Outcomes from the Interview

4.3.1 Information from Interviewing Group 1 key Informants:

Persons related to the dispute or direct stakeholders. The researcher used information from interviewing related persons in the case study of Klity Creek dispute, pipeline leakage and crude oil spill in Rayong sea dispute, and Praksa landfill dispute. They were 6 representatives of the plaintiff and defendant who participated in the process of dispute resolution. A semi-structured interview was used to focus on the clarity of determining issues and factor development, significant elements for environmental dispute mediation. The obtained data were summarized in various issues in the form of perspectives and attitudes of victims or affected people.

4.3.1.1 The process of dispute resolution shall take place when damage occurs empirically.

That means people receive damage and are affected one way or another and sometimes there must be a large number of affected victims. Otherwise, it will be difficult for people who do not understand of the system and patterns of prosecution

or claiming rights. People probably do not understand the process or dispute resolution if no one gives them advice or they are not taken care of by skilled persons. In the past, prosecution or negotiation to seek a conclusion of problems was rather difficult since the rising problems caused damages and impact but people did not understand of their rights. Since the implementation of various activities by those who made an impact was primarily supervised by government agencies, people's demanding or claiming was partially compensated but they did not know about real impact and damages and they had to get affected continuously. Therefore, people may not understand about an environmental dispute and how to carry out it to the process of dispute resolution and mediation until prosecution takes place and the judicial system will lead them to the process of mediation. People's important point is they do not understand legal provisions related to cases while there are many agencies supervise and enforce those laws. Though the same cause of damage, they have to report to various agencies and each agency has different operational patterns and procedures. The one whom people can rely on is some nonprofit organizations that give them assistance. However, people need to know and understand the role of each organization as well. Once they enter into legal proceedings and the process of mediation takes place, a lawyer will play an important role in being the representative of people and an authorized person or attorney. The important point for making understanding is verification and showing details of fact and the cause of problems, clarity in details of the impact and damage. These can make understanding and lead to problem-solving guidelines for mutual decision-making. Therefore, information being complete fact is important for negotiation and mediation. Scientists who have expertise in advanced technologies should be recruited to people who get in trouble and cannot bring their information to the process of mediation or negotiation. All victims and affected people should be considered and participate in determining and solving problems altogether. Currently, the process of solving environmental problems is more improved than in the past that it took such a long time to see a conclusion. A certain agency should be assigned to supervise, and open people chances to seek advice for claiming. Nonetheless, problems passed through the process of mediation have not been comprehensively solved; for example, consideration of remediation that takes time with a lot of procedures. Sometimes,

impact and damages incurred are greater than to providing compensation or remedy. Experts who are judges, lawyers, experts in environment and other fields as the case may be including mediators play a vital role in the process of dispute resolution and problem-solving of people, as well as all government agencies.

4.3.1.2 Perspectives and attitudes of damage and impact makers

The process of environmental dispute mediation contains a wide range of consideration and there are different types of affected people. It is necessary to be provided by information for entering into the process of seeking a mutual agreement. Availability of the panel of committee is needed of implementation of mediation but the panel should not contain a large number of mediators for benefits and flexibility of problem-solving. However, implementation in the procedures of fact finding, inspection by judge, and seeking guidelines for natural resource and environment management still requires persons holding a body of knowledge in a specific field. Probably, it is necessary to have a panel of mediators in environment consider and inspect information for determining primary issues or a special panel of work groups or sub-committee should be appointed for fact finding by allowing the chairperson to propose through the approval of the mediation committee occasionally.

The important element of making an agreement is showing complete fact and information and listening to reasons based on fact as much as possible. As for skeptical points, guidelines and models of fact checking should be determined, fact related to problem issues should be reported as well as damage and impact including a scope of victims and affected people in the future related to a certain case so as to be used as information for determination of preventive measures accordingly.

With regard to lawyers and attorneys of both dispute parties, in the procedure of negotiation and mediation, there is a frame and scope for decision-making. In this regard, problem assessment and seeking a mutual agreement in dispute resolution, maintenance, restoration, substitution or other processes need decision-making and consent of dispute parties but participation requires only attorneys or lawyers for implementation but cannot immediately make decision on consequences of an agreement or problem-solving guidelines in all cases, especially if those persons are representatives or attorneys of big organizations or agencies having a particular way of operation and administration. A person who actually has power to

make decision may have to be approved by board of directors or senior executives who do not attend the mediation, giving rise to a smaller chance of reaching an agreement in the negotiation or mediation due to higher restrictions and consideration of each organization. Time spent on implementing the mediation process may be longer and outcomes are probably not consistent with the agreement.

With regard to environmental dispute mediation, neutral agencies appropriate to the process are judicial agencies being trusted and reliable in the judicial system based on legal proceedings. Roles and duties of the courts are not provided with outstandingly practical guidelines to the process of environmental dispute resolution, causing an issue related to entering into the process of problem-solving in the form of civil case proceeding. Meanwhile, there is no standard for determination of compensation for damage incurred to natural resources or standard for consideration of paying compensation for damage both directly and indirectly according to economic principles. Thus, there is difficulty in determining an agreement and a chance for demanding independently, making a chance to implement the mediation not successful increasingly. As for the process of legal proceedings according to each law, many laws and many sections are required to be amended to meet current situations more and more.

4.3.2 Outcomes from the Interview- Information from Interviewing Group 2 key informants:

The informant18 persons holding knowledge and expertise in specific fields. An in-depth interview was used to collect fact, concepts, attitudes, estimation, procedures of implementation, problems, obstacles, and reactions related to the environmental dispute mediation for the restoration of natural resources. The points can be concluded as follow:

4.3.2.1 Group of judges/judiciaries

Environmental dispute resolution comprises many methods that have been abided and context of relevant environmental disputes having various types of effect and impact on many groups of victims. Acquisition of fact and access to problem conditions of each group are different. Since the judicial system for environmental cases in Thailand has not been particularly separated, procedures in

legal proceedings adopt the proceedings of civil and commercial cases. The adoption of the mediation process as a guideline for dispute resolution is implemented in the direction of civil and commercial cases. Due to the limitation number of judges, work restrictions occur. It is necessary to find mediators as assistants. The issues related to mediators are their skills, knowledge, and access to problems for considering mediation to reach efficiency for gaining trust and reliability from dispute parties. With regard to qualification of mediators, legal knowledge, environmental knowledge, knowledge about natural resource management, seniority, and significant experience in implementing the process of environmental dispute mediation, mediators in Thailand have not had outstanding mechanisms towards these points that much. Though the judicial system in environmental issues of Thailand has been improved increasingly in terms of models of dispute resolution, problems related to employing appropriate laws with regard to laws on legal proceedings, laws on dispute resolution are seen, and it is necessary to develop knowledge, understanding, attitude, and skill of persons associated with conflict management, natural resource and environment management in an appropriate manner.

Nowadays, the process of alternative dispute resolution in Thailand is improved in a good direction. However, social structure, fast, fair, and cost-saving principles are applied to the process of environmental dispute resolution. People's understanding of legal rights, rights to environment need to be much improved as well as social relationship, Thai culture in terms of relationship between people and government agencies. People often view that it is the duty of government agencies to monitor and protect people's benefits. They do not dare to make a claim according to fundamental human rights. Practically, people are not eligible to claim for something with some restrictions. Moreover, models in the conduct of legal proceedings and the process of fact finding for public benefits have an effect on protecting other people. Expert witnesses from each party may have discrepant understanding of neutrality and play their roles to mainly support their party. The modern and explicit technologies can help the exercise of discretion in determining problem-solving guidelines in an appropriate manner. Time spent on managing damaged natural resources and impact on properties, persons, society and others requires an obvious process for the benefits of extending the prescription period of environmental cases to have consistency.

As for the implementation of giving legal advice including entering into the mediation process, in foreign countries, there are private organizations and various agencies play a role to give advice, assess situations, and primary guidelines for entering into legal proceedings, advantages, disadvantages for enabling dispute parties to take into consideration. In most cases, they end up with making a settlement. In Thailand, there are some restrictions and difficulty that neutral agencies have to encounter when they implement the process of environmental dispute mediation pursuant to the laws. Consequently, the essential agency implementing the mediation process is the Court of Justice. Though time spent on entering into the mediation process shall reduce length of judicial proceedings, taken into account, it cannot abruptly reflect the process of restoration of natural resources and environment and such conditions need to be maintained as evidence and witnesses beneficial to the essence of consideration in the future.

