



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

ENVIRONMENTAL LAW IN INDONESIA

Mas Achmad Santosa, Founder, Indonesian Center for Environmental Law (ICEL); and Deputy Head, President's Delivery Unit for Development Monitoring and Oversight, Indonesia, **Josi Khatarina**, senior legal staff of Indonesia REDD+ Agency, and **Aldilla Stephanie Suwana**, legal staff of Indonesia REDD+ Agency, Indonesia

OVERVIEW OF KEY SCHOLARSHIPS

Indonesian Environmental Law: History and Context

1. Asshiddiqie, J., *Green Constitution: Nuansa Hijau Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta, Rajawali Pers, 2010.
2. Resosudarmo, B.P., (eds.). *The Politics and Economics of Indonesia's Natural Resources*, Institute of Southeast Asian Studies, 2005.
3. Arnscheidt, J., *'Debating' Nature Conservation: Policy, Law and Practice in Indonesia: A discourse analysis of history and present*, The Netherlands, Leiden University Press, 2009.
4. Hardjasoemantri, K., *Hukum Tata Lingkungan*, Yogyakarta, Gadjah Mada University Press, 1994.
5. Syarif, L.M., "Current Development of Indonesian Environmental Law", *IUCN Academy of Environmental Law e-Journal Issue*, 2010, (1), pp 1-18.
6. Santosa, M. A., J. Khatarina and R. Assegaf. "Climate Change Liability in Indonesia", *Climate Change Liability: Transnational Law and Practice*, Cambridge University Press, 2011, pp 178-205.

Indonesian Environmental Law: Lessons Learned

7. Faure, M., and N. Niessen, (eds.) *Environmental Law in Development: Lessons from the Indonesian Experience*, Edward Elgar Publishing, 2006.
8. Faure, M., and A. Wibisana, (eds.) *Regulating Disasters, Climate Change and Environmental Law: Lessons from the Indonesian Experience*, Edward Elgar Publishing, 2013.
9. Nicholson, D., *Environmental Dispute Resolution in Indonesia*, Koninklyk Instituut Voor Taal Land, 2010.

10. Santosa, M.A., "Class Actions in Indonesia", *The Globalization of Class Actions*. United States of America, the Annals of the American Academy of Political and Social Science, 2009, pp 310-317.

Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Indonesia

11. Indrarto, G. B. *et al.*, *The context of REDD+ in Indonesia: Drivers, agents and institutions*. Bogor, CIFOR and ICCEL, 2013.
12. Santosa, M. A., J. Khatarina and A. S. Suwana, "The Progress on Governing REDD+ in Indonesia," *International Journal of Rural Law and Policy: REDD+ and legal regime of mangroves, peatlands and other wetlands ASEAN and the World*, 2013 Special Edition.

Background:

Indonesia has been confronted with a long list of environmental issues affecting forest, peat lands, soil, air, marine, coastal and sea areas. Some of the most challenging issues are excessive deforestation and forest degradation, loss of biodiversity, air and soil pollution, and forest fire. This situation is a result of many factors, including the political situation and the economic policies regarding the natural resources of the country.ⁱ For example, a recent research suggests a correlation between local elections and higher rate of deforestation and forest degradation.ⁱⁱ

Realizing the impact on the environment, there has been a movement to strengthen the environmental law framework. In 1982 Indonesia adopted its first *Environmental Management Act*, which was subsequently amended in 1999 and 2009. Furthermore, Indonesia had adopted several other flagships laws, regulations & policies such as Law No. 5 of 1960 on *Natural Resources Conservation*; Law No. 32 of 2009 on *Environmental Protection and Management*; Presidential Regulation 61 of 2011 on *National Action Plan to reduce GHG emissions*; Presidential Instruction No. 6 of 2013 on *Suspension of New Licenses and Improving Governance of Primary Forest and Peat Lands*; and Law No. 18/2013 on *Prevention and Eradication of Deforestation*. In October 2009, Indonesia voluntarily committed to reduce its emissions by 26 per cent from business as usual by 2020 through national efforts, and by 41 per cent with international support. To realize this commitment, *Reducing Emission from Deforestation and Forest Degradation (REDD+)*, a new incentive mechanism in global climate change movement, became the new flagship initiative.ⁱⁱⁱ This is because a majority of Indonesian emissions comes from forest and peat land.^{iv}

English literature on Indonesia environmental law is limited. The following selected readings deal with the history, general context, development, lessons learned, case study on environmental compliance and enforcement, and details about REDD+ Indonesia. Ten of twelve readings are written in English while the other two are written in Bahasa Indonesia.

