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Current Development of Indonesian Environmental Law

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The Source of Indonesian Environmental Law

In order to fully understand the general framework of Indonesia's environmental law, it is important to understand the roots and historical background of the Indonesian legal system. As a former colony of the Dutch, Indonesia's legal system is heavily influenced by the civil law tradition of the Dutch. In addition, as a consequence of its highly diverse society and ethnic mix,[1] the Indonesian legal system is pluralistic.[2] In general, the sources of Indonesian law can be divided into two: the written law and the unwritten law. Written law refers to legislated laws enacted during the colonial period and after independence, while the unwritten law refers to the customary law or

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[1] While Indonesia is scattered in more than 16,000 different islands, they are also divided into many ethnic groups. Indonesia is a very diverse nation with 350 recognized ethno-linguistic groups. The biggest ethnic group is Javanese, which makes up 45% of the population, followed by Sundanese with 14 %, Madurese 7.5 %, coastal Malays 7.5 %, with others constituting 26 %. There are also significant numbers of non-indigenous people, such as Chinese, Indians and Arabs. In addition, Indonesians practices various religions, with about 88 % Muslims, 5% Protestant, 3% Roman Catholic, 2% Hindu and 1% Buddhism. See *Overview of Indonesia*, at http://www.expat.or.id/info/overview.html#THE%20LAND. (Consulted: 30/03/10).

[2] However, the *Indonesian Constitution* guarantees religious freedom. See Charles Himawan, *Indonesia*, in Poh-Ling Tan (Ed), *Asian Legal System*, Butterworths, Sydney, 1997, pp196-262, See also Timothy Lindsey (Ed), *Indonesia Law and Society*, The Federation Press, Sydney, 1999.

adat law that traditionally practiced by some Indonesians in their day-to-day affairs. In addition to these laws, some aspects of Islamic law (*shariah*) also apply to several jurisdictions such as marriage, inheritance and Islamic banking.[3]

In summary, Indonesia is a pluralistic society with diverse sources of law absorbed and modified over many years, such that contemporary Indonesian law has been influenced by the Dutch civil law, *Adat* law and Islamic law. This situation also pertains to Indonesian environmental law.

While traditional wisdom on environmental protection can be found in many practices and under *Adat* laws in Indonesia,[4] the history of written environmental law in Indonesia only began in colonial times. The Dutch enacted several sectoral laws that were aimed at environmental protection, such as the *Ordinance for Wildlife Protection* (*Dierenbeschermings Ordonantie* or *Undang-Undang Perlindungan Binatang Liar*)[5] and the *Nuisance Ordinance* (*Hinder Ordonantie* or *Undang-Undang Gangguan*). The *Nuisance Ordinance* is still relevant today, but gradually playing a less important role in environmental management.

After the declaration of independence on 17 August 1945, the Parliament produced several pieces of sectoral legislation on forestry and mining, which also contained several provisions aimed at protecting the environment. However, they proved to be insufficient in dealing with the rapid development of environmental problems, as they were only concentrated on specific areas of the environment and neglecting some important general aspects of the environment. Some scholars classified these sectoral laws as exploitation-oriented laws.

[3] Some criminal aspects of Shariah apply in the Province of Aceh but its implementation is very limited.
[4] Certain practices of indigenous Indonesians, such as: *Sasi Laut* in fisheries management in Maluku and Subak in agricultural management in Bali are a few examples traditional wisdom that play major role in environmental protection. See Ingvild Harkes, *An Institutional Analysis of Sasi Laut: A Fishery Management System in Indonesia*, Danida – ICLARM, Netherlands, 2000; Charles Zerner, 'Through a Green Lens: The Construction of Customary Environmental Law and Community in Indonesia's Maluku Island' (1994) 28 *Law and Society Review* 1079., and J. Stephen Lansing, *Perfect Order: Recognizing Complexity in Bali*, Princeton University Press, Princeton, 2006.
[5] *Staatblad* 1931 No. 134.