4.3.2.2 Group of lawyers/prosecutors

The process of environmental dispute mediation is a part of widely used alternative dispute resolution. In general arbitration method is also used. Consideration of the process of environmental dispute mediation reveals that there is no specific law for such case. Unlike in foreign countries, environmental laws are legislated as well as rules and methods for dispute mediation, enabling relevant personnel are aware of their roles and implementation according to the process obviously. In Thailand, general mediation involves advantage regarding characteristics of power of dispute parties, being a gap of negotiation. In case dispute parties are government agencies or giant organizations, they most likely have preparedness and understanding legal procedures. They more likely seek reliable information than people who are their dispute party. However, if people have a high level of preparedness towards understanding of environmental laws or a firm purpose of claiming, the process of mediation is not successful, and a case has to be moved to the court system. When the process of mediation is taken into consideration, it has to be different from other cases as the mediation should be implemented in the form of a panel of mediators rather than only one mediator. Not only a high level of experience is required, knowledge in various laws, natural resource management, economic value assessment, forensic investigation are needed for the benefits of mediation,

memorandum of conciliation including penalties for non-conformity of dispute parties, chances given to lawyers to participate in inquiring and investigating fact.

> "...Mediation having a mediator to negotiate/mediate/conciliate needs to coordinate with and access stakeholders, namely victims or affected people, authorized persons, agencies exercising the laws. A scope of damage or impact should be considered so as to be able to assess and implement. The point regarding the prescription period of a case is consider limitation of working duration. In some case, though mediation is implemented, court proceedings keep going..." (ChonnapatWinyawat, personal communication, 14 May 2020).

4.3.2.3 Group of experts, environmental scholars

1) Environmental Fieldscholars

Roles of environmental scholars towards the process of dispute mediation is not explicit enough. Therefore, to say that environmental disputes open a chance to natural resources to claim for fairness at a small degree does not exaggerate. The provisions prescribed that the State is the supervisor and owner of the rights to occupy natural resources and environment. If the State did not specify its role to claim for the rights to restoration and conservation, it will be difficult for making consideration. Many environmental scholars possess knowledge and ability. They study and collect data. Though these data can reflect changes and damages from various situations being threats to natural resources, the major causes as earlier mentioned are climate change, population expansion, and country development policies of the State. Environmentalists' participation probably has an effect on independence and giving some opinions or facts, and the important point is participation in lawsuits. As of todayopinions of environmental scholars according to current factors and elements of environment are used to predict the future but consequences cannot be entirely confirmed as natural components may change. Management of damaged and affected natural resources needs immediate and appropriate care and protection. Encouraging a panel of mediators to play their roles in handling problems with participation of environmental scholars and scholars in

related fields will increase a chance of natural resource restoration and conservation in a better direction.

The point related to restoration and conservation of natural resources and environment requires a process based on a fundamental and scope of laws that are not consistent with the whole process of natural resource management. Meanwhile, the society does not understand or cooperate with the process of natural resource management thoroughly. People are not aware and do not understand of access to and utilization of natural resources, which most likely the roles of consumers or users. Those who work with natural resources and environment need to conserve them to achieve sustainability, namely biodiversity of plants and animals, natural balance in an ecosystem, maintaining changes or adjustment of an ecosystem as good as possible, leading to a variety and fertility of natural resources with the following management guidelines:

Restoration of natural resources through a legal process refers to the determination of legal guidelines to be strictly enforced for the acquisition of remediation and compensation for damage in an obvious and comprehensive manner in all systems, reflecting facts to current situations and future consequences of an ecosystem, natural resources and environment.

Restoration of natural resources through government policies is a vital factor for natural resource and environment management since government policies enable a process and continuity giving a positive effect on management and awareness of conservation and restoration of natural resources and environment in a sustainable manner. Models of natural resource management depend on characteristics of damage and impact. Therefore, problem-solving implemented to a case with huge damage requires analysis of impact on the major ecosystem of areas. The neighboring ecosystem living dependently must be maintained its balance for efficient restoration. Nevertheless, restoration of damaged natural resources is divided into levels with the help of human actions and letting nature restore itself. The implementation with the help of human actions includes pollution elimination, conservation and increase of the quantity of natural resources, substitution or building a new system. These are considered solving problems of environmental impact from a process requiring cooperation from public sector, private sector, societies, and

communities. In this regard, the restoration of natural resources cannot be managed by separating humans, communities, societies, and cultures.

2) Environmental laws Fieldscholars

With regard to restrictions on Thai laws, it has been known that legal proceedings of environmental issues, in terms of the rights to prosecution, are not up to what they should be. In addition, the laws do not facilitate fact finding, searching for evidence and witnesses, hearing of evidence and the important point is laws on dispute resolution. Though there is law enforcement about environment, it does not give a clear meaning of "natural resources" and "value of natural resources" including assessment methods of value of natural resources. When an environmental lawsuit occurs to claim for damage compensation, there is a point to be considered that which principle a court should use for implementing a legal procedure of compensation for natural resource and environmental damage. As for the improvement of the substantive law related to rules and legal procedures, assistance and facilitation systems for people to carry out dispute mediation, entering into the process can be implemented both in court and out of court, in terms of civil cases and administrative cases, depending on preparedness in each point of knowledge, expertise, and understanding of environmental laws and a body of knowledge about environmental management. Relevant persons with regard to judges, judiciaries, legal officers, prosecutors, lawyers, policemen, and administration officers have to understand the context of both issues. Management requiring a neutral agency to implement problem-solving is working based on redundant power and a neutral organization needs to exercise its role to encourage people' s participation and to gain acceptance from all sectors.

In relation to the role and importance of experts, especially in the process of environmental fact finding and conclusion of damage and impact, experts in calculation of environmental damage play an important part in determining how much compensation and remediation are correct and reliable. Experts need to show facts from their research and studies with the help of their knowledge and expertise. The following principles should be available:

(1) Knowledge in science, technique, or expertise in different fields. They have to show that problems are facts or help solve problems for being widely acceptable.

(2) Evidence and opinions of experts are in accordance with facts or adequate information.

(3) Experts show principles and methods reliable and accepted by scholars and professionals in a certain field.

(4) Experts adapt principles and methods to facts in disputes in a reliable manner (Dr. UthaiAthiwet, interview on 20 May 2020).

Currently, Thailand relies on advice from the President of the Supreme Court on the proceedings of environmental cases, enhancing the requirement of witnesses and experts for environmental case proceedings in various procedures such as data collection, gathering witnesses and evidence, mediation, etc, and a preponderance of evidence form experts in environmental cases "with regard to a preponderance of evidence, courts shall consider reliability of principles and theories proposed by experts, scientific errors, knowledge and experience of witnesses, working experience related to the point of disputes, advantages and disadvantage of the outcome" as a broad conceptual framework (Judge of the Criminal Court, interview on 16 May 2020).

Point related to enforcement of mediation settlement in the case of environmental disputes – The intention of the Enhancement and Conservation of the National Environmental Quality Act B.E.2535 (1992) is to enable polluters and damage maker to natural resources to take responsibility and pay damage compensation to the State at the amount of actual damage. It is consistent with the Polluter-Pays Principle. The determination of damage should not limited to circumstances and severity specified in the Civil and Commercial Code of Thailand but it should cover all other consideration points such as impact on an ecosystem, direct and indirect damages including remediation of damages to natural resources, expenses on natural resource restoration, damage compensation for providing natural resources having characteristics and value similar to the damaged natural resources, court judgment reservation related to compensation for damages in the future and

amendment of court judgment related to compensation for damages. Environmental impact may not occur or may not be noticeable at early stage. In case of the obvious impact, time spent on restoration and pollution elimination is very long, exceeding the date of judgment or overdue the duration agreed in a conciliation agreement for many years. Expenses and measures for restoration and pollution elimination can be changed until the implementation is finished, in some cases, at the date the complaint is filed or the date the court makes a judgment. Thailand Civil and Commercial Code Section 444 prescribed that if at the time of giving judgment it is impossible to ascertain the actual consequences of the injury to the body and health, the Court may reserve in the judgment the right to revise such judgment for a period not exceeding two years. In this regard, it is probably not consistent with natural resource restoration and pollution elimination in some cases. Court judgment reservation within an appropriate duration shall enable the restoration and pollution elimination to be carried out efficiently and determination of compensation for damage shall conform to actual damage (Judiciary of the Administrative Court, interview on 11 May 2020).

