strengthening the rule of law and good governance is the main impetus driving the International Development Law Organization in assisting developing, transitional and post conflict nations on the path towards sustainable development and poverty alleviation. Environmental degradation affects most directly and brutally the poorest communities that rely directly on their natural environment for their very subsistence. Environmental sustainability is critical to poverty alleviation, for it underpins long term sustainable economic and social development. It necessitates the effective enforcement of a sound environmental law and policy framework that is only achievable through a paradigm of good governance.

It is in this context that this issue of the DLU proposes to sketch the major challenges to environmental law and enforcement in Indonesia, and suggests possible strategies to address them. This issue summarizes the lessons learned from the 12-week ‘Environmental Law and Enforcement’ workshop implemented by IDLO at its Asia Pacific Training Centre, Sydney, Australia, for the first six-week component, in September-October 2005. A select group of 18 Indonesian judges, prosecutors, environmental law enforcement officers and environmental non-government organizations’ lawyers benefited from the training which focused primarily on criminal and civil aspects of environmental law and good governance principles as they relate to environmental law enforcement. The training workshop was part of phase III of the wider “Indonesia Australia Specialised Training Project” (IASTP III), supported by AusAID and the Government of Indonesia, and managed by Hassall and Associates International. The implementation was ensured by a consortium joining IDLO, the University of South Australia and SAGRIC International. The second component of the course was delivered by the Centre for Environmental Management and Compliance, University of South Australia over October-December 2005.
Indonesia is a rich and diversified archipelagic nation, with over 13500 islands -6000 of them inhabited- and a population of 223.8 million (2004) belonging to over 300 ethnic and tribal groups. Recognized as a major world centre for biodiversity, Indonesia has a wide range of natural habitats rich in fauna and flora. Its forests harbour the world’s greatest diversity of palms as well as a great number of commercially valuable tree species. The extensive reef systems are among the world’s richest in a variety of corals, fish and other reef organisms. Indonesia’s biodiversity is the country’s greatest natural resource, and is ecologically and economically important. However, it is also extremely vulnerable.

Development and Environment

The rapid economic growth that has characterized the policy of Indonesia’s New Order Government since 1966 has intensified environmental pressures threatening the sustainability of whole sectors of the economy such as forestry, fisheries and tourism. These sectors depend on the diversity of the natural ecosystems and the environmental functions they protect. The Indonesian population and the region suffer from the effects of environmental degradation resulting from poor environmental management practices and inadequate governance, which threatens the subsistence of the most vulnerable groups.

"Natural forest cover in Indonesia has decreased from 80% of the land area in the 1960s to 57% today. Indonesia now has over 100 million ha of natural forest, the third largest area of tropical forest in the world, but this is being destroyed at a rate of 1 million ha a year (or 1% a year)."
Environmental Issues Affecting Indonesia

Indonesia is confronted with a long list of environmental issues affecting land, air, marine and coastal areas at local, regional and national levels. They range from air and water pollution caused by industrial and domestic sources, illegal clearing and deforestation (large scale burning for oil palm plantations and small-scale slash and burn for itinerant farming, as well as illegal logging and trade in timber). In fact, Indonesia has one of the world's worst deforestation rates, with an estimated area of the size of Switzerland being lost every year. Indonesia also suffers from decreasing biodiversity, land and natural resources mismanagement, as well as from the local effects of the global phenomenon of climate change.

Illegal poaching, trade in protected species, and illegal and unsustainable fishing threaten Indonesia's biodiversity. Indonesia is home to two critically endangered species of rhinoceros, the Javan rhinoceros (Rhinoceros javanicus) of which only about 50 remain in the Ujung Kulon National Park in Banten, and the Sumatran rhinoceros (Rhinoceros sumatraensis). Poachers have hunted down the rhinoceros for its horns that are used in traditional Asian medicine.