The Constitution

Another important source of the Indonesian environmental law can be found in the Constitution of the Republic of Indonesia. It is important to note that when the founders of the Republic discussed the *Undang-Undang Dasar Negara Republik Indonesia 1945* or the *Constitution of the Republic of Indonesia of 1945*[6] (hereinafter the Constitution), environmental issues were barely contemplated. This was reflected in the preamble and the provisions of the original version of the Constitution, which did not mention the word 'environment'. The one and only provision in the Constitution that is usually referred to by many authors as having environmental protection implications is Article 33(3), which states that:

> The land and the waters as well as the natural riches therein are to be controlled by the state to be utilised to the greatest benefit of the people.[7]

Article 33(3), however, was not intended by the drafters of the Constitution for the purpose of environmental protection as such. The first part was aimed at giving the State the ultimate control to exploit land, water and the natural resources of Indonesia. In this sense, the State has no obligation to protect the environment, while controlling the utilisation of Indonesia's natural resources. Meanwhile, the second part of the sentence ("*utilised/exploited for the greatest benefit of the people*") emphasises the State's obligation to use the economic benefits from natural resources exploitation for the welfare of all Indonesian people. Therefore, to interpret Article 33(3) as the basis for environmental protection in Indonesia stretches the core concept of that Article. Article 33(3) in fact focuses on who shall benefit from the exploitation of natural resources rather than on environmental protection.[8]

After the fall of President Soeharto in 1998, followed by the '*era reformasi*' (reform era), the Indonesian people were allowed more freedom by the new government to express opinions. This culminated in the discussion of possible amendments to the Constitution, which had been taboo during Soeharto's administration.

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[6] Text of the English version of the Constitution is available online at official website of the Constitutional Court of the Republic of Indonesia, at http://www.mahkamahkonstitusi.go.id/. (Consulted: 09/04/10).

[7] Article 33(3) "*Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh Negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat*" (Indonesian version).

[8] For a comprehensive analysis on constitutional aspects of Indonesian environmental protection, see S.K. Waddell, *The Role of the 'Legal Rule' in Indonesian Law: Environmental Law and Reformasi of Water Quality Management*, PhD thesis, Faculty of Law, University of Sydney, 2004, pp. 197-201.

During the first year of *reformasi*, the *Majelis Permusyawaratan Rakyat* (People's Consultative Assembly) initiated the first amendment in 1999, followed by the second amendment in 2000 and the third amendment in 2001. This process finally concluded with the fourth amendment in 2002 and this version became Indonesia's Constitution as it stands today.

During that period, members of Parliament inserted two important provisions that could be used as a basis for environmental protection in Indonesia. The first is the provision inserted in Article 33(4) which states that:

> 'The organization of the national economy shall be based on economic democracy that upholds the *principles* of solidarity and efficiency along with fairness, sustainability, keeping the *environment in perspective*, self-sufficiency, and by maintaining the balance between progress and with the unity of the national economy'[9] (italics added).

This new provision attempts to integrate economic development with issues of democratisation, solidarity, efficiency, fairness, sustainability and environmental perspective principles, but it was formulated in a general language instead of strict legal language and thus lacks clarity. Is this provision an aspirational principle or a strict rule? Waddell suggested that the appearance of the word 'principle' indicates that this provision is a principle.[10] This Article needs to be explained by lower level legislation or interpreted by the Court.

The other new provision that substantially enhances the status of the Indonesian Constitution as an 'environmentally friendly' constitution is the recognition of an 'environmental right' as part of the basic human rights of the Indonesian people. This is stated in Article 28H(1), which reads:

> 'Every person shall have the rights to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care' (Italics added).

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[9] Compare with the Indonesian version which states that "*Perekonomian nasional diselenggarakan berdasar atas demokrasi ekonomi dengan prinsip kebersamaan, effisiensi keadilan, berkelanjutan, berwawasan lingkungan, kemandirian, serta dengan menjaga keseimbangan kemajuan dan kesatuan ekonomi nasional*". (Italics added).
[10] S.K. Waddell, supra note 8, p. 201.