> "...the important thing of the process is compulsory execution that will have an effect on previous operation. A conclusion is important. In order to enter into the mediation process, the important procedure is entering into the mediation with consent. If a dispute party fails to engage in the mediation process, is there any measure to call the other party to acknowledge and agree. The most important point of disputes is paying compensation and restoring natural resources. These are operating budgets and it is vital for the source of operating budgets due to a high cost of operation. In case the budgets are not enough, there will be discontinuity, outcomes will not be efficient. Budget allocation and management are big points..." (ThawanRuyaporn, personal communication ,27 May 2020).

3) Environmental economics and social science fieldscholars

Value assessment of natural resources and environment is a vital problem of economists, especially environmental economists. Natural resources connect to economic system in all aspects. Measuring value of change in natural resources shall affect how people spend their lives measured by use value, non-use value, and option value. Assessment instruments are.

Revealed preference method is referred to travel cost method (TCM), hedonic price method (HPM), environmental quality as a factor input, and cost of illness.

Stated preference method involves asking individuals questions that can be used to infer economic values, either using direct or indirect expressions of economic value; contingent valuation method (CVN) involves directly asking people how much they would be willing to pay for specific environmental services and choice experiment (CE) that individuals are asked to choose their preferred alternative from several options in a choice set, and they are asked to respond to a sequence of such choices.

Benefit transfer method is used to estimate economic values of ecosystems services by transferring available information from studies already completed in another location and/or context. As for environmental dispute assessment in Thailand, it is necessary all aspects have to be considered. That means all methods involve in the assessment. Thing to be taken into consideration is biodiversity and anticipated benefits. Two big issues to be considered are

(1) ecosystem – issues to be considered are factors of existence for maintaining the balance of an ecosystem; status for products and services; cultural benefits and production support benefits.

(2) human livelihood – issues to be considered are factors related to factors related to security of life, supportive factors for sustainable livelihood, health and hygiene factors, and social relationship factors. (JakkritDuangpattra, personal communication, 17 October 2015).

Nowadays, Thailand focuses on the use of measures and control standards by issuing regulations and prohibition to limit and control pollution and waste by means of government agencies as supervisors, causing law redundancy, lack of unity of control, lack of good coordination, the laws have not been strictly enforced by government officials, lack of assessment, lack of data collection and serious inspection. Information related to changes in natural resource and environment condition in Thailand has been changed frequently due to an increase in the process of destruction and utilization of natural resources, resulting in the quality and quantity of natural resources. Assessment and inspection of environmental value need to be conducted annually for being able to determine environmental value appropriate to situations. Converting the benefits of natural resources and environment into financial value for value assessment as a standard that the society can understand in the same direction can build all sectors' awareness of paying attention to natural resources, resulting in conservation, restoration, remediation and management of natural resources in a sustainable manner. In this regard, value assessment needs preparation of database and data models to be appropriate and convenient for information access through various channels being widely accepted with people's participation, giving advantage to the process of environmental dispute mediation (Faculty of Economics, Sukhothai Thammathirat Open University, personal communication, 19 May 2020)

> "... after all this time, though measures and methods to solve pollution and environmental problems were available, Thailand focused on monitoring and control measures in which there were restrictions in problem-solving as law enforcement was not strictly implemented, low level of penalty and inexpensive fine, and government agencies were deprived of monitoring and inspection of the sources of pollution in an immediate manner due to the restrictions of personnel, budgets, and other..."

4) Environmental dispute mediation fieldscholars

Dispute mediation is a procedure specified to build good relationship between dispute parties in cases. Expressing the intention to make a compromise of dispute parties is conciliation necessary to get through decision-making and consideration of problem-solving guidelines, and the process of dispute resolution agree. A chance for mediation is open at all time and environmental dispute mediation has characteristics and models different from general dispute mediation whose number of dispute parties is not large and characteristics of disputes are quite certain and legal proceedings are quite similar; most mediators act as middlemen to facilitate mediation and dispute resolution in a way that is not so complex and sometimes only one mediator is required. Unlike environmental disputes, there are a large number of victims or affected people and models of filing claims including impact are associated with various laws This enables personnel having expertise in problem assessment and direct mediation experience some difficulty due to their knowledge and experience that do not comprehensively cover all issues and results in reliability of those who act as a mediator. The establishment of a panel of mediators sounds more appropriate in gathering those who have relevant experience and skills to make consideration and understanding of problem issues thoroughly. Meanwhile, they are able to assess guidelines for fact finding and problem-solving models, create alternatives for decision-making of dispute parties to resolve dispute correctly including the process of compensation for damage, remediation and restoration of natural resources appropriately. Difference in negotiation power of dispute parties is a vital issue for the process of mediation. With regard to restoration and remediation, it is necessary to have explicit guidelines and laws appropriate to mediation that experts are required to prove fact in all aspects (Office of the Judicial Affairs, Office of the Judiciary, personal communication, 20 November 2019).

> "...in order to reduce conflict, ability to communicate and models of discussion among various parts are significant techniques used in mediation, leading to success in finding resolution and building participation in the

process, and enabling stakeholders to enter into the process procedurally while disputes can be resolved with reconciliation ...” (Thai Arbitration Institute, personal communication, 24 May 2020).

Dispute mediation needs understanding of and access to motivation or actual requirement, standpoint and demand of dispute parties. Mediators have to understand and create an atmosphere that can stimulate identification of possible offers at the maximum level that dispute parties can carry out. The offers are considered and implemented in a direction that can respond to demands of both parties based on fairness with comparison of many guidelines rationally until being accepted. However, building trust and reliability is important. Do not create a win or loss atmosphere, revenge atmosphere or atmosphere full of tiredness for preference of living peacefully (Judge of the Office of the President of the Supreme Court, interview on 26 September 2019).

4.3.3 Information from Interviewing Group 3 Key Informants:

The informant 11 opinion leaders who persuade or motivate people to have connection of thought among group of people in communities or societies. An in-depth interview was used to collect facts, concepts, attitudes, estimation, implementation procedures of problems, obstacles, and reactions related to environmental dispute mediation for the restoration of natural resources. The issues can be concluded as follow:

4.3.3.1 Agencies in charge of environment fieldscholars

The role of agencies in charge to resolve disputes is only a primary process since power and scope of operation in each agency are limited. Most of their role is associated with receiving claims and negotiation in accordance with provisions in the laws, rules and regulations, or relevant notifications. Agencies can primarily facilitate people with regard to inspecting actions against any section as prescribed and sometimes implementing enforcement for taking responsibility, making correction in accordance with a process, or giving advice any implementation before penalty is taken into consideration. Negotiation and agreement primarily made including mediation under the supervision of each agency require assistance of the

judicial system since if there is any arising dispute associated with a large number of agencies or affected people, consideration of impact on each sector will be redundant. As for expenses for pollution elimination, only government agencies can file a claim, people cannot request compensation for this damage. In case both the government and people receive damages, only the government can file a claim for compensation for the damages so as to prevent redundancy of claiming compensation. The issue related to damage assessment and pollution elimination may not be determined comprehensively because pollution elimination is time-consuming, requires budgets, manpower, modern technologies for implementation and at that time may not be consistent with the length of proceedings.

