



# Environmental Compliance and Enforcement in Indonesia

Rapid Assessment



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# **Environmental Compliance and Enforcement in Indonesia Rapid Assessment**

November, 2008

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## LIST OF ACRONYMS

AECEN	Asian Environmental Compliance and Enforcement Network
AMDAL/EIA	Analisis Mengenai Dampak Lingkungan/Environmental Impact Assessment
APBD	Anggaran Pendapatan dan Belanja Daerah/Local Revenue and Expenditure Budget
APBN	Anggaran Pendapatan dan Belanja Negara/National Revenue and Expenditure Budget
APS/ADR	Alternatif Penyelesaian Sengketa/Alternative Dispute Resolution
ASEAN	Association of South East Asian Nations
B3	Bahan Beracun dan Berbahaya/Toxic and Hazardous Materials
BAPEDAL	Badan Pengendalian Dampak Lingkungan/Environmental Impact Control Agency
BAPEDALDA	Badan Pengendalian Dampak Lingkungan Daerah/Local Environmental Impact Control Agency
BAPPENAS	Badan Perencanaan Pembangunan Nasional/National Development Planning Agency
BI	Bank Indonesia/Indonesian Central Bank
BOD	Biochemical Oxygen Demand
BPLHD	Badan Pengelolaan Lingkungan Hidup Daerah/Local Environmental Management Agency
BPS	Badan Pusat Statistik/Statistics Indonesia
CEM	Continuous Emission Monitoring
DAK	Dana Alokasi Khusus/Special Allocation Fund
DAS	Daerah Aliran Sungai/river basin
DKI	Daerah Khusus Ibukota/State Capital Special Region
DNPB	Dewan Nasional Pembangunan Berkelanjutan/National Sustainable Development Board
DNS	Debt for Nature Swap
DPR	Dewan Perwakilan Rakyat/House of Representatives
DPRD	Dewan Perwakilan Rakyat Daerah/Local House of Representatives
EMA	Environmental Management Act
GEL	General Environmental Legislation
HO	<i>Hinder Ordonantie</i> /Nuisance Ordinance
IBSAP	Indonesian Biodiversity Strategic Action Plan
ICEL	Indonesian Center for Environmental Law
IEPA	Indonesian Environmental Protection Agency
IKM	Industri Kecil dan Menengah/Small- and Medium-scale Industries
ILMTA	Industri Logam, Mesin, Tekstil dan Aneka/Metal, Machinery, Textile and Multifarious Industries
IPAL	Instalasi Pengolahan Air Limbah/Waste Water Treatment Plant
ISO	International Organization for Standardization
JBIC-PAE	Japan Bank for International Cooperation - Pollution Abatement Equipment
KEPMEN	Keputusan Menteri/Ministerial Decree
KEPPRES	Keputusan Presiden/Presidential Decree
KfW-IEPC	<i>Kreditanstalt fur Wiederaufbau</i> - Industrial Efficiency and Pollution Control