However, similar to Article 33(4), the language of this provision needs further explanation, because the use of words 'physical and spiritual prosperity' may be difficult to understand by the executive and the judiciary. They need a specific language to use as the basis of their role as the guarantors of the environmental rights of the Indonesian people.

It is important to note that the environmental aspects of the Constitution have never been tested in Indonesian Courts. Taking into account the general attitude of Indonesian Courts, which reflects a general reluctance to apply 'unclear provisions', it may take some time for Indonesian judges and other law enforcers to incorporate these new provisions into judgements or indictment documents. However, in comparison to the original version of the Constitution, the adoption of these two provisions can be considered a significant development for the Indonesian legal system in general and for Indonesian environmental law in particular.

Evolution of the Indonesian Environmental Law

Modern environmental law was firstly introduced in 1982 when the Parliament enacted Law *No. 4/1982 on Environmental Management* (Environmental Management Act-EMA 1982). This Act attempted to consolidate environmental management in one comprehensive Act. As an 'umbrella Act', the EMA 1982 contained several important provisions that could be used as a basis for Indonesian environmental management,[11] but they lacked detail and most of them required implementing regulations.[12] As a result, the practical effects of the EMA 1982 were disappointing.[13]

[11] EMA 1982, Article 5(1) stated that "Every person has the right to a good and healthy environment, and (2) Every person has an obligation to maintain the living environment and to prevent and abate environmental damage and pollution". Its also introduced the harmony between humans and the environment and the implementation of sustainable development principles for the benefit of existing and future generations. [Article 4(a) and (d)].

[12] EMA 1982 required at least 15 pieces of implementing legislation (in the form of a *Government Regulation* and a *Ministerial Regulation*) to be effectively implemented. See Laode M. Syarif, *The Implementation of International Responsibilities for Atmospheric Pollution: A comparison between Indonesia and Australia*, ICEL-LEAD, Jakarta, 2001, p. 168.

[13] Nicole Niessen, *The Environmental Management Act of 1997: Comprehensive and Integrated?*, in Adriaan Bedner & Nicole Niessen (Eds), *Towards Integrated Environmental Law in Indonesia?*, CNSW Publication, Leiden, 2003, p. 3.

However, despite failure in achieving its objectives,[14] the EMA 1982 has been regarded as the beginning of an environmental era in Indonesia and had significantly increased environmental awareness among Indonesian citizens. The EMA 1982 also marked the beginning of Indonesia's adoption of international environmental law concepts such as sustainable development, intergenerational equity, environmental impact assessment and polluter-pays principle, as documented in the *1972 Stockholm Declaration* and the *1982 World Charter for Nature*. In this sense, the EMA 1982 was successful in incorporating international concepts into domestic law.

The 1997 Environmental Management Act

Aware of several weaknesses of the EMA 1982 and because it was no longer suitable to deal with the growing environmental challenges, many environmental law professors and activists demanded its revision. The Parliament then enacted *Law No. 23/1997 on Environmental Management*[15] (hereinafter the *Environmental Management Act* – EMA 1997). In comparison to its predecessor, the EMA 1997 brought a new light to environmental management as it was aimed at improving the weaknesses of the EMA 1982.[16] However, despite the improvements, some of its provisions are still too vague, too general and suffered from lack of clarity. Furthermore, similar to EMA 1982, it still required implementing regulations to be fully functional.

The EMA 1997 was structured as a general framework statute that attempted to cover a whole range of aspects in environmental management, with the idea of achieving an integrated environmental policy. However, the EMA 1997 did not deal with the wider concerns of environmental management and not readily applicable to the management of natural resources such as soil, river basins and coastal areas

[14] The main objectives of the EMA 1982 are to: achieve harmonious relations between humans and the environment, control the utilisation of natural resources, implement development with environmental considerations for the interests of present and future generations, and protect the nation from environmental impacts derived from activities outside the Indonesian jurisdiction that could cause environmental damage and pollution. EMA 1982, Article 4.