Along with those issues, the large-scale forest fires have recently been among the most serious and prominent on the international scene. Their devastating effects in Indonesia, which include air pollution, loss of biodiversity and landslides, are compounded by the transboundary air pollution generated in the region. At the global level, these effects further contribute to the already critical issue of climate change (emission of large quantities of greenhouse gases and loss of carbon sink).
Indonesia has been actively involved in the development of an international environmental law framework. As a member of the World Commission on Environment and Development (WCED) and a participant to the United Nations Environment Program (UNEP), Indonesia has ratified most of the major international environmental treaties. Once ratified, the treaties become theoretically part of the Indonesian domestic law (monist theory). However, in practice, judicial decisions rarely refer to international principles either through lack of knowledge on the part of the lawyers and the judges involved in these particular matters or the failure to adopt detailed provisions of the international agreement into relevant laws (or both).

Only some international environmental law principles are reflected in Indonesia’s domestic legislation. The Environmental Management Act, No. 23 of 1997 (EMA) appears to support the principles of Environmentally Sustainable Development (ESD), and by implication its core elements: the precautionary principle, intergenerational equity and the polluter-pays principle. Clauses b., c. and d. of the EMA’s Preamble refer to ESD. Article 3 of Chapter II (“Basis, Objectives and Target” of the Act) states that “Environmental Management which is performed with ... a principle of sustainability ... aims to create environmentally sustainable development.”

Furthermore, the concepts of sustainable development find expression in the preamble to the Law on Forestry (Law No. 41 of 1999) which refers to sustainable forestry management, and in the Government Regulation on Environmental Impact Assessment (No. 27 of 1999).
Therefore, it is arguable that the Indonesian administration and courts should be bound by the core elements of Environmentally Sustainable Development, as appears to have occurred in relation to the precautionary principle in the Mandalawangi Landslide Case.

Regional Environmental Legal Framework

Indonesia is one of the 10 member countries of the Association of the Southeast Asian Nations (ASEAN), created in 1967 with its Secretariat in Jakarta.

The ASEAN founding mandate to promote economic development and peace in the region did not mention the environment, but evolved to include the protection of the environment and the promotion of sustainable development.

The ASEAN Agreement on the Conservation of Nature and Natural Resources (ACNNR) was reached in 1985. At the time, it was considered a most progressive instrument, despite its weak wording and lack of effective implementation mechanisms. It has not to date come into force, failing to reach the required minimum number of ratifications.

However, the momentum created by this Agreement has resulted in the development of regional environmental cooperation, with the creation of Working Groups on the Environment (e.g. ASEAN Working Group on Multilateral Environmental Agreements, ASEAN working group on Nature Conservation and Biodiversity) and the adoption of declaration and action plans, such as the Environmental Education Action Plan (2000-2005).

The unprecedented scale of the Indonesian forest fires of 1997 and the air pollution they generated in the region inspired the adoption of the Regional Haze Regional Action Plan in the same year. In 2002, it was followed by the ASEAN Agreement on Transboundary Haze Pollution (THP). The THP came into force in 2003, but its purpose is largely defeated by Indonesia’s failure to ratify it.

The environment reached the top of ASEAN’s agenda in 2003, with the launch of the ASEAN Environment Year. The theme was “Together Towards Sustainable Development,” with a pledge to “ensure sustainable development and poverty alleviation, which includes the implementation and expansion of afforestation and reforestation programmes, the careful management of natural resources and the ratification of the Kyoto Protocol.”

The development of a regional environmental law framework is encouraging. But for a variety of reasons, including a lack of political will, it has failed so far to bring practical solutions to Indonesia’s current environmental problems.

Domestic Environmental Legal Framework

With the 1972 UN Stockholm Conference on the Environment came the emergence of environmental
issues on the international scene. In Indonesia, it prompted the establishment of the Office of the State Minister for the Environment and the enactment of the \textit{Environmental Management Act} (EMA) No. 4 of 1982 replaced in 1997 by the EMA No. 23 of 1997. This Act and its implementing regulations are set in the broader context of the state policies passed every 5 years by the People’s Consultative Assembly (the Garis-garis Belu-lan Negara (GBHN) and the REPELITA (5 year development Plan), which have since the early seventies progressively entrenched the concepts of sustainable development and natural resources management. The EMA must also be read in the context of other natural resources management acts, such as the \textit{Forestry Act No. 41 of 1999}, and the \textit{Fisheries Act No. 31 of 2004}, and associated regulations and decrees.