KUHAP	Kitab Undang-undang Hukum Acara Pidana/Criminal Procedure Code
LBH	Lembaga Bantuan Hukum/Legal Aid Institute
LEL	Local Environmental Legislation
MA	Mahkamah Agung/Supreme Court
Menko Ekonomi	Menteri Koordinator Bidang Perekonomian/Coordinating Ministry on Economics
Menko Kesra	Menteri Koordinator Bidang Kesejahteraan Rakyat/Coordinating Ministry on People's Welfare
MoE	Ministry of Environment
MoU	Memorandum of Understanding
MPR	Majelis Permusyawaratan Rakyat/People Consultative Assembly
NGO	Non-Governmental Organization
NSW EPA	New South Wales Environmental Protection Agency
ORES	One Roof Enforcement System
P21	The legal dossier is declared complete and ready to bring to the court
PAD	Pendapatan Asli Daerah/ Locally Generated Revenues
PEL	Provincial Environmental Legislation
PERPU	Peraturan Pemerintah Pengganti Undang-undang/ Government Regulation in Lieu of Law
PMA	Penanaman Modal Asing/Foreign Investment
PN	Pengadilan Negeri/District Court
PP	Peraturan Pemerintah/Government Regulation
PPLH	Pejabat Pengawas Lingkungan Hidup/Environmental Inspection Officer
PPNS	Penyidik Pegawai Negeri Sipil/Civil Servant Investigator
Prokasih	Program Kali Bersih/Clean River Program
PROPER	Program Penilaian Peringkat Kinerja Perusahaan dalam Pengelolaan Lingkungan Hidup/Rating Program for Business Performance in Environmental Management
PT	Pengadilan Tinggi/High Court
PTTUN	Pengadilan Tinggi Tata Usaha Negara/High Administrative Court
PTUN	Pengadilan Tata Usaha Negara/Administrative Court
Pusreg	Pusat Pengelolaan Lingkungan Hidup Regional/Regional Environmental Management Centers
REC	Ratified Environmental Convention
RI	Republik Indonesia/Republic of Indonesia
RKL	Rencana Pengelolaan Lingkungan/Environmental Management Plan
RPL	Rencana Pemantauan Lingkungan/Environmental Monitoring Plan
RUU KMIP	Rancangan Undang-undang Kebebasan Memperoleh Informasi Publik/Bill of Freedom to Obtain Public Information
RUU	Rancangan Undang-undang/Draft Act or Bill
SEL	Sector Environmental Legislation
SKB	Surat Keputusan Bersama/Joint Decree
SLAPP	Strategic Lawsuit against Public Participation
SMS	Short Message Service
STP2LH	Satuan Tugas Penyelesaian Permasalahan Lingkungan Hidup/Environmental Problems Settlement Task Force
STPLH	Satuan Tugas Penegakan Hukum Pidana Lingkungan/Environmental Criminal Law Enforcement Task Force
UKL	Upaya Pengelolaan Lingkungan/Environmental Management Efforts
UKM	Usaha Kecil dan Menengah/Small- and Medium-scale Enterprises
UNFCCC	United Nations Framework Convention on Climate Change
UPL	Upaya Pemantauan Lingkungan/Environmental Monitoring Efforts
US EPA	United States Environmental Protection Agency
USAID	United States Agency for International Development

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## 1.0 INTRODUCTION

This study is a rapid assessment of environmental compliance and enforcement in Indonesia, conducted by the Indonesian Center for Environmental Law (ICEL) in collaboration with the State Ministry of Environment (MoE) and the Secretariat of Asian Environmental Compliance and Enforcement Network (AECEN). MoE is a member of AECEN. The United States Agency for International Development (USAID) Regional Development Mission/Asia (RDM/A) funded the assessment through the Environmental Cooperation Asia (ECO-Asia) project implemented by AECOM International Development.

***Asian Environmental Compliance and Enforcement Network.*** Established in 2005, AECEN works to promote improved compliance with environmental legal requirements in Asia through regional exchange of innovative policies and practices. Composed of environmental agencies, AECEN objectives are to:

- Promote the development and implementation of improved environmental policies, laws, regulations and institutional arrangements;
- Strengthen practitioner capacity through specialized training and skills development; and
- Facilitate regional sharing of best practices and information on compliance and enforcement.

One principal activity of AECEN is to pilot innovative policies and practices at the country level and facilitate further adoption and dissemination through regional cooperation ([www.aecen.org](http://www.aecen.org)).

### **Objectives and Methodology of the Study**

ICEL, MoE and AECEN conducted this rapid assessment to help Indonesia define challenges and priorities in strengthening environmental compliance and enforcement. In designing the framework methodology of the study, a research team worked with the MoE and other national and regional officials to formulate a survey questionnaire used to assemble needed information. The questionnaire was designed to identify program strengths and weaknesses, priority reform areas and opportunities for strategic interventions in eight principal areas:

- Law enforcement authority
- Institutional arrangements and capacity building
- Compliance monitoring
- Enforcement response
- Compliance assistance and promotion
- Economic and other incentive-based instruments
- Indicators to evaluate program success; and
- Public participation in environmental compliance and enforcement.

ICEL conducted interviews with various stakeholders, particularly officials of the MoE. The data collection was augmented through a document review, including independent reports and the government's official bulletins. The research team also reviewed relevant legislation and regulations. A draft summary of findings was reviewed by policy makers at a national workshop, "Environmental Compliance and Enforcement in Indonesia: Evaluation on Its Effectiveness and Agenda for Reform toward Integration," on July 30, 2007 in Jakarta.