4.3.3.2 Environmental organizations, associations, juristic persons

The role of environmental organizations, associations, and juristic persons is independent organizations having objectives to maintain and conserve natural resources and environment including being supporters of fairness in access to utilization of natural resources wisely and sustainably. Many agencies perform their duties as independent organizations to inspect environmental processes and policies, project implementation of public and private sectors that may have social and environmental impact. Nonetheless, what those organizations can do is to support, promote, inspect, and identify points of impact, the formation of social trends towards perception of true information. When it is necessary, public-benefit foundations and organizations in environment will perform their duties as consultants who facilitate affected people. However, this role is not widely accepted by legal processes. As for environmental dispute mediation, independent agencies with higher work flexibility than the government sector and are neutral can participate in the process of mediation as expert witnesses or a panel of mediators. Facilitating and reducing the redundancy of processes in the government sector shall be beneficial to environmental dispute mediation for the restoration of natural resources. The other vital point is that in addition to laws and regulations, the role of the Environment Fund should be changed with regard to the process of natural resource restoration and determination of operational measures to be consistent with current circumstances. Due to country development, utilization of natural resources encompasses a higher chance to make an impact on natural resources and environment. Budget support or budget allocation for

pollution elimination, restoration and conservation of natural resources and environment should be implemented in a tangible manner. The important part in performing the duties of independent organizations and civil society organizations is access to fact.

4.3.3.3 Organizations for consulting and promoting the process of dispute mediation.

Thailand has many agencies for providing assistance and legal consultation as well as many parts of the judicial system that people can access such as Lawyers Council, foundations, Rights and Liberties Protection Department, Office of Rights Protection and Legal Aid for People, etc. All relevant agencies provide legal advice and practical guidelines for people. In case of victims from environmental disputes, though currently the Dispute Mediation Act is available for opening a chance of mediation, damage issues and environmental impact are found with some restrictions on roles and duties of other organizations from public sector, civil society sector, or independent organizations to comprehensively implement. A vital role that foreign countries open a chance to agencies to implement dispute mediation is assessment of cases and expenses as decision-making guidelines of dispute parties. Dispute parties can view that how cases and proceedings will be and how long they will take, and the important thing is what kind of an effect the process of problem-solving has on dispute parties, compensation for damage, remediation in civil and criminal approaches. Such role in the process of dispute mediation has not been obviously certified especially environmental disputes because the process of proving a fact and hearing of evidence, damage assessment and criteria for compensation and remediation that are important issues for determining a conclusion and resolution of environmental disputes are suspended.

CHAPTER 5

CONCLUSION, DISCUSSION AND RECOMMENDATION

Conclusion and discussion comprise 3 parts e.g., the study results of development guidelines model, discussion and suggestion obtained from the study on the development guidelines model, and recommendation for mediation on environmental disputes for the restoration of natural resources in Thailand, whichrequire the process of data collection, review of concepts, analysis and synthesis of documents, non-participant observation and interview of relevant persons. Based on the study and data analysis for responding to the objectives of the study as 1) to study basic data about mediation on environmental disputes for developing a model of mediation on environmental disputes for the restoration of natural resources, 2) to study and seek factors affecting the mediation process on environmental disputes affecting the restoration of natural resources in a tangible manner and 3) to prepare a model and suggestion appropriate to current situations based on development guidelines model of mediation on environmental disputes for the restoration of natural resources and environment for sustainability, it can be concluded as follow:

5.1 Conclusion

According to PDCA principle, the processes of environmental dispute resolution for the restoration of natural resources and environment are found as follows:

5.1.1 The Process of Environmental

The process of environmental dispute resolution encompasses several models for implementation which can be divided into dispute resolution in court; disputes are moved through the court system, and dispute resolution out of court; disputes are

primarily resolved through negotiation, mediation, and conciliation to find problem solutions through civil society sector, organizations, governmental agencies or other agencies. As for mediation in civil and criminal cases, the processes and procedures are probably not consistent with solutions or guidelines of environmental dispute resolution in an efficient manner. Government sector policies and legal restrictions result in management and models of facilitating environmental dispute mediation. Victims or affected people initially need to seek guidelines to end problems and disputes through other alternatives. Finally, the cases are moved to the court system according to a principle and belief of Thai society that a court is the last resort for people.

Though the process of environmental dispute mediation occurs, Thailand still makes reference to mediation in civil cases in which emphasis is placed on seeking a conclusion for compensation for damage, remediation, and substitution for damage incurred to people and properties. However, in the part of natural resources and environment, there is no right to make a request from the judicial system or systematic mediation since it is considered the role and duty of the government to implement the demands of the process of remediation and healing of natural resources and environment. Legal restrictions required only the government to demand some parts such as expenses used for pollution elimination not including expenses used for restoration, remediation, conservation, and substitution of damaged or affected natural resources and environment. Exercising discretion to consider actual circumstances of environmental disputes requires expertise of relevant personnel. Reliable information accepted by dispute parties and other common people are important to fact finding including verification process of damage and impact on all aspects so as to implement problem-solving and propose problem-solving guidelines. Appropriate implementation of environmental dispute resolution does not result in continual dispute in the future and natural resources and environment can be correctly managed to achieve sustainability in the future. An explicit factor in addition to the application of the Dispute Resolution Act is advice of the President of the Supreme Court.

The process of environmental dispute in the past revealed that a chance to access mediation was available at all time but reliability factors of dispute parties are issues that affect the process of mediation. The occurrence of mediation required trust

and reliability given to the process of mediation and mediators. In this case, persons who act as mediators were agencies in the justice department. A person or a group of persons were appointed to carry out mediation including differences of negotiation power of dispute parties when either party is organizations, government personnel or personnel of giant organizations who have preparedness and understanding of relevant processes. But for common people or villagers, they had discrepant understanding and they do not have good preparedness, contributing to differences of negotiation power for negotiation, mediation, access to information, evidence, and arguments, etc. Meanwhile, working that required experts' opinions was not systematic in terms of principles in verification, inspection of fact finding for disputes. The way experts performed their duties was established as persons who give advice, witnesses, a panel of mediators or any status but practical guidelines were not obvious. Therefore, cooperation could not be successful, making the criteria used to assess damage not certain and the management process of damaged natural resources was not taken care of in an appropriate manner.

As for the case study in this research, it was noticed that the mediation for the restoration had restrictions on the operation of agencies affiliated to the government sector in terms of redundancy of role, duty, and responsibility for supervision of natural resources and environment, differences of operational guidelines and enforcement of legal regulations, people lacked understanding and were confused. Meanwhile, qualitative and quantitative data about natural resources were not stored systematically in the same database and not up-to-date, giving rise to restrictions on efficiency of mediation for the restoration according to the following points:

5.1.1.1 Court reservation judgment in environmental cases

For the benefits of prevention and remediation of any impact that may occur in the future from the arising incidents, court reservation judgment in damage lasted for 2 years. To be consistent with Thailand Civil and Commercial code, it should last for 10 years and collateral is required to ensure status and ability for responsibility of damage makers as they may go bankrupt and the court may reserve in the judgment the right beyond the request in terms of damage that the plaintiff receives and actual damage caused by actions or violation of the defendant.

5.1.1.2 Environmental dispute mediation in Administrative Court

In case of claiming in the Administrative Court, dispute mediation is an appropriate method for compensation, substitution, restoration, and problem-solving with the same characteristics of civil cases. However, operational guidelines or provisions related to environmental dispute mediation have not been explicit.

5.1.1.3 Determination of mental damage from environmental cases

Thailand does not have legal proceedings associated with mental impact caused by destruction of natural resources and environment that are public properties having both direct and indirect effects on life, physical health, emotional health, and mental health. Mental impact can be divided into 2 characteristics as 1. Mental damage caused by illness, injuries from consequences of the destruction of natural resources and environment, 2. Mental damage caused by anxiety, lack of confidence in security of life and property while living in destructive environment or under restoration circumstances that may have an impact on physical health in the future.

5.1.1.4 Environmental dispute mediation out of court

The process of environmental dispute mediation out of court has not been explicit in various aspects such as the length of prescription period, lack of neutral organizations to specifically perform their duty to mediate environmental disputes, lack of standards to mediate disputes having an impact on a large number of people, lack of standards of giving confidential information and violation, standards of implementation in case of violation to an agreement after mediation, etc. The process of mediation implementation can be considered as follow:

1) Participatory mediation. An agreement made to allow victims from all sectors damaged from the same fact to participate in the process of mediation in appropriate periods does not disturb the mediation process to be delayed or damaged including an adaptation of the process of a class action lawsuit. Namely, victims pursuant to the same type of motion or claim or even victims in the same scope and cause assign a representative to implement mediation and mediation outcomes shall come into force with all relevant parts.

2) Qualification requirements of mediators – Mediation requires a panel of mediators from related interdisciplinary fields who have a body of knowledge appropriate to and consistent with each situation.