From 1990, the non-ministerial Environmental Impact Management Agency (BAPEDAL) assumed the bulk of the responsibility for the implementation of environmental laws, allowing the Ministry of the Environment to address policy formulation and coordination. In 2002, as part of the decentralization process, the functions of the BAPEDAL were fused into the Office of the State Ministry for the Environment. Environmental Non-Government Organizations strongly opposed this reform arguing that “the state ministry deals only with policy not practicalities and therefore is not equipped to deal with Bapedal’s functions as the supervisor and law-enforcement body,” and that the reform would result in the loss of the power to issue permits, to make legally-binding regulations and opinions, to control and carry out investigations on environmental offences at a national level. Responsibility for environmental management was transferred to the local (provincial and district) governments’ agencies (BAPEDALDA).

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Despite the increased recognition of the importance of resolving the many urgent environmental issues and the apparent political will to do so, cultural, economic, political, legal and geographical factors combined with a lack of resources and technical skills hinder Indonesia’s ability to address these issues effectively. The future strategy to promote effective enforcement of environmental law in Indonesia may involve strengthening its institutional capacity to manage and enforce environmental law, improving the legal and regulatory environmental framework and increasing public awareness and participation.

**Institutional Capacity Building**

The intricacy of Indonesia’s legal and regulatory framework, the highly complex prosecution and civil enforcement processes and the lack of institutional capacity in environmental law jointly contribute to poor environmental law enforcement.

**Judicial Training**

Indonesia has no specialized environmental law courts. Environmental cases are heard by the general and administrative courts as well as the Supreme Court on appeal.

A relatively small number of environmental cases reach the courts. When they do, the plaintiffs are often faced with powerful and resourceful business interests. Through the IASTP Environmental Law and Enforcement training, both in Indonesia and in Australia, approximately 1000 Indonesian judges have been equipped with enhanced knowledge of the complex environmental legislative and regulatory framework, relevant legal concepts such as strict liability, standing and class action, and environmental law principles such as environmental sustainable development (ESD), the precautionary principle, the polluter pays principle, and intergenerational equity. This on-going training of the judges in environmental law is essential to ensure a fair hearing of prosecuted cases, to promote enforcement, deter environmental violations and encourage compliance.
Prosecution of Environmental Law Violations

No matter how extensive and effective the training of Indonesian judges in environmental law may be, it is of little value if appropriate cases do not reach the courts. The relatively small number of cases of environmental law violations being prosecuted or otherwise pursued through the courts may be caused by a variety of factors, including the lack of resources and corruption. Other causes relate to geographic isolation, particularly in the smaller islands where legal mechanisms are difficult to implement, and where there is a lack of available technical and legal expertise to gather circumstantial and expert evidence.

Technical skills in investigation and prosecution are essential to a successful use of the Indonesian legal system to address the more severe breaches of environmental legislation.

Evidence gathered must be technically and forensically valid, which requires the effective use of environmental experts and the gathering of evidence based on generally accepted international protocols. This becomes particularly critical with respect to environmental breaches where complex scientific dispute may arise regarding matters such as causation and the environmental effects of the alleged activities, particularly in the longer term.

The use of scientific tools, such as satellite imagery may be developed and promoted as a powerful and effective tool for the investigation and the prosecution of illegal clearing and forest fires.

Government officials (e.g., from the environmental agencies or the Ministries of Forestry and Fisheries) under Indonesian environmental legislation do not have the power to investigate or prosecute environmental violations. These cases must be investigated by the police before being presented to the courts by a prosecutor. It is therefore critical to train both police and prosecutors in environmental law to improve its enforcement. As indicated above, the enhancement of investigation skills is important and would be assisted by the development of national environmental investigation guidelines or standards. Environmental prosecution guidelines would also be valuable in the prosecution of environmental cases.
Indonesia is divided into 27 provinces, which are subdivided into regions and further divided into districts. The multiplicity of jurisdiction over environmental matters results in uncertainty and constitutes a major hurdle for the effective enforcement of environmental law.

Jurisdictional issues appear at two levels: horizontally between ministries/government departments and agencies, and vertically between national, provincial, regional and local authorities.