## 2.0 BACKGROUND AND CONTEXT

The territory of the Republic of Indonesia is an archipelago totaling more than 18,000 islands, comprising 33 provinces and 434 regencies/cities. Indonesia has a tropical climate with a high level of rainfall. Indonesia's population, estimated in 2007 at 234 million is projected to increase to more than 274 million in the year 2025. In the year 2000, the total population living in urban areas was only 47 million people. In the year 2025, this number is projected to increase to approximately 187 million people. This means that around 68% of the total Indonesian population will live in cities in 2025<sup>1</sup> as compared to approximately 23% in 2000.<sup>2</sup> From 1961 to 2005, 60% of the country's population inhabited the Island of Java, which accounts for less than 7% of Indonesia's total land mass.<sup>3</sup> This high concentration of population translates into high concentrations of pollution resulting from urbanization as well as high exploitation of natural resources as demand for raw materials in urban centers increases.

### 2.1 Environmental Challenges

**Environmental Pollution.** Threats to the environment in Indonesia include both environmental pollution and environmental destruction.<sup>4</sup> The MoE recorded that environmental quality had been degrading due to a significant increase of pollutants in water and air. In addition, domestic waste and toxic and hazardous pollution cases also increased.<sup>5</sup>

Per a 2007 MoE report, Provincial Environmental Impact Control Agencies conducted monitoring of 35 rivers in Indonesia, which revealed that all 35 rivers were unusable as a drinking water source and relegated as a second class water source,<sup>6</sup> suitable for a water recreation, fish cultivation, irrigation and other similar uses. Surface water and ground water pollutants came mostly from industry, agricultural activities and households.

The MoE (2007) also noted that the worsening air quality due to pollution from transportation and industry was most apparent in big cities such as Jakarta, Surabaya, Semarang, Bandung and Medan. Monitoring of ambient air quality parameters such as particulates, sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), carbon monoxide (CO) and hydrocarbon (HC) in those cities indicated alarming conditions. Moreover, air quality in several cities in Sumatra and almost all provinces in Kalimantan also decreased due to increased incidence of forest fires.<sup>7</sup>

The Indonesian State of Environment Report 2006 stated that the amount of garbage in big cities and metropolitan areas in Indonesia is increasing exponentially. The amount of waste generated increased by approximately 20.9% between 2005 and 2006. For purposes of comparison, the average urban garbage production in Indonesia in 1995 was 0.8 kg per capita per day. However, the number had risen to 1 kg per capita per day in 2000, and is expected to increase to 2.1 kg per capita per day by 2020.<sup>8</sup> Industrial activities in Indonesia produced 26,514,883 tons of toxic and hazardous wastes according to data from the Department Industry of Indonesia (2006) and quoted by the MoE (2007).

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<sup>1</sup> National Development Planning Agency, *National Air Quality Atlas*, Jakarta, November 2006.

<sup>2</sup> Based on 2000 census numbers from United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) available at [http://www.unescap.org/stat/cos12/cos12\\_indonesia.pdf](http://www.unescap.org/stat/cos12/cos12_indonesia.pdf).

<sup>3</sup> MoE, *supra* note 2, page 18.

<sup>4</sup> "Environmental destruction is an action which gives rise to direct or indirect changes in the physical and/or biological characteristics of the environment which causes the environment to no longer be able to function to support sustainable development", Law no. 23 of 1997, Article 1 number 14.

<sup>5</sup> MoE, *supra* note 2, page 23.

<sup>6</sup> Government Regulation no. 82 of 2001 regarding Water Quality Management and Water Pollution Control, Article 8.

<sup>7</sup> MoE, *supra* note 2, page 24.

<sup>8</sup> *Ibid*.