[15] For a full text, see Indonesia's State Gazette (*Lembaran Negara*), No. 68 of 1997.

[16] The Preamble of EMA (point 'e') states that "the awareness and life of the community in relation to environmental management has developed to such an extent that the substance *of Law No. 4 of 1982 regarding Principles of Environmental Management* (State Gazette 1982 Number 3215) needs to be perfected to achieve environmentally sustainable development".

and to other elements such as biological resources, forests, the atmosphere and endangered species.[17]

The EMA 1997 was divided into 11 chapters and 52 articles that dealt with particular issues ranging from general provisions[18] to more specific issues such as environmental compliance requirements[19] and environmental dispute settlement.[20] One of the most important provisions of the EMA 1997 was the recognition of the right of every person to a good and healthy environment and to environmental information.[21] In addition, Article 3 laid down the basic premises upon which environmental management was founded, namely (i) the principle of state responsibility (*asas tanggung jawab negara*), (ii) the principle of sustainability (*asas berkelanjutan*) and (iii) the principle of benefit/utilisation (*asas manfaat*). Based on these premises, the main goal of Indonesian environmental management is to achieve sustainable development (*pembangunan berkelanjutan yang berwawasan lingungan hidup*).[22]

However, similar to the EMA 1982, the EMA 1997 provided neither a clear 'environmental quality standard', nor 'standard criteria of environmental damage', because they were intended to be regulated by specific Government Regulations. For example, Article 14 stated that:

> '(1) To guarantee the preservation of environmental functions, every business and/or activity is prohibited from breaching quality standards and standard criteria of environmental damage"
> (2) Criteria of environmental quality standards, ... are regulated by Government Regulation.'

As a consequence, Article 14 could not be readily implemented until the government issued those implementing regulations. In total, the EMA 1997 required eight government regulations to be fully implemented. Aware of the fact that the EMA 1997 had limited capacity and was no longer suitable to answer the problems of the

[17] S.K. Waddell, supra note 8, p. 202.
[18] Chapter 1: *Ketentuan umum* (Articles 1-2).
[19] Chapter 6: *Persyaratan penaatan lingkungan hidup* (Articles 8-13).
[20] Chapter 7: *Penyelesaian sengketa lingkungan hidup* (Articles 30-39).
[21] Article 5(1). In addition Article 5(2) states that every person has the right to environmental information.
[22] See also Nicole Niessen, supra note 10, p. 72.

Indonesian environment, the Parliament enacted *Law No 32/2009 on Protection and Management of the Environment* (hereinafter the EMA 2009).

The Anatomy of EMA 2009

In comparisons to its two predecessors, the EMA 2009 is more comprehensive, which is apparent in the significant increase in the number of provisions. The EMA 2009 is divided into 17 Chapters and 127 Articles[23] and introduces several new principles and provisions, which were not covered by the two previous Acts. In addition, the EMA 2009 also attempts to integrate and harmonise the responsibility of central, provincial and district governments in environmental management.

(a) Principles

Several new principles that are explicitly introduced by the EMA 2009 are precautionary, balance and harmony, good governance, bio-diversity, eco-region, local wisdom, participation and regional autonomy principles. These principles were not explicitly stated in EMA 1982 and EMA 1997.[24] They are then integrated into more concrete provisions of the 2009 Act. Unfortunately, several principles like good governance, balance and harmony, local wisdom principles are not properly integrated into the text of the Act. In addition, some people may find it difficult to understand the meaning of biodiversity principle, bioregion principle, balance and harmony principle and local wisdom principle, because in common legal terms, these principles are not normally classified as legal principles such as precautionary or polluter-pay principles. In this context, the original intention of the legislators was to ensure that environmental management considers biodiversity, balance and harmony, bioregion and local wisdom. As a consequence, the legal implication for one particular principle and another may be different.