The respective jurisdiction of the Office of the State Minister/BAPEDAL and that of other sectoral ministries (Ministry of Forestry, Ministry of Agriculture and Ministry of Industries) are not clearly divided and overlap. The same issues appear at the provincial-local level.

The implementation of the decentralization and regional autonomy policy has given local government bodies a major role in the protection of Indonesia's environment and the management of its natural resources. The division of responsibilities between national, provincial, regional and local agencies is also subject to overlapping legislatures creating more uncertainty.

This situation is conducive to apathy and poor enforcement. When environmental damage occurs, lack of certainty about which agencies have competence can lead to none of them taking action to address the environmental violation. For instance, the 1997 forest fire crisis revealed the uncertainty as to whether the Forestry or Industry government agency or local authority would be responsible for the pollution generated by the fires.

Good Governance and Environmental Law Enforcement

Good governance, defined as the “commonly shared goal on accountability, transparency, participation, rule of law, predictability, responsiveness, consensus, equity, effectiveness and efficiency, and strategic vision” is a prerequisite to strengthening enforcement of environmental law.

Corruption is recognized and has been documented as a significant issue in Indonesia inhibiting
effective enforcement of environmental law. Powerful business interests have the resources to 'persuade' the police, government officials and judges to overlook environmental law violations, to deter witnesses from testifying and to influence the outcome of court cases. In the last few years, the Government of Indonesia has displayed its political will to promote good governance and combat corruption with the adoption of the Law 28 of 1999 on “Clean government and freeing Indonesia from corruption, collusion and nepotism” and the establishment of a Corruption Eradication Commission (KPK).

The strong correlation between good governance and good environmental results is highlighted in the conclusions of the Yale and Columbia Universities’ Pilot 2006 Environmental Performance Index presented at the Davos World Economic Forum in 2006. It concludes that “Good environmental results correlate significantly with good governance. Policy emphasis at the national and global levels on establishing the rule of law, eliminating corruption, promoting a robust policy dialogue, and setting up effective regulatory institutions appears fully justified.”

Public Participation is one of the core concepts of good governance critical to the effective enforcement of environmental law. Indonesian environmental legislation formally acknowledges public participation: Chapter III “Community rights, obligations and role,” Article 5 of the EMA provides that “Every person has the right to environmental information which is related to environmental management roles” (Art. 5 (2)) and that “Every person has the right to play a role in the scheme of environmental management in accordance with applicable laws and regulations” (Art. 5(3)). The Government Regulation No. 27 of 1999 on Environmental Impact Assessment and the Decree of the Head of Environmental Impact Management Agency (Bapedal) No. 8 of 2000 further provide for access to information and public participation. However, in practice, wide gaps are revealed in the opportunities for public participation. In relation to environmental impact assessment, the timeframe allocated for submissions restricts public participation. “With a mere 45 days allocated for the development of the ANDAL and related documents, citizens and environmental groups have little time to give proper regard to the impact of the project. The narrow timeframe also restricts their ability to make submissions during the EIA assessment period.”

Effective public participation is hindered by ineffective procedures to guarantee public access to information. While access to information is a right entrenched in the second amendment of the Indonesian Constitution (Undang-Undang Dasar 1945), public access to information proves often difficult due to the complex bureaucracy involved in obtaining information, the absence of clearly defined mechanisms to obtain information, the lack of explicit standards for exemptions to disclosure requirements, the lack of human resources available to support information management and service to the public, and the lack of awareness of the public on their right of access to information.

Public Awareness of Environmental Issues and of Legal Enforcement Mechanisms is essential to the prevention of damage to the environment and to the prosecution of environmental law violations. It can discourage ‘traditional’ practices detrimental to the environment—e.g. fishing with explosives destroying the reef and fish habitat or ‘slash and burn’ itinerant farming practices—although the social and economic dimensions of such unsustainable practices should not be dismissed. Raising the awareness of the public on their right to a clean and healthy environment and on their legal standing (including in the context of class actions) may contribute significantly to the reduction of environmental degradation in Indonesia. It may also lead to realistic consideration of economic alternatives for those whose living increasingly depends on exploiting the country’s natural resources, often by damaging methods.