**Environmental Destruction.** Environmental destruction in Indonesia includes land, forest, coastal and marine ecosystems. The Department of Forestry, as quoted in the Indonesian Status of the Environment Report 2006, stated that land and forest area destruction reached almost 59.2 million hectares, with a deforestation rate of about 1.19 million hectares per year.<sup>9</sup> This high rate of decline has had a significant effect on biological diversity in forest ecosystems. Land and forest destruction in general is a result of land and forest fires, illegal logging, land settlement, conversion of forest functions and mining.<sup>10</sup>

Unsustainable management has also caused devastation in Indonesian coastal and marine areas. Ninety percent of Indonesia's coral reefs have been damaged or destroyed in the last 50 years as the consequence of unsustainable and environmentally destructive fishing practices, sedimentation and terrestrial pollution and coral mining.<sup>11</sup> Meanwhile, Indonesia's mangrove forest, which covered about 3.7 million hectares in 1993, was reduced to only 1.5 million hectares in 2005.<sup>12</sup> This amounts to a 59% decrease in the total number of mangrove-covered hectares in the span of just 12 years.

## 2.2 The Constitution

The Indonesian Constitution explicitly states and guarantees the right of any individual to a good and healthy environment.<sup>13</sup> Article 28 (1) of the Constitution states that: "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." Similarly, according to Article 33 (4) of the Constitution, "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 the unity of the national economy."

## 2.3 Legal Framework

There are literally thousands of regulations and legislation<sup>14</sup> related to or directly governing environmental management and protection in Indonesia. These regulations and legislation may be classified into five categories, namely: (a) General Environmental Legislation (GEL); (b) Sector Environmental Legislation (SEL); (c) Ratified Environmental Convention (REC); (d) Provincial Environmental Legislation (PEL); and (e) Local Environmental Legislation (LEL).

**General Environmental Legislation (GEL).** GEL refers to legislation accompanied by implementing regulations governing environmental management in general and covers all sectors. For instance, Law No. 23 of 1997 regarding Environmental Management (frequently referred to as the Environmental Management Act or EMA 1997) is "the basis for the evaluation and adjustment of all laws that contain applicable environmental provisions, namely laws concerning irrigation, mining and energy, forestry, conservation of biological resources and its ecosystem, industry, settlement, spatial management, land use, etc."<sup>15</sup>

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<sup>9</sup> Ibid, page 92.

<sup>10</sup> Ibid, page 96.

<sup>11</sup> Ibid, pages 125 - 126.

<sup>12</sup> Ibid, page 126.

<sup>13</sup> The Indonesian Constitution was created in 1945 and has been amended four times. The First Amendment was made in 1999, the Second Amendment in 2000, the Third Amendment in 2001 and the Fourth Amendment in 2002.

<sup>14</sup> Pursuant to Law no. 10 of 2004 regarding The Establishment of Legislation, Article 7, the types and hierarchy of legislation in Indonesia are as follows: (1) the 1945 Constitution, (2) Act/Government Regulation in lieu of Act, (3) Government Regulation, (4) Presidential Regulation, and (5) Local Regulation.

<sup>15</sup> Law no. 23 of 1997, Elucidation.

EMA 1997 contains a number of important provisions on environmental management, including:

- People's right for a good and healthy environment (Article 5);
- People's right for participation in environmental management (Article 5);
- The obligation to prepare an Environmental Impact Analysis (EIA/AMDAL) for any planned business/activity that has large and significant impact (Article 15);
- The obligation for an authorized official to include conditions and obligations to carry out environmental impact control measures in the business license issued (Article 18);
- The authority of the Minister of Environment to issue waste disposal licenses (Article 20), to supervise the compliance of any party responsible for a business and/or activity with environmental legislation (Article 22), to order mandatory an environmental audit (Article 29)
- A requirement for the Government to establish a special agency for environmental impact control (Article 23);
- Recognition of the use of mediation and arbitration as alternative environmental dispute settlement mechanisms (Article 30-33);
- Recognition of the strict liability principle (liability without fault) for a number of activities (Article 35);
- Recognition of the class action procedure (Article 37);
- Recognition of the legal standing of Non-Governmental Organizations (NGOs) (Article 38);
- Provision on environmental civil servant investigators (PPNS LH) (Article 40);
- Recognition of the corporate criminal liability principle, which will impose sanctions to corporations as a legal entity, as well as the top management of a company and the person who gives the orders (Article 46).

EMA 1997 provides a mandate to establish various implementing regulations as Government Regulations (PP). Government regulations that exist in this way include provisions on marine pollution;<sup>16</sup> environmental impact assessment;<sup>17</sup> air pollution control;<sup>18</sup> institution for out-of-court environmental dispute settlement;<sup>19</sup> environmental damage and/or pollution control;<sup>20</sup> toxic and hazardous substances;<sup>21</sup> and water quality management and water pollution;<sup>22</sup> among others.