[23] The EMA 1997 has 52 Articles while the EMA 1982 only has 24 Articles.
[24] Compare with Article 3 of EMA 1997. "Environmental management which is performed with a principle of national responsibility, a principle of sustainability, and a principle of exploitation, aims to create environmentally sustainable development in the framework of the holistic development of the Indonesian people and the development of the Indonesian community in its entirety". Apart from the above mentioned principles, the EMA 2009 still maintain several principles of EMA 1997.

Another important development introduced by the EMA 2009 is the recognition of 'environmental inventory'. In relation to 'environmental planning' as stipulated in Chapter 3,[25] it is stated that environmental protection and management shall be planned through the following steps: (a) environmental inventory; (b) establishment of ecoregion; and (c) formulation of protection and management of environmental planning (RPPLH). In addition, the environmental inventory shall be conducted at national, provincial and district levels. The EMA 2009 also states that environmental inventory shall contain specific information, such as: the potential and availability of natural resources, the types of environmental damage, existing and potential conflicts that may exist in environmental management, etc. Similarly, the Government is obliged to determine the environmental characteristics of one particular region before they establish one particular eco-region. The EMA 2009, for instance, states that the establishment of eco-regions shall consider the similarity of landscape characteristics, river stream area, climate, flora and fauna, socio-culture of the people, economic development, community institution and the results of environmental inventory.

This new intervention may be good for environmental management but at the same time it also poses a new challenge to the Ministry of Environment and other related government agencies such as: Ministry of Forestry, Ministry of Home Affairs, Ministry of Mining and Natural Resources and sub-national governments.

(b) Environmental Management Control

Similar to its predecessors, EMA 2009 maintains three main measures to manage environmental problems: prevention, pollution control and restoration. In relation to prevention, the EMA 2009 introduced more comprehensive measures compared to the EMA 1997, which include: (a) strategic environmental study (KLHS), (b) spatial planning, (c) environmental quality standard, (d) standard criteria for environmental damage, (e) environmental impact assessment (AMDAL), (f) environmental management and monitoring plan (UKL-UPL), (g) licensing, (h) environmental economic instrument, (i) environment-based legislation, (j) environment-based budgeting, (k) environmental risk analysis, (l) environmental audit and (m) other

[25] Articles 5 -11.

instruments in accordance to the needs and/or scientific developments. The Act defines KLHS as a series of systematic, comprehensive and participatory analyses to ensure that sustainable development principles have become the basis and been integrated into regional development policy, plan and/or program. Meanwhile, UKL-UPL are measures to manage and to monitor businesses and/or activities that have no major impacts to the environment, but can be used as a consideration in decision making for the operation of the business and/or activity.

In addition, the EMA 2009 also introduces several new environmental instruments that would pose a challenge in their implementation, such as: environment-based budgeting and environment-based legislation. These instruments expect other government agencies to incorporate these instruments in policy making. However, since the Ministry of Environment has no power to force other government agencies to comply with such a requirement or expectation, the implementation will mainly depend on the willingness of other government agencies.

(c) Licensing System

Different from EMA 1997, the EMA 2009 clearly states that every business and/or activity is obliged to have EIA and/or UKL-UPL and/or an environmental permit, depending on the nature of the proposed business or activity. The EMA 2009 also mandates relevant government authorities to reject a license application that is not furnished with EIA or UKL-UPL documents. In addition, any granted license can be revoked if it contains legal irregularities, mistakes, misuse and/or falsification of data. The license can be also revoked if the licensee does not comply with license conditions.

(d) Economic Instruments

The EMA 2009 also mandates the central, provincial and district governments to develop and implement environmental economic instruments in their development

plan and economic activities.[26] These new instruments are aimed at internalising the costs of environmental protection into development planning and economic activities. They also provide an economic incentive to environmentally sound business practices.