3) Prescription period of a case – When a case is brought to the process of mediation, the prescription period of a case is suspended temporarily until the mediation process has an explicit conclusion in all procedures.

4) Mediation that focuses on prevention – Mediation gives importance to direct and indirect impact from the destruction of environment in present circumstances and future including conditions of natural resources that require restoration. If the process is not restored at that time, any impact that may occur should be taken into consideration as it will become a dispute in the future.

5) Filing a civil case in respect of environmental case by people

Common people cannot file a civil case when a case involves natural resources and environment that are damaged, destructed as public properties, public benefits since the laws prescribed that defendants have to pay for compensation for damage, remediation for the government or government agencies only except the case related to individual benefits that are damaged. Though filing an administrative case is easier for identifying that government agencies neglect or fail to perform their duties and cause damage, the point to be filed must relate to stakeholders and administrative act that damage is caused. Thus, people will be able to file a lawsuit when they can prove that they are stakeholders.

5.1.1.5 Environment dispute mediation in court

The court system process in terms of management and conservation has not covered and promoted problem-solving of the destruction of natural resources. Emphasis is placed on alleviation, remediation, and compensation for damage and impact on life and property of a person and a group of persons. Essence of laws does not support the conservation and restoration of natural resources and environment which considered the rights and responsibility of the State in taking care of benefits of public properties. The implementation of restoration has been obstructed by rules and regulations of government agencies that their work is divided for taking care of the same area with unity, causing difficulty in implementation.

5.1.1.6 Restoration of natural resources to remedy damages.

With regard to measures associated with the restoration of natural resources, the government can claim only expenses used for pollution elimination, but this does not include the restoration from direct damage and damages caused by the process of pollution elimination, and determination of compensation. Compensation for damage to natural resources and environment does not have an explicit standard or method for calculation, depending on the amount a court shall determine as appropriate or in some cases it is able to claim according to what government agencies implemented. The problem is government agencies have small budgets that do not cover the process of restoration. Therefore, implementation should be obvious by determining models or operational guidelines for damage assessment and determining correct and appropriate compensation for damage that can cover the restoration process. A neutral organization should be available to handle the restoration and remediation of natural resources and its implementation is not against other relevant laws. Procedures of remediation, restoration, and substitution are explicit and appropriate. Damage makers must participate in the process of restoration to their full capacity. The objectives of restoration funds should be extended to cover the process of restoration, remediation, and substitution of damaged natural resources and environment.

5.1.1.7 Determination of compensation for damage

Determination of compensation for damage is not explicit, without any models or operational guidelines. Therefore, value assessment of natural resources should be clearly determined as well as assessment of damage to natural resources, assessment of impact on processes related to damage assessment, both direct and indirect. Determination of models and types of compensation and remediation or types of basic compensation for remediation and substitution of damaged natural resources includes 3 major groups as

1) Expenses or compensation for remediation, restoration of natural resources to be back to their existing or close to their existing conditions including the process of constructing and improving substitution areas.

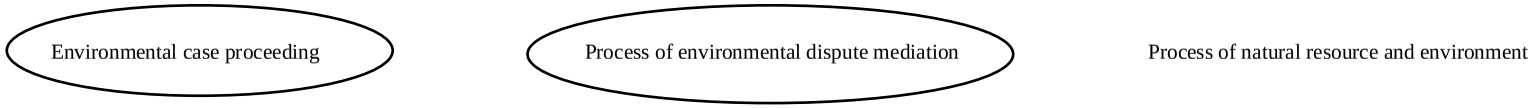
2) Compensation for value depreciation of damaged natural resources from the date damage occurred to the date that the process of remediation and restoration is complete.

3) Compensation that covers the process of damage assessment, impact assessment, and enhancement of guidelines for remediation and restoration of natural resources and environment to be back to their existing conditions.

5.1.1.8 Witness and evidence in civil cases in respect of environment

Legal proceeding of environmental cases needs information from technologies or specific knowledge for seeking scientific information or fact or opinions from specialists in each field so as to be information supporting assessment and judgment of a court. Thailand still embraces accusation system and fact known by a court but this seems not to be obvious. Those who claim in the legal proceedings have to prove and encourage a court to agree rationally. Hearing of evidence in advance appears to have some restrictions, causing some disadvantage in a court. Therefore, the points related to experts giving information about damage assessment, seeking solution, impact assessment are not available in a systematic manner in terms of environmental cases. The process of hearing of evidence has obstacles and restrictions. The processes affecting longer time spent on legal proceedings are contrary to time spent on maintenance, remediation, and restoration of natural resources that need speedy and immediate action through correct and proper management of each case.

A conclusion is made in the form of a chart with regard to the restrictions that occur in the process of environmental dispute resolution in Thailand at present as shown in Figure 5.1. The restrictions are divided into 3 points as restriction on legal proceedings, restriction on environmental dispute mediation, and restriction on management process of natural resource and environment.



- Environmental laws have been enforced but they have not been used in the proceeding of environmental cases having more essence of consideration than usual in an appropriate manner to current situations.
- The process of environmental case proceedings is found with restrictions.
- The process of identification, fact finding about environmental cases needs improvement and development.
- Restrictions are found on the proceeding of complex cases for solving environmental problems.
- Prescription period of cases, prosecution points, reservation, claim for compensation, restoration, mediation.
- The judicial system has not given importance to sustainable protection of natural resources but emphasis has been placed on compensation and remediation for damages incurred to lives and properties of individuals or a group of individuals.

- Laws and practical guidelines related to mediation were not explicit.
- Elements of the environmental mediation process were not complete due to a lack of the participation of natural resource part.
- Mediators in the system did not have well-rounded knowledge about environment and remuneration paid to performing such duty was not available.
- The process of damage assessment and inspection by judge had restrictions due to dispute parties.
- Environmental experts performing their duties in the judicial system were not explicitly available as well as remuneration system.
- Victims of the whole systems had a slim chance to enter into the process of mediation.
- There were no explicit practice guidelines for assessment of compensation for damages and they did not cover all aspects.
- Shortcomings were found in the process and procedure of breach of mediation agreement.

- Laws did not give a chance for systematic approach to restoration in case damages occur.
- Systematic scope/pattern for explicit restoration was not available.
- Procedure and consideration process for restoration based on the judicial system with the purpose to prevent natural resource damages.
- Government budget was not provided.
- Direct agencies responsible for the process of restoration were not assigned.
- Claiming compensation for damages did not cover expenses for restoration and remediation of natural resources and environment.
- The period of legal protection related to the process of restoration was not consistent.
- Only governmental agencies could file a claim.
- Expenses for pollution elimination were not related to restoration.

Figure 5.1 Chart of restrictions that occur in the process of environmental dispute resolution.

5.1.2 Importance of the Process of Environmental Dispute Mediation

Though the process of environmental dispute mediation shares the same major procedures of implementation as other dispute mediation, namely a mediator is required to facilitate negotiation and seek solution for an agreement made by dispute parties and the dispute is solved with willingness of both parties, details in the implementation are different in various points depending on severity of damage and impact. The more impact or damage occurs, the longer time spent on procedures of the implementation which can be concluded as follow:

5.1.2.1 Relevant government policies and laws

Environmental dispute is a dispute beyond the points of common dispute mediation. When damage occurs, natural resources and environment being public properties get a direct impact including damages to people's lives and properties. As for an impact, many people may be affected in various dimensions. Therefore, the management is most likely concerned with a high cost of damage and environmental dispute resolution needs to eventually enter into court proceedings. Government policies on environment are significant factors that do not facilitate the process of environmental dispute mediation to be successful since there are many laws under supervision of government agencies and organizations used for the enforcement and they are not consistent with the enhancement of environmental dispute mediation for the restoration of natural resources. The existing laws have some details that limitedly support the process of mediation for the restoration of natural resources. None of government agencies and organizations is in charge or makes coordination in a tangible manner to encourage victims or affected people to really access the process of environmental dispute mediation. In fact, management of natural resources and environment should go along with management of damage and impact in a civil case or administrative case to people and properties in a fair and sustainable manner.