***Sector Environmental Legislation (SEL).*** SEL refers to legislation accompanied by implementing regulations governing certain sectors closely related to environmental management. The regulations address all major sectors, including mining, industry, energy, water resources, as well as government operations, including national development planning, local government, and the financial balance between central and local governments.

***Ratified Environmental Convention (REC).*** RECs are international conventions or agreements on the environment that have been ratified by Indonesia and therefore are incorporated as part of Indonesian environmental law. International treaties on environment that have been ratified include, among many

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<sup>16</sup> Government Regulation no. 19 of 1999 regarding Marine Pollution and/or Destruction Control (State Gazette of 1999 No. 32, Supplement to State Gazette No. 3816)

<sup>17</sup> Government Regulation no. 27 of 1999 regarding Environmental Impact Assessment (State Gazette of 1999 No. 59, Supplement to State Gazette No. 3838)

<sup>18</sup> Government Regulation no. 41 of 1999 regarding Air Pollution Control (State Gazette of 1999 No. 86, Supplement to State Gazette No. 3853)

<sup>19</sup> Government Regulation no. 54 of 2000 regarding Institution for Out-of-Court Environmental Dispute Settlement (State Gazette of 2000 No. 113, Supplement to State Gazette No. 3982)

<sup>20</sup> Government Regulation no. 4 of 2001 regarding Environmental Damage and/or Pollution Control related to Forest and Land Fire (State Gazette of 2001 No. 10, Supplement to State Gazette No. 4076)

<sup>21</sup> Government Regulation no. 74 of 2001 regarding Toxic and Hazardous Substances (State Gazette of 2001 No. 138, Supplement to State Gazette No. 4153)

<sup>22</sup> Government Regulation no. 82 of 2001 regarding Water Quality Management and Water Pollution Control (State Gazette of 2001 No. 153, Supplement to State Gazette No. 4161)

others, the Law of the Sea, the Basel Convention, the Convention on Biological Diversity and the Convention on Climate Change.

***Provincial Environmental Legislation (PEL).*** PELs are provincial legislation and regulations that govern the environmental management policies and operations within the provincial territory. For instance, the East Java Province has sector-specific legislation and regulations addressing policies and operational matters on environmental impact control (EIA or AMDAL), water pollution control and air pollution control. These province and sector-specific legislation and regulations enumerate standardized protocols and methods to analyze samples, measure quality standards, operational guidelines for investigation and monitoring as well as implementation of environmental management efforts.

***Local Environmental Legislation (LEL).*** LELs are regulations and legislation that govern the policies and operations of environmental management in the territory of a regency or municipality. For instance, several operational regulations and legislation for environmental impact control at the regency or municipality level include decrees and circulars from the mayor or other municipal officials regarding environmental compliance and management, liquid waste disposal as well as registration of nuisance and business licenses.

Current environmental legislation in Indonesia, particularly legislation enacted before the 1999 reform, mostly uses the command-and-control approach. This situation is marked by the common use of environmental licenses as well as the obligations to comply with environmental standards adopted, and in the case of violation of such provisions, penalties being imposed according to the applicable law. The EMA 1997 itself puts more emphasis on the command-and-control approach, but it also has provisions on voluntary instruments that refer to environmental audits.

In general, environmental legislation is primarily sector-based. As a result, environmental management is governed by each sector, and in an absence of coordination, there are often conflicts of authorities, and overlapping interests among sectors. This sector-based approach exists because the practical operation of any activity is left to each department or sector. This is also due to the fact that each department is authorized to establish regulations in relation to their own mandate.

## **2.4 Key Institutions**

The Republic of Indonesia is composed of 33 provinces which are further divided into 465 regencies or cities. Each province and regency/city has its own regional administration. The provincial and regency/city administrations govern and manage their administrative affairs in keeping with the *autonomy principle* and the *medebewind* principle (assistance assignment/*tugas pembantuan*). The regional administration has the right to establish local regulations to implement the autonomy and the assistance assignment.<sup>23</sup> While the sub-national administrations exert autonomy as widely as possible within their jurisdiction, the law excludes administrative affairs that are reserved for the central government.