Another significant contribution from the EMA 2009 is that it mainstreams environmental protection in every aspect of development by mandating the Government and Parliament to create environment-based legislations and environment-based budgeting. The introduction of these two instruments addresses the long existing development policy that for some time has neglected environmental aspects in development and economic activities. In addition, the EMA 2009 mandates any business activity that has the potential to cause environmental problems to produce an environmental risk assessment report and to carry out regular environmental audits.[27]

(e) Pollution Control

In relation to pollution control, the EMA 2009 obliges every individual that causes pollution and/or damage to the environment to control and mitigate the damage by informing the incident to the community and isolating and stopping the source of pollution. In addition, responsible individuals shall restore and rehabilitate the damages caused. The licensee of a major business is also obliged to provide financial guarantee for environmental recovery.[28] In relation to the environmental preservation, the EMA 2009 introduces three instruments, namely: (i) conservation of natural resources, (ii) reservation of natural resources and (iii) preservation of atmospheric functions.

The EMA 2009 dedicates one particular chapter to the management of toxic and hazardous materials and wastes (THM/W).[29] Compared to its predecessor, this new chapter is more comprehensive, as it gives the legal foundation for the THM

[26] See Article 42.
[27] See Articles 44-52.
[28] See Articles 53-55.
[29] See Articles 58-61.

management. The provision covers all aspects of THM management, which include: importation, production, transportation, distribution, storage, utilization, and the discharge of THM. In addition, it also mandates the producers of THW to manage their wastes as specified by Government Regulations. The EMA 2009 also prohibits any individual to dump any kind of waste to the environment without proper license.

(f) Environmental Information

In relation to environmental information system, the EMA 2009 requires national and sub-national governments to provide environmental information systems. Such information shall contain the following information: status of the environment, map of environmental vulnerabilities and other environmental information. The information shall be published and disseminated to the people.[30]

(g) Relationship between National and Sub-National Governments

Another important change introduced by the EMA 2009 is a clear distinction between the powers of national and sub-national governments in environmental management. The EMA 2009 clearly states that the national government has the authority to establish national environmental policy, norms, standards, procedures, criteria and to coordinate relevant government agencies in environmental management. The national government is also responsible for the enforcement of the EMA 2009 and has the power to manage transnational and trans-provincial environmental issues. In contrast, provincial government has no authority to establish environmental norms, standards, criteria and procedures. Provincial governments are only responsible for developing provincial environmental policy within their jurisdiction and assisting district governments in environmental management and assisting the central government in enforcing relevant environmental law. Similar power is also given to district governments, but their power is limited to their jurisdiction.

[30] See Article 62.

(h) Environmental Rights and Public Participation

Compared to previous Acts, the EMA 2009 clearly recognizes environmental rights of the people by stating that “every person shall be entitled to a proper and healthy environment as part of human rights”. In addition, the EMA 2009 also states that “every person shall be entitled to environmental education, access to information, access to participation and access to justice as the fulfillment of the right to a proper and healthy environment”. The EMA 2009 also guarantees the right of every individual who struggles for the fulfillment of their right on healthy environment and that they cannot be prosecuted under criminal and civil enforcement. Such guarantee makes Indonesian environmental activists ‘free’ from the shadow of fear that are usually imposed by the government or big corporations.

The EMA 2009 also improves some provisions on public participation by recognizing the right of individual and community to participate in environmental protection and management. Public participation can take place in the form of: (a) social supervision, (b) suggesting opinion, recommendation, objection or complain and (c) submitting information and/or report.

(i) Obligation of Individuals and Corporations

The EMA 2009 imposes several obligations to every individual and corporation to preserve the environment and control environmental pollution and damage. The corporation is obliged to provide environment-related information to the community and the information shall be accurate, transparent and must be on time. In addition, every corporation is required to comply with environmental quality standards. Meanwhile, every individual is also prohibited to cause environmental pollution and damage to the environment. For example, every person is prohibited from importing THMW, releasing genetically modified organisms to the environment, and using fire for land clearing purposes.