The development of Environmental Non-Government Organisations (ENGOs) has played a leading role in raising awareness of environmental issues in Indonesia, and in the enforcement of environmental law. ENGOs have initiated most of the landmark environmental cases. The EMA (Art. 38) grants ENGOs standing to sue in the name of the environment. ENGOs also play an important role in raising the profile of environmental issues, conducting environmental educational and research activities, as well as lobbying the government and the international community.
This DLU has sought to give an overview of the main challenges to effective enforcement of environmental law in Indonesia and the role that strengthening institutional capacity, improving the legal and regulatory framework and promoting good governance can play in overcoming these challenges.

IASTP III Environmental Law and Enforcement – in Australia 2005 graduates are now, along with the project’s alumni, better equipped to contribute to address Indonesia’s environmental issues, commencing with the implementation of the Action Plans they designed with the support of their mentors during the course.

However, enhancement of technical skills contributes only partially to resolving the conflict between Indonesia's need for economic development in Indonesia and the need to protect the country’s natural resource base effectively.

The demands on Indonesian governments to provide for the needs of over 200 million people in a developing economy are enormous and there is an inevitable temptation to ignore longer-term consequences in order to meet more immediate needs.

It is arguable that a meaningful commitment by the national Indonesian government to the principles of ecologically sustainable development could start to address this problematic dilemma. However, such a re-direction requires political will by the country's national and provincial governments and the support of the international community. In the latter case, developed economies must recognize that it is very much the consumption patterns of western societies that are contributing to the loss of some of the most precious resources of developing countries – such as their forests. Fundamentally, in developing as in developed countries, progress on the challenging road to improved environmental stringency and environmental performance, depends on laying the foundations of sustainable development, good governance, the rule of law and compliance.


Mandalawangi Landslide Class Action Case (Civil Litigation). No.49/PDT.G/2003/PN.District Court Bandung, 4 September, 2003, quoted in David Cole Ibid Footnote 5


IASTP III Generic module – training guide p 15 – AusAID & HAI

Indonesia is ranked 134 out of the 158 countries on the Transparency International 2005 Corruption Perception Index (CPI), with a score of 2.2.

Ibid Note 2- Full Report at pg. 46- See also pg. 27.


Article 28F of the Indonesian Constitution states that "Everybody has the right to communicate and the right to information to develop his/her personal and social environment, and has the right to seek, receive, possess, keep, develop, and give the information by any means."


In particular, WALHI and the Indonesian Centre for Environmental Law (ICEL).

“Wealth and a country's level of economic development emerge as significant determinants of environmental outcomes. But policy choices also affect performance (...). In this regard, good governance appears highly correlated with environmental success” Source: *The Pilot 2006 Environmental Index, Ibid note 1.*
### Upcoming Activities

#### Rome-Based
- **Seminar on “Legal Framework of Water Resource Management”** *(in English)* - Rome, Italy
  - September 11-22
- **Public International Trade Law Course** *(in English)* - Sydney, Australia
  - November 6-24
- **Public International Trade Law Course** *(in Arabic)* - Cairo, Egypt
  - November 20-December 8
- **Development Lawyers Course** *(French version)* - Rome, Italy
  - October 2 - December 8

#### In-Country
- **Training workshop on “Intellectual Property”** *(in English)* - Beijing, China
  - August 28-September 1
- **Microfinance: Building Inclusive Financial Sectors & Supportive Legal and Regulatory Frameworks in the Asia Pacific Region** *(in English)*
  - Sydney, Australia - September 11-23
  - Training workshop on “Civil Procedures” *(in French)* - Nouakchott, Mauritania - September 11-15
  - Training workshop on “Criminal Law” *(in French)* - Nouakchott, Mauritania - September 18-22

#### Distance Learning
- **Seminars:**
  - “Regulatory Framework” - September 12-15 - Connecting Tanzania, Uganda and Kenya
  - “Performance Contract” - October 2-5
- **Policy Dialogues:**
  - “Regulatory Framework for Countering Terrorism in Kenya” - October 17
  - “Countering Terrorism in Nepal” - October 6
  - “Countering Terrorism in Sudan” - November 7
  - “Countering Terrorism in Bangladesh” - December 5

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