5.1.2.2 Mediators

The implementation carried out by mediators for environmental dispute mediation requires trust and faith from experience and a body of knowledge about natural resource laws and management for understanding of problem conditions of dispute parties in all aspects and giving proper advice or problem solution to dispute

parties. In case of appointing a mediator, if a dispute has a lot of factors causing damage to and impact on natural resources and environment, a panel of mediators is necessary to be established by allowing dispute parties to participate in the process of appointment. Mediation committee is recruited openly, at least 3 persons, and they should possess expertise in techniques and methods of mediation, laws and operational methods as well as the process of natural resource management in a sustainable manner. The roles and duties for the process of mediation are

1) Seeking a conclusion of problems and damage consequences incurred to mutually have a solution to cease damages to lives, health, properties, natural resources and environment

2) Seeking a conclusion of an impact from the damages that can be confirmed and proved until both dispute parties agree so as to implement remediation, substitution, compensation for damage in a fair manner to physical health, mental health, culture, tradition of the related societies and communities

3) Seeking models for management, restoration, remediation of damaged or affected natural resources and environment in a systematic manner, assessing and inspecting the quality and quantity of natural resources and environment to ensure they are the same or close to the former conditions before damages occur including enhancing participation in the protection of natural resources for sustainability in the future.

5.1.2.3 experts in environment and relevant interdisciplinary

In the process of environmental dispute mediation, with regard to fact finding and a conclusion of issues, mediators need to rely on advice, verification, inquiry and investigation of fact to gain acceptance from dispute parties without any disagreement based on principles and methods including advanced technologies through experts and professionals, as well as experienced persons. Environmental disputes more likely require experts in environment who can analyze any damage and impact incurred to an ecosystem and supportive systems for ecology and environment including other interdisciplinary fields such as environmental laws, public health, environmental economics, environmental engineering, landscape architecture, natural resource conservation and management, sociology, humanity, tourism art and culture, communication and public relations must perform their duties to provide suggestions,

verification, inquiry method, fact finding through principles and methods including advanced technology showing any damage and impact on ecosystem and commensalism in ecology and environment to enable mutual acceptance between dispute parties unanimously, technology and industry, public sector management, etc. Experts shall provide an offer and problem management to dispute parties for the benefits of their decision-making as a norm for the process of thinking and judging for making a claim, compensation, remediation in a systematic manner for the environmental dispute mediation system of the country.

5.1.2.4 Environmental data and technologies

Data are very important to environmental dispute mediation for decision-making in all processes so as to achieve acceptance. They are data and statistics of the existence of natural resources and environment in terms of detailed quantity and quality, both macro and micro levels. Currently, there are some restrictions for access to data related natural resources and environment stored dispersedly by each organization; without continuity; not up-to-date; without connectivity; could not be assessed and inspected changes in details; lack of enhancement and support of the country's natural resource storage and database including data and standards of calculation for economic assessment of natural resources and environment that are not organized in a systematic manner.

5.1.2.5 Lawyers or attorneys

The roles of lawyers and/or attorneys are important to the process of environmental dispute mediation for the restoration. Majorly, lawyers are persons who have to study details of disputes in advance and they acknowledge problem issues of each party as well as basic data necessary for alternative assessment. Practically, people more likely allow lawyers to primarily consider and make decision, giving rise to the process of mediation that negotiators can achieve an agreement more easily except in the case involving giant organizations, agencies and companies that the roles of lawyers and/or attorney have some restrictions because decision-making on implementing an agreement needs to be assigned and considered carefully again. Giving a chance to lawyers and/or attorneys to participate in seeking, inquiring, investigating fact and mutually seek solutions for generating and determining an agreement between dispute parties is advantageous to the process of

environmental dispute mediation for the restoration of natural resources and environment in Thailand.

5.2 Discussion

Based on the study, it has been found that guidelines of environmental dispute mediation for the restoration of natural resources in Thailand will be efficient to natural resource and environment management and dispute resolution in an appropriate manner through the following implementation:

1) Development of government policies, improvement of regulations and laws on dispute mediation to be consistent, connected to environment. Emphasis should be placed on mediation that covers the process of restoration, remediation, compensation, substitution, and conservation of damaged and affected natural resources and environment in a systematic manner. Network and database systems of natural resources and environment should be developed for easier accessibility with accurate and up-to-date data. The process of recruiting, developing, and training personnel to have expertise in problem analysis in terms of legal, ethical, cultural approaches and natural resource and environment management should be provided in a systematic manner, Development should be given to the payment system of remuneration for work. The appointment and duties of mediators and mediation committee, registration of experts and professionals in each field should be made explicit and appropriate. It is essential to establish a neutral organization to perform its duty to mutually resolve environmental disputes and mediate disputes for inspecting, assessing, and seeking solutions of dispute issues and carry out natural resource and environment management in a timely manner, reducing a chance of continuous damage and disputes in the future.

2) Environmental dispute mediation for the restoration of natural resources in Thailand shall achieve maximum efficiency when the process of mediation occurring after disputes are brought to the judicial system gives a negative effect on the management process of natural resources and environment. The reason is that disputes moved to the court system require a proceeding model that is not consistent with the guidelines of restoration and remediation of damage and impact incurred to natural

resources and environment that involve duration of the recovery of an ecosystem. The court proceedings need to reserve necessary witnesses and evidence and this may have an effect on continuous disputes after causes of impact incurred to environment are destroyed.

Though relevant government agencies can mediate disputes for suspending and resolving problems at a certain level, restrictions are seen in regulations and practical guidelines under the frames, roles, and duties that they are unable to manage and supervise problems in all aspects. What they can do is giving opinions to relevant agencies. Some agencies can carry out tasks continuously but some agencies fail to do. Finally, cases are moved to the court proceedings.

3) Environmental dispute resolution through mediation is a method most likely appropriate to and consistent with the restoration of natural resources and environment since it can build cooperation and agreement among public sector, private sector, all relevant persons according to ability of each party. It is a process of problem-solving that can be implemented periodically while it needs assessment, follow-up, inspection, outcome reporting in a systematic and continuous manner for sustainable management of natural resources and environment.

4) Guidelines of environmental dispute mediation for the restoration of natural resources in Thailand

To achieve efficient environmental dispute resolution in Thailand it has been found that it is necessary to have a neutral organization established for being a control center that provides advice and mediate environmental disputes at a regional level and central level (Central Co-ordination Organization), carries out coordination, gives advice, and receives claims for solving dispute problems after damages and impact incurred to environment. The role in being a coordinator, negotiator, mediator of disputes between both parties is supported by experts who can give advice and explain implementation guidelines for solving problems in different ways. Primary outcome assessment is informed before cases are brought to the judicial system. The role includes seeking problem-solving guidelines, compensation, substitution, restoration, and conservation of natural resources among consent of all parties in a systematic and speedy manner. For the benefit of flexibility, it is necessary to have a management work unit which can be divided into 2 levels as regional and central

levels in which there is the executive committee of Central Co-ordination Organization available as

(1) Regional level – Management is carried out at a provincial level responsible for mediating environmental disputes, inquiring, investigating, listening to fact from dispute parties based on causes of incidents having characteristics of damages and impact incurred to people's health and hygiene, natural resources and environment, art, culture and way of life in a certain province. The appointment of the executive committee of Central Co-ordination Organization for giving advice and mediating environmental disputes at regional level shall be proposed by a provincial office of natural resources and environment to a provincial governor who is an appointer. The committee will have a 4-year term, 7 persons comprising 3 lawyers, 1 doctor, 1 expert in environment selected from a provincial office of natural resources and environment, and 2 experts nominated by a dispute party. The judgment of the committee is only advice and an appropriate solution for dispute parties to take into consideration. During a case is brought to the process, its prescription period will be temporarily suspended. If dispute parties accept and agree with problem-solving guidelines, a memorandum of agreement shall be made within 30 days and shall come into force with both parties. If either party does not agree with the proposed guidelines, the process of dispute resolution shall be immediately ceased.