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(j) Supervision and Administrative Sanctions

Another significant improvement that the EMA 2009 brings can be seen in the specific chapter on supervision and administrative sanctions. This chapter clearly states that the minister, governors, regents (*bupati/walikota*) and their special apparatus (investigators), in accordance with their respective scopes of authority, shall supervise the compliance of responsible person of every businesses and/or activities as mandated by environmental legislations. Similar to the general police, they have the power to: monitor, seek information, make the copy of documents, enter premises, take photograph, make video/audio records, take sample, inspect equipment and installation and to stop the continuation of violation.

If a particular business failed to comply with the legislation, the respective government has the power to impose administrative sanctions which include: written warning, government compulsion,[31] license suspension and license cancellation.[32] The government can also exercise its power to stop the operation of businesses or activities without warning, if they have the potential to cause a serious environmental damage. (Article 80)

[31] Government compulsion can take place in several forms such as: temporary closure, removal of production infrastructures, closure of liquid waste pipe/channel and other measures.
[32] Under the EMA 1997, administrative sanction consists of the following steps: first warning, second warning, third warning, a mandatory audit, a daily fine of non compliance, license suspension, and license cancellation.

(k) Dispute Settlement and Legal Standing

In the area of environmental dispute settlement mechanism, the EMA 2009 is similar to the EMA 1997. The Act still recognizes two mechanisms: through court settlement and out of court settlement. Out of court settlement can only be done to determine the amount of compensation, form of action for environmental recovery and special measures to ensure pollution and damage to environment is not repeated. Out of court settlement can not be used for environmental criminal offences.

In relation to court settlement, the EMA 2009 states that it can be used for every environmental dispute (civil and criminal). In civil enforcement, especially to businesses or activities that pose serious environmental damage, such as businesses or activities that produce, manage or use THMW, a strict liability principle applies. Central, provincial and district governments can ask for compensation to those who cause pollution and damage to the environment. In addition, the community is also granted the rights to use class action to sue if their environmental rights are violated. Similarly, the EMA 2009 also recognizes the legal standing of environmental organizations (NGO) to sue for the preservation and protection of the environment. They can ask responsible parties such as a government or business entity to perform several actions, such as stopping the operation of a particular project or increase the quality of the environment. However, the NGOs cannot ask for direct compensation.

Another significant improvement of the EMA 2009 can be seen in administrative suits provision which recognizes the legal standing of every individual or person. It states that every individual can bring environmental administrative suit to the Administrative Court if the decision of the government is considered contradictory to environmental legislations.

In relation to criminal enforcement, the EMA 2009 mandates civil servant investigators to take lead in investigation, but they can ask for assistance from the national police. The EMA 2009 specifically states that in environmental criminal enforcement, civil servant investigators, the national police and the Attorney General

Office (AGO) shall collaborate and coordinate under the supervision of the Minister of Environment. This provision was inserted to answer the often difficult coordination among them as experienced during the enforcement of the EMA 1982 and EMA 1997. It is hoped that this new Act can be effectively enforced because it tries to harmonize the coordination of different law enforcement agencies in the criminal enforcement of the Act.

(l) Penalties

The final significant improvement of the EMA 2009 is its criminal provisions. The EMA 2009 introduces a minimum criminal penalty and increases the maximum penalty for the violation of the Act. It clearly states that "whoever intentionally commits an action which causes the violation of the ambient standard of air, water, sea water and breaches the standards of environmental damage shall be criminally liable to a minimum of 3 years up to a maximum of 10 years imprisonment AND to a minimum fine of Rp 3,000,000,000 (three billion rupiahs)[33] up to a maximum fine of Rp 10,000,000,000 (ten billion rupiahs)". If such actions cause injury or death, these penalties can be increased up to a minimum of 5 years up to a maximum of 15 years imprisonment AND a minimum fine of Rp 5,000,000,000 (5 billion rupiahs) up to a maximum of Rp 15,000,000,000 (fifteen billion rupiahs). In the case of negligence, the minimum penalty is 1 (one) year up to a maximum of 3 (three) years imprisonment and minimum fine of Rp 1,000,000,000 (one billion rupiahs) up to a maximum of Rp 3,000,000,000 (three billion rupiahs).