The Ministry of Environment (MoE) and provincial and regency/city environmental management institutions are the main government institutions responsible for environmental management in Indonesia. In addition, there are also sector institutions that are closely related to environmental compliance and enforcement (e.g., Department of Industry, Department of Forestry, Department of Marine Affairs & Fisheries, etc.), and the traditional enforcement roles played by the Police Force, National Attorney and Judiciary. The principal institutions and their respective authorities for environmental compliance and enforcement are contained in Table 2.1.

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<sup>23</sup> Consult Article 18 of the 1945 Constitution (second amendment).

**MoE.** Formed as a state ministry in 1973, MoE's powers are more limited compared to those of a departmental ministry. MoE's coordinating function is more effective and prominent than its law enforcement function, due to the lack of provincial and regency/city level offices. In 2005, the MoE formed five Regional Environmental Management Centers (known as *Pusreg*), which are assigned to execute coordination of policy implementation and to provide technical guidance, as well as to carry out supervision and control in the environment sector in accordance with applicable legislation in each region.<sup>24</sup> These regional centers do not have subordination relations with provincial and regency/city environmental management agencies.

In 1990, the Government of Indonesia formed the Environmental Impact Control Agency (BAPEDAL),<sup>25</sup> which answered directly to the President and was led by the State Minister of Environment. In 1994, the Government formed Local Environmental Impact Control Agencies (BAPEDALDA) in 30 provinces and 111 Local Environmental Impact Control Agencies at the regency/city level. However, the Government dissolved the BAPEDAL in 2002 and transferred its functions to MOE.<sup>26</sup> The local environmental impact control agencies then were subsumed into the provincial and regency/city administrations.

**Sector Ministries.** Sector ministries (e.g., Department of Industry, Department of Forestry, Department of Marine Affairs and Fisheries, etc.) are responsible for implementing environmental management policy in their sector, issuing business licenses, managing compliance monitoring, undertaking supervision and imposing administrative sanctions for violations of license requirements.

**Table 2.1 Institutional Framework of the Environmental Management in Indonesia**

Agency	Scope	Authority
Ministry of Environment	National	<ul style="list-style-type: none"> <li>• Coordinating all activities related to environmental management</li> <li>• Formulation of policy in the environmental management area</li> <li>• Issuing waste disposal licenses</li> <li>• Compliance monitoring and supervision</li> <li>• Inquiry on and investigation of environmental criminal cases</li> </ul>
Sector Ministries (Department of Industry, Department of Forestry, Department of Marine Affairs & Fisheries, etc)	National	<ul style="list-style-type: none"> <li>• Responsible for implementing environmental management policy in each sector/department</li> <li>• Issuing business licenses</li> <li>• Monitoring compliance with business licenses requirements</li> <li>• Managing supervision on business license requirements</li> <li>• Imposing administrative sanctions for violation of business license requirements</li> </ul>
Provincial governments	Province	<ul style="list-style-type: none"> <li>• Responsible for implementing the environmental management policy in its territory for cross-regency/city environmental issues</li> <li>• Compliance monitoring</li> <li>• Managing supervision</li> <li>• Imposing administrative sanctions</li> </ul>
Regency/ City governments	Regency/ City	<ul style="list-style-type: none"> <li>• Responsible for implementing the environmental management policy in its territory</li> <li>• Issuing location permit, building permit, nuisance license (HO)</li> <li>• Compliance monitoring</li> <li>• Managing supervision</li> <li>• Imposing administrative sanctions</li> </ul>
National Police Force	National	<ul style="list-style-type: none"> <li>• Conducting investigation of and inquiry on environmental criminal cases</li> </ul>
National Attorney	National	<ul style="list-style-type: none"> <li>• Prosecuting environmental criminal cases</li> </ul>
Judiciary	National	<ul style="list-style-type: none"> <li>• Hearing of criminal cases (Court of General Jurisdiction)</li> <li>• Hearing of civil cases (Court of General Jurisdiction)</li> <li>• Hearing of administrative cases (Court of Administrative Justice).</li> </ul>

Source: Santosa (1997) updated (2007)

<sup>24</sup> Regional scope: (1) Sumatera Region, (2) Java Region, (3) Kalimantan Region, (4) Bali and Nusa Tenggara Region, and (5) Sulawesi, Maluku and Papua Region. The Regulation of the Minister of Environment 1 of 2005 regarding Organization and Work Procedure of the MoE of the Republic of Indonesia.