(2) Central level is responsible for mediating environmental dispute, inquiring fact and listening to fact from dispute parties based on causes of incidents having severe characteristics of damages and impact incurred to a large number of people or in the event of disputes having a great impact on many areas starting from 2 provinces onwards. The committee shall be appointed by Minister of Ministry of Natural Resources and Environment through Department of Environmental Quality Promotion. The committed will have a 4-year term, 9 persons comprising no fewer than 3 lawyers, no fewer than 1 doctor, 3 experts selected by the Ministry, and 1 expert nominated by each party. The judgment of the committee is only advice and an appropriate solution for dispute parties to take into consideration. During a case is brought to the process, its prescription period will be temporarily suspended. If dispute parties accept and agree with problem-solving guidelines, a memorandum of agreement shall be made and come into force with both parties. If either party does

not agree with the proposed guidelines, the process of dispute resolution shall be immediately ceased.

Power, duties, and roles of the committee of Central Co-ordination Organization consist of providing advice and environment dispute mediation is management, preparation of policies to facilitate service providing as a center for receiving claims from people and those affected by damages incurred to environment, coordinating with relevant agencies, assessing and inspecting fact, providing legal advice and procedures, mediating environmental disputes, inquiring fact and listening to fact from dispute parties based on causes of incidents having characteristics of damages and impact incurred to environment, preparing reports, and collecting data about dispute mediation and suggestions about improvement of the process of environmental dispute resolution, gathering environmental database in all aspects including seeking a conclusion of problems and impact incurred to mutually seek resolution of damages incurred to lives health, properties, natural resources and environment, seeking a conclusion of any impact from damages that can be confirmed, proved and accepted by dispute parties and other people for implementing remediation, substitution, compensation in a fair manner for physical health, mental health, psychological impact, culture, custom in relevant societies and communities, seeking models of management, restoration, remediation, conservation of damaged or affected natural resources and environment in a systematic manner, assessing and inspecting the quality and quantity of natural resources to ensure they are the same or close to the existing conditions before damages occur as well as promoting participation in protecting natural resources for sustainability in the future. The roles and duties of the committee of Central Co-ordination Organization for providing advice and mediating environmental disputes are summarized and shown in Figure 5.2.

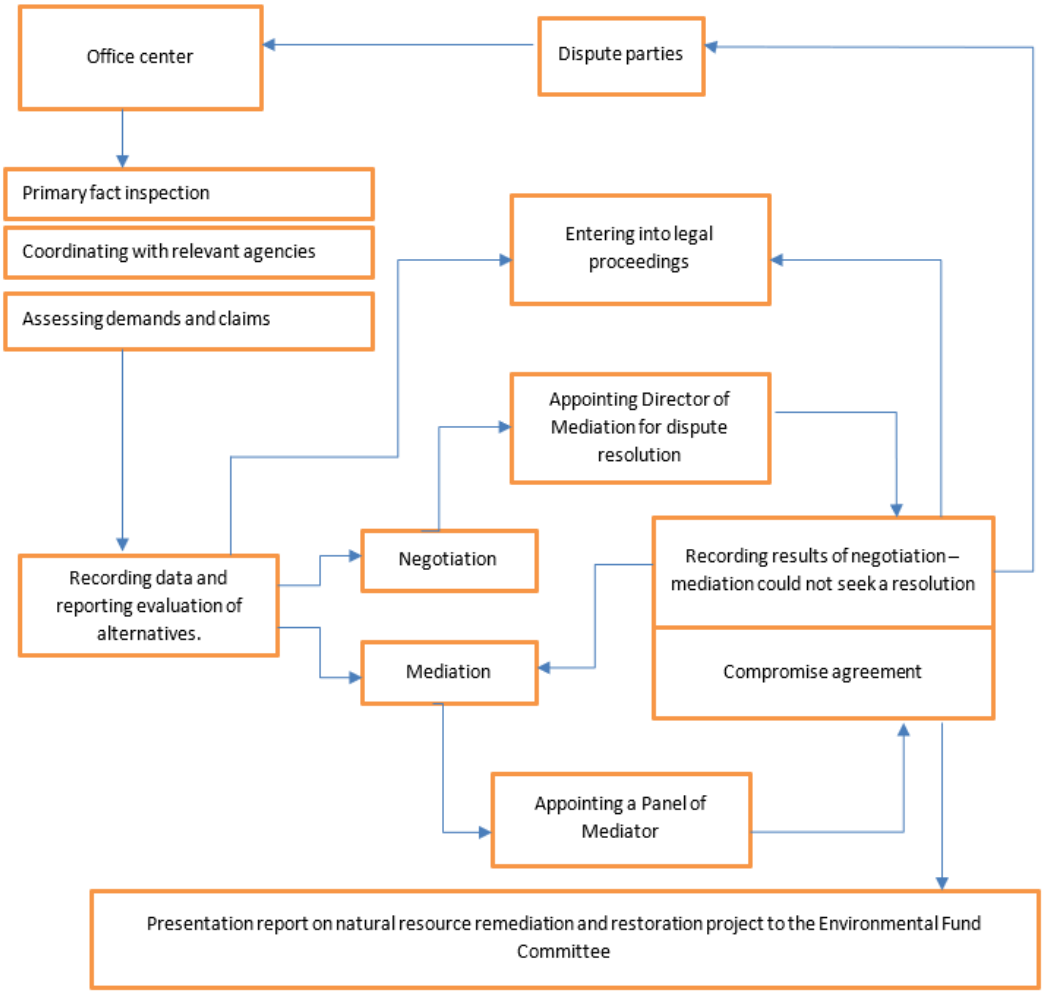


Figure 5.2 Roles and duties of Central Co-ordination Organization for providing advice and mediating environmental disputes.

Data and guidelines of environmental dispute mediation for the restoration of natural resources and environment in Thailand are summarized as follow:

Environmental dispute mediation for the restoration of natural resources can be carried out by 2 processes and 3 procedures as summarized in Figure 5.3 which is the process identified as RY-TW model, a management model of environmental dispute mediation developed on the basis of allowing a chance to dispute parties for having interaction and mutually seeking a conclusion with reconciliation, being able to mutually and appropriately handle problems, demands or claims, acceptable by both parties in a fair manner. A chance is opened for natural resources to be considered in a systematic manner through proper management models by experts in

environment. Therefore, the process of mediation proposed by the researcher shall respond to environmental dispute resolution and implementation of natural resource management in a correct manner at the same time, contributing to sustainable management of natural resources rather than the traditional mediation focusing on compensation and civil damages incurred to properties and impact on relevant people. Details are shown below:

5.2.1 Process 1: Negotiation

Negotiation is the first process carried out by the committee of Central Co-ordination Organization that provides advice and mediates environmental disputes so as to allow dispute parties to have a chance to enter into the process of fact finding and problem-solving (Resolve State) and seek an agreement with the consent of both parties. Emphasis is placed on 3 primary procedures as

1) Need is a procedure that a director negotiates to bring dispute parties to agree with an opinion consistently in the same direction pursuant to the problem incurred. The director makes negotiation and coordination, collect data from each party through inquiring points of the problem and impact they have, and assess based on fact. The data about demanding and impact is informed to the other party to acknowledge and inspect fact and preparedness including conditions and restrictions in response to demands and restrictions of each party. When data from both parties are obtained, data are prepared to open a chance to the dispute parties to have negotiation to seek a solution that can be mutually accepted. The purpose of this process is encouraging dispute parties to see things the same way and end up with dispute resolution accepted by both parties.

2) Want is the process of seeking problem-solving guidelines in response to requirements for compensation, remediation, and substitution of damage (Resolve State) and impact incurred in a rational manner under consent and acceptance of both parties, directly and indirectly. Emphasis is placed on satisfaction of both parties.

3) Wish is the process that a director who negotiates has a role to encourage dispute parties to participate in responsibility for maintenance, conservation, and restoration of natural resources and environment including the

process of preventing deterioration and continuous impact of damages. Experts are required to assess, give opinions and advice about guidelines for conservation and restoration of natural resources so that dispute parties and relevant agencies have participation in operation and work planning in a systematic manner. In the past though calling for justice was done or environmental cases were brought to court proceedings, any process resulting in remediation and restoration of natural resources did not occur systematically. Thus, this process will enable dispute parties have participation in conservation of natural resources.

5.2.2 Process 2: Mediation

The process of dispute mediation seems to be more formal and complex than negotiation. When negotiation outcomes are still full of controversy or tend to take a long time for resolution, mediation can be entered by willingness of both dispute parties or by a court's order. The purpose of mediation is not different from negotiation, namely to resolve disputes. Difference can be seen in showing explicit information to be accepted by both dispute parties that can lead to acceptance, agreement, and participation in the process of problem-solving with willingness. Emphasis is placed on 3 procedures as follow:

1) Need is a procedure for fact finding of dispute problems (Conflict Situation). Mediation committee plays its role to find fact such as inspection by judge, viewing the scene, conducting a survey, conducting an interview. Fact shall be concluded and proved in response to points of damage and impact incurred to people, communities, societies, plants, animals, and properties including informing causes and effect to be accepted by dispute parties, leading to dispute resolution as they both agree with problem and impact incurred. Both parties shall mutually seek problem-solving guidelines accordingly.

2) Want is a procedure in seeking guidelines in response to problem-solving and demands of dispute parties (Resolve State). Both parties participate in seeking problem-solving guidelines until they all agree. Importance is given to the significant process, namely compensation for damages caused by certain disputes (Compensate). Compensation must be determined damage assessment and compensation requires appropriateness and fairness which can cover direct and

indirect damages incurred to people, animals, plants, and properties. Remediation (Remedial) is a mechanism used to determine a frame and practical guideline for remediating affected people. Emphasis is placed on loss of opportunity and benefits in utilizing damaged properties, especially mental health remediation, a point that has been overlooked since outcomes presented in a tangible manner take such a long time or it is necessary to use a different process of verification. Replacement is a process showing consequences from problem-solving by making something to replace what are damaged and alleviating impact. Good understanding, cooperation, and coordination from all sectors are required for prevention, restoration, remediation of damaged natural resources and environment in a correct sequence.

3) Wish is a procedure of being the representative of natural resources in protecting the rights of some victims or affected people. The process views the importance of restoration, preservation, and protection natural resources for maintaining their balance. In some cases, damages incurred to natural resources have an effect on various ecosystems and in case of important ecosystems in a certain area, it takes such a long time for verification of damages. Environmental disputes are continuous issues having an effect on people, societies, custom, and community way of life. Therefore, experts in environment and specialists in various fields are required to mutually assess appropriate methods. Emphasis is placed on encouraging dispute parties to take major responsibility with the cooperation of relevant societies and participation of government agencies that perform their duties under the laws. Sometimes, law provisions are required for implementation. The determination of scope and power of National Environmental Fund is necessary for being able to approve budgets for each project through the committee of Central Co-ordination Organization providing advice and mediating environmental disputes with measures in claiming compensation for damages incurred to natural resources and environment from damage makers and follow-up of the implementation.

With regard to negotiation and mediation of environmental dispute, the process can be summarized in 2 characteristics. During entering into the process, the prescription period of a case will be temporarily suspended. If dispute parties accept and agree with problem-solving guidelines, a memorandum of agreement shall be

made and come into force. If either party does not accept or agree with the proposed guidelines, the process of dispute resolution shall be immediately ceased.

First characteristic: Operational performance goes in the direction that can be resolved. The obtained fact is presented to a panel of mediators or the committee of Central Co-ordination Organization. A conclusion is made in a written form and signed. Dispute parties are required to sign their names on the document. Each party is given a copy of the document. Expenses incurred in the process are implemented from to-be-established Natural Resource Protection Fund, especially expenses incurred by the process of negotiation and mediation while operating expenses from agreements including follow-up and assessment of projects are pursuant to what dispute parties determine or the guidelines that the mediator negotiated or the committee of Central Co-ordination Organization proposed with approval of dispute parties.

Second characteristic: Operational performance cannot find resolution. The obtained fact is presented to a panel of mediators or the committee of Central Co-ordination Organization. A conclusion is made in a written form and signed. Dispute parties are required to sign their names on the document and confirmed they do not accept the operational performance. Each party is given a copy of the document. Expenses incurred in the process are implemented from Environmental Fund.

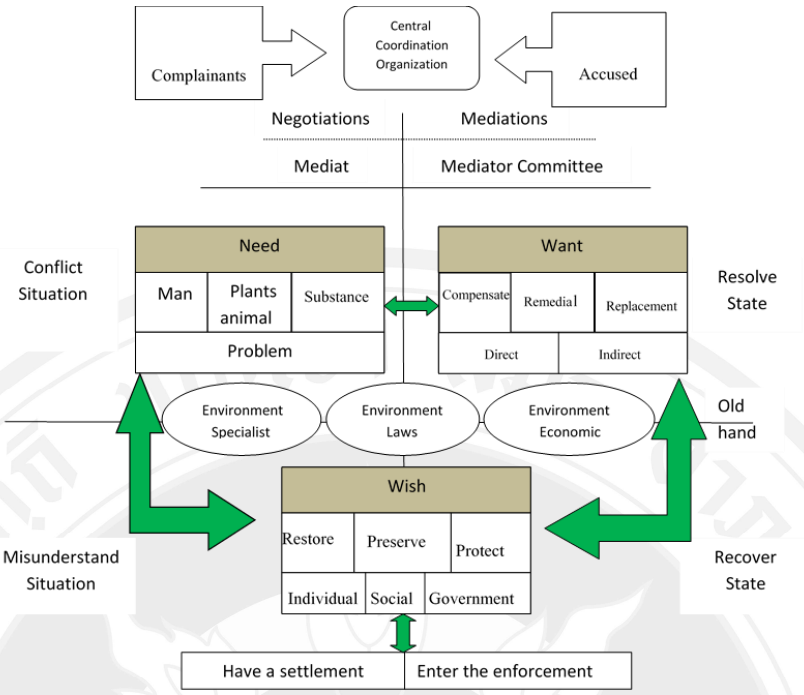


Figure 5.3 RY-TW Model

5.3 Recommendations

The process of environmental dispute mediation in Thailand has been adhered to the process of civil dispute mediation. Though mediation guidelines have been improved to be consistent with environmental dispute solution increasingly, the major elements of solving such disputes are affected or damaged natural resources and environment that have not been entered into the calling for justice process in a systematic manner. Consequently, the process of mediation brought to serve the benefits of dispute resolution needs to add a process in consideration of damages and impact incurred to natural resources and environment in the mediation process. This study developed a draft of guidelines of environmental dispute mediation for the restoration of natural resources and environment in Thailand. It is necessary to establish a new neutral organization to coordinate, assess, and inspect fact regarding primary damages and impact incurred to environment, give recommendation and legal advice, and bring a case to the process of environmental dispute mediation. Personnel should be developed to perform their duties as mediators in terms of negotiation and mediation strategies and a body of knowledge about environment. Registration of experts in environment from different fields should be enhanced so that they shall

play an important role in fact finding and giving correct advice for environmental problem management in a systematic manner. Suggestions for future research are as follow:

1) Giving chances to people to access correct information and advice for entering into the process of environmental dispute resolution through a neutral organization being a control center for giving advice in all aspects. The neutral organization must actually work independently, plays its role and has power to call or invite dispute parties to acknowledge an offer for entering into the mediation process.

2) Mediation is a process that dispute parties can actually access fact finding and guidelines of problem management, reducing a chance of withdrawal or cessation of negotiation and mediation.

3) Data are collected to use as reference for developing a conceptual framework for calculation and determination of value standards of natural resources and environment, compensation, remediation for environmental disputes in the future.

4) Experts and professionals in environment should be registered including relevant interdisciplinary. Guidelines for remuneration payment should be settled in a systematic manner.

5) Development of advanced technologies, research, follow-up, assessment, inspection and data record of environment in all aspects should be supported continuously to be used for consideration of changes in quantity and quality of natural resources and environment in the macro and micro context to be up-to-date at all time.

6) Guidelines for assessing damages, compensation, remediation, calculating compensation in the process of damage claim and other expenses necessary for the restoration and conservation of natural resources and environment should be determined so as to be used as a standard of the country.

7) Establishing a specialized environmental court with the power to supervise and manage all processes in the system. All roles under environmental laws of the country are gathered and enforced efficiently for the benefits of natural resource and environmental management with sustainability in the future to reduce legal restrictions.

8) The role of National Environmental Fund should be improved to be able to approve budgets of each project for implementing activities through the committee of

Central Co-ordination Organization. Measures for claiming from damage makers compensation for damages incurred to natural resources and environment should be provided in a fair manner including follow-up of implementation and the addition of work units for restoration of natural resources and environment.

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