Indonesian Environmental Law: History and Context

1. The book titled *Green Constitution: Nuansa Hijau Undang-undang Dasar Negara Republik Indonesia Tahun 1945* by **J. Asshiddiqie** analyzes the shifting of Indonesian environmental law from legislative base toward constitutional one. Hence, all laws and regulations are to be adopted in conformity with the constitutional principle of sustainable development.
2. The book titled *The Politics and Economics of Indonesia's Natural Resources*, edited by **B.P. Resosudarmo**, addresses political and economic developments in Indonesia, focusing on major issues related to decentralization and natural resource management. The initial aim of decentralization was to create a better natural resources management regime. However there are many downsides to decentralization. Some examples discussed in the book are political uncertainty, inconsistent laws and regulations, weak law enforcement, weak governmental system and insecurity of land tenure.^v
3. **J. Arnscheidt** in *Debating' Nature Conservation: Policy, Law and Practice in Indonesia: A discourse analysis of history and present* provides a thorough history and context for nature and conservation discourses in Indonesia. The book examines the policies and laws from pre-colonial times to the present era. Going beyond mere description of Indonesia environmental law, it looks into the political struggles behind the law's enactment and analyses the effects of the law on the ground, in particular with regard to national parks.
4. The book by **Koesnadi Hardjosoemantri**, titled *Hukum Tata Lingkungan*, is one of the first books looking in detail at Indonesian Environmental Law. It covers the history, nature, and context of the first Indonesian environmental Law, Law No. 4 of 1982 on *Environmental Management*.
5. The article by **Laode M. Syarif**, *Current Development of Indonesian Environmental Law*, explains the evolution from the first environmental Law enacted in 1982 to the currently effective Law No. 32 of 2009 on *Environmental Protection and Management*. The article also presents the downsides and upsides of each environmental law amendments.
6. The article by **M. A. Santosa, J. Khatarina and R. Assegaf**, titled *Climate Change Liability in Indonesia*, is an essential reading for anyone wishing to grasp the big picture of current Indonesian environmental laws and other relevant legislations. In the context of climate change, it notes that even if Indonesia has no specific law on climate change, its environmental law framework covers a broad range of provisions that can be used to prevent and mitigate environmental disasters including climate change. The framework of Indonesia environmental law can be divided into three main categories according to its scope of application: 1) General Environmental Law; 2) Sectoral Environmental Law and 3) Provincial and Local Environmental Law.

Indonesian Environmental Law: Lessons Learned

7. The book titled *Environmental Law in Development: Lessons from the Indonesian Experience*, edited by **M. Faure** and **N. Niessen** assesses in detail the implementation and impact of Law No. 23 of 2007 on *Environmental Management*. Topics covered include the role of international conventions in the development of the *Environmental Management Law*, decentralization of environmental management, supervision and law enforcement, the integration of economic instruments. The book concludes with specific proposal to revise the Law No. 23 of 2007.
8. The book edited by **M. Faure** and **A. Wibisana**, titled *Regulating Disasters, Climate Change and Environmental Law: Lessons from the Indonesian Experience*, depicts more recent Indonesian experience and lessons learned in regulating disasters, climate change and environmental harm. The articles presented in the book analyze a number of Indonesian cases including environmental compensation for several recent serious environmental damages such as Sidoarjo Mudflow, corporate liability for human rights violations in the case of Exxon Mobil, and the revitalization of *kewang institute* in sustainable management of marine and coastal natural resources^{vi} in Maluku Province. Other articles discuss various topics regarding Indonesian environmental management such as wildlife law, nuclear power plant, customary village responsibility, and REDD+ laws and governance.
9. The book by **D. Nicholson**, titled *Environmental Dispute Resolution in Indonesia*, describes and analyzes in detail environmental dispute resolution in Indonesia. It provides an insightful overview of the theoretical and legal framework for Indonesian environmental litigation as well as Indonesian environmental mediation. In doing so it looks at a number of cases from a wide range of sectors such as disputes in forestry, mining, agriculture, and energy.
10. In *Class Actions in Indonesia*, **M.A. Santosa** discusses the class action legal framework in Indonesia, including the procedural aspect. The article notes that there has been an increase of class action filing procedures since 1997. A number of class actions have been on environmental matters as well as consumer protection.