<sup>25</sup> Presidential Decree no. 23 of 1990

<sup>26</sup> See Presidential Decrees no. 2 of 2002 and no. 4 of 2002.

**Provincial Governments.** Provincial governments have responsibility for implementing environmental management policy in their territories, especially with respect to environmental problems pertaining to cross-regency/city matters. In addition, the provincial governments also have the power to monitor compliance, manage supervision and impose several administrative sanctions limited to industries and enterprises within their jurisdiction.

**Regency/City Governments.** The regency/city governments are responsible for implementing environmental management policy within their own territory. In addition, the regency/city government also has the power to issue location permits, building permits and nuisance licenses (HO), to monitor compliance, to undertake supervision and to impose administrative sanctions for license requirement violations.

**National Police.** The National Police of the Republic of Indonesia is the national entity authorized to maintain security and public order.<sup>27</sup> Among these duties, National Police officers are also responsible for enforcing environmental law.<sup>28</sup> More specifically, provisions in the Criminal Procedure Code (KUHAP) authorize the National Police to undertake investigations and inquiries against all criminal acts, including environmental crimes. The National Police's authority to undertake environmental investigations does not reduce the authority held by other investigators, including environmental public servant investigators (PPNS LH).

**Public Prosecutor.** The Office of the Public Prosecutor of the is a government institution that prosecutes crimes.<sup>29</sup> The functions of the Public Prosecutor are performed by the Office of the Attorney General, the High Prosecutor's Office and the Public Prosecutor's Office. The Attorney General is located in Jakarta and its jurisdiction includes the state jurisdiction. The High Prosecutor is located in provincial capitals and its jurisdiction covers the provincial territories, while the Public Prosecutor is located in the regency/city capital and its jurisdiction covers the regency/city territory.<sup>30</sup> In an environmental criminal context, the Public Prosecutor's duty involves (a) carrying out prosecutions against violators, (b) executing judge rulings and court decisions, (c) supervising and administering conditional criminal decisions, and (d) completing cases sometimes requiring coordination with investigators.<sup>31</sup> Similarly, in an environmental administrative and civil context, the Public Prosecutor has wide latitude to act both inside and outside of court in the name of the government.<sup>32</sup>

**Judiciary.** The judiciary consists of four different jurisdictions under the Supreme Court. Two subsystems are closely related to environmental cases, namely the general judiciary (District Court/*Pengadilan Negeri* and High Court/*Pengadilan Tinggi*) and the administrative judiciary (Administrative Court/*PTUN* and High Administrative Court/*PTTUN*). The general judiciary has jurisdiction over criminal and civil cases. The state administrative judiciary has jurisdiction over administrative disputes. Two other subsystems, the religion and military courts, do not relate to environmental cases.

## 2.5 Status of Environmental Compliance

**Water Polluting Industries.** The MoE recorded that in 2004 Indonesia had approximately 9,600 large- and medium-scale industries with the potential to pollute surface water and groundwater. Food and

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<sup>27</sup> Ibid, Article 5 (1).

<sup>28</sup> One of the duties of the National Police of the Republic of Indonesia is "to protect the security of body and soul, property, the public, and the environment from disruption and/or disaster, including providing aid and assistance by highly respecting the human rights. Law 2 of 2002, Article 14 (1) letter i.

<sup>29</sup> Law 16 of 2004 regarding the Public Prosecutor of the Republic of Indonesia, Article 2.

<sup>30</sup> Ibid, Article 4.

<sup>31</sup> Ibid, Article 30 (1).

<sup>32</sup> Ibid, Article 30 (2).

beverage, textile, leather, paper, mining, chemical and rubber industries are examples of industries that have high polluting potential. In 2004, there was also an estimated 134,000 small-scale industries affecting surface water and groundwater, which was an increase of about 14% over a 2001 estimate.<sup>33</sup>

**Air Polluting Industries.** Typical air-polluting industries in Indonesia are manufacturing, mining, energy, and oil and gas. The manufacturing industries consist of metal smelting, cement, fertilizer, pulp and paper, dry battery, carbon black, paint, consumer goods, electronic, pharmaceutical, sugar refinery, chemical, ceramic and base chemical. Statistics Indonesia (BPS) recorded 20,729 large- and medium-scale industries, 16,995 (81.99%) of which were situated in Java and the remaining 3,734 (18.01%) situated outside Java in 2005.<sup>34</sup>

**Status of Compliance.** At present, Indonesia develops very limited information on compliance and instead relies on reported information under its industrial public disclosure program, PROPER, and other voluntary compliance programs (e.g., Prokasih). In general, the MoE (2006) reported that of the 251 companies evaluated in the 2003-2004 PROPER program,<sup>35</sup> 128 companies (51%) were assessed as “non-compliant” and obtained red and black ratings. Only 123 companies (49%) were assessed as “compliant” and obtained blue and green ratings.<sup>36</sup>

With regard to water pollution, of the 49 agro-industrial companies monitored in the 2006 Clean River Program (Prokasih) in the Provinces of Riau, Banten and Central Java, 32 companies (73%) complied with the quality standards and 13 companies (27%) exceeded the standards set for *Biochemical Oxygen Demand* (BOD).<sup>37</sup> In addition, from the 520 companies evaluated in the 2006 PROPER program, only 199 of them (38%) were assessed as compliant with water pollution control regulations.<sup>38</sup>

Inspection findings on wastewater treatment performance during the period of January to June 2007 at the Brantas river basin (DAS), as reported by the Environmental Impact Control Agency of East Java Province (2007), indicated that only 39.7% of the companies complied, 10.3% sufficiently complied and 50% did not comply.

With regard to air pollution, the State Ministry of Environment (2007) reported that the evaluation of compliance with air pollution control regulations by 254 companies in the 2006 PROPER report indicated that only 103 companies (41%) were assessed as compliant, 147 companies (59%) were assessed as non-compliant and 4 companies (2%) did not generate any emissions from their activities.

In the mining, energy, oil and gas sector, from 149 companies participating in the 2005-2006 PROPER Program, 68% of those in the mining industries were assessed as compliant, 93% in the oil and gas were assessed as compliant and 90% in the energy industries were assessed as compliant. For agro industries, from 106 companies participating in the 2006 PROPER, 2 companies (11.32%) complied, 94 companies (86.68%) did not comply and 3 plywood manufacturers and 1 tapioca company had ceased operation.

Another monitoring result undertaken on 6 companies in Bandung Regency, 8 companies in Bekasi Regency and 4 companies in Tangerang City indicated that in general they had not implemented any air

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<sup>33</sup> MoE, *Supra* note, page 24.

<sup>34</sup> <http://www.bps.go.id/sector/manufacturing/ibs/table1.shtml>, accessed on 14 November 2007.

<sup>35</sup> For a complete discussion of the PROPER program, see Sec. 3.6, Economic and Other Incentive-based Instruments, pp. \_\_\_\_\_.

<sup>36</sup> Under the PROPER public disclosure rating system, the environmental performance of companies is represented in five color ratings, namely (1) gold, which means that the environmental management practices of a company exceeded requirements and achieved zero emission, (2) green, which means that the environmental management practices of a company exceeded requirements, (3) blue, which means the company has carried performed environmental management measures just as required, (4) red, which means the company implements environmental management measures but does not meet the requirement, and (5) black, which means that the company does not implement any significant environmental management measures.

<sup>37</sup> MoE, *Supra* note 2, page 49.

<sup>38</sup> *Ibid*, page 50.

pollution control measures in line with applicable legislation. Non-compliance related to failure to use stacks for exhaust emissions, non-existent emissions monitoring, failure to meet emission standards, failure to self-monitor, lack of continuous emission monitoring (CEM) equipment or improperly installed CEM equipment.

The MoE (2007) reported that of the 7,029,000 tons of toxic and hazardous waste produced by 521 PROPER participating companies in 2006, about 90% was treated and 10% or 696,000 tons were not treated.<sup>39</sup>

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<sup>39</sup> MoE, *supra* note 2, page 237.

### 3.0. ASSESSMENT RESULTS

#### 3.1. Law Enforcement Authority

**MoE Authority.** Based on the EMA 1997, the MoE has the power to: (1) coordinate the planning and implementation of national environmental management policy<sup>40</