The introduction of a minimum penalty is to answer the tendency of the court to impose very lenient penalties in environmental crimes. However, the formulation of criminal provisions of this Act may cause injustice to laborers or 'small' workers that may not be directly responsible for the incident of an environmental crime. This kind of provision also limits the power of the judge in determining a suitable penalty for 'small' offenders.

[33] At the time of writing, Rp 3,000,000,000 was equivalent to USD 330,000.

The EMA 2009 imposes criminal sanctions to State official who issue environmental license without proper EIA and UKL-UPL documents. The maximum penalty for this action is 3 (three) years imprisonment and a maximum fine of Rp 3,000,000,000 (three billion rupiahs). This new invention tries to prevent the issuance of license by irresponsible and corrupt officials. However, the court may not be able to enforce this provision because based on the most well-established doctrine, state apparatus cannot be criminally liable for issuing licenses, unless the prosecutor can convince the court that there are irregularities in the process of issuing the environmental license.

It is important to underline that if the violation of the EMA 2009 is committed by a company or on behalf of or for the benefit of a company, the company is criminally liable. The person who gives orders or acts as the leader of the company is criminally liable for the conduct of his/her company. The amount of penalty (imprisonment and fine) will be increased by 1/3 of the maximum penalty of an individual if the perpetrator is a company. Another characteristic of the EMA 2009 is the amount of its criminal provisions, which reach 23 articles (article 97 to 120).

(m) Transitional Provisions

Lastly, in its transitional and closing provision, it is stated that this law will be fully implemented in two years after its enactment and all subsidiary legislations for the EMA 1997 still apply unless they have been repealed by a new regulation.

While the EMA 2009 is more comprehensive than the EMA 1997, the full implementation of this new Act may find strong opposition from other government agencies because several provisions of the Act have strong legal implications to other sectors such as forestry, mining and other government agencies. Hopefully this new Act can achieve its objectives and be effectively enforced.

Sector-Based Legislation

Apart from the EMA 2009, there are several sector legislations that have a strong impact on environmental protection. These legislations are: (i) *Law No 41/1999 on Forestry* (ii) *Law No 31/2004 on Fisheries*, (iii) *Law No.27/2007 on Coastal Management and Small Islands*, (iv) *Law No 4/2009 Mineral Mining and Coal*, (v) *Law No 32/2004 on Local Government*, (vi) *Law No 26/2007 on Spatial Planning* and several other laws which are correlated and sometimes inconsistent to one another. The EMA 2009 tries to bridge the gap between these sector legislation by introducing several 'principles' such as eco-region, balance and harmony and good governance. However, EMA 2009 was not specifically designed to answer the inconsistencies in environmental management as a whole.

As a result of this complication and lack of willingness of the President and relevant Ministers to work in harmony, the enforcement of environmental law still has its challenges. In addition, the persistence of corrupt practices among law enforcement agencies and state officials at the national and sub-national levels has created a doubt on whether full enforcement of these laws can be achieved.

Conclusion

Legal framework of Indonesian environmental law is sufficient to answer environmental problems in Indonesia. The recognition of environmental right in the Constitution and the enactment of the EMA 2009 is a good sign from the government and parliament because it appears that they try to mainstream environmental protection in economic development of the country. The good provisions, however, will not have a significant impact on environmental protection if the government is still reluctant to enforce them. It is hoped that the enactment of EMA 2009 will enhance the level of collaboration among related government agencies to enforce all environmental legislation.