Reducing Emissions from Deforestation and Forest Degradation (REDD+) in Indonesia

11. The working paper, *The Context of REDD+ in Indonesia: Drivers, agents and institutions*, by **Indrarto, G. B. et al.**, is an essential paper for anyone wishing to understand the context of REDD+ in Indonesia. The paper details Indonesia's forests governance, the drivers of deforestation and forest degradation, and REDD+ policy environment in Indonesia.
12. In the effort to further elaborates on REDD+ in Indonesia, **M. A. Santosa, J. Khatarina** and **A. S. Suwana**'s *The Progress on Governing REDD+ in Indonesia* portrays the implementation and development of REDD+ governance in Indonesia. The paper describes not only the challenges faced by Indonesia to tackle deforestation and forest degradation

but also the government of Indonesia's initiative and movement to address those challenges. In addition, the paper briefly presents the establishment and progress of a REDD+ agency.

ⁱ See Resosudarmo, Budy P. (eds.). *The Politics and Economics of Indonesia's Natural Resources*. Institute of Southeast Asian Studies, 2005.

ⁱⁱ See for instance Burgess, Robin. *Et al.* "The Political Economy of Deforestation in the Tropics," *The Quarterly Journal of Economics*, Oxford University Press, vol. 127(4), 2012, pp 1707-1754; Bram, Deni. "Local Elections and Deforestation in Local Areas: Another Challenge for Indonesia in the fight against climate change," *Regulating Disasters, Climate Change and Environmental Law: Lessons from the Indonesian Experience*, 2013. The article gives a perfect example of the impact of local elections in the increase of deforestation.

ⁱⁱⁱ For a comprehensive overview of the role of forestry in the context of climate change mitigation, see Streck, Charlotte, *et al.* (eds.). *Climate Change and Forests: Emerging Policy and Market Opportunities*. Brookings Institution Press, 2008.

^{iv} Ministry of Environment, Indonesia Second National Communication Under The United Nations Framework Convention on Climate Change, 2010 <http://unfccc.int/files/national_reports/non-annex_i_natcom/submitted_natcom/application/pdf/indonesia_snc.pdf> [accessed at 12 March 2014].

^v For a comprehensive overview of Decentralization System in Indonesia, see Niessen, Nicole. *Municipal Government in Indonesia: Policy, Law and Practice of Decentralization and Urban Spatial Planning*. The Netherlands, Research School CNWS, Universiteit Leiden, 1999. **Nicole Niessen** gives a comprehensive history and background of decentralization system in Indonesia; Hadiz, Vedi R. "Decentralization and Democracy in Indonesia: A Critique of Neo-Institutionalist Perspectives," *Development and Change*, 2004, 35(4): 697-718. **Vedi Hadiz** analyzes and argues that decentralization has often failed to achieve its aims of promoting democracy and good governance. The article gives a brief example of decentralization impact in natural resources management by regional and local government.

^{vi} For a comprehensive overview of marine fisheries in Indonesia, see: Syarif, Laode M. "Promotion and Management of Marine Fisheries in Indonesia" Gerd Winter (ed), *Towards Sustainable Fisheries Law: A Comparative Analysis*, IUCN Environmental Policy and Law Paper No. 74, IUCN Environmental Law Center, Bonn, 2009, pp 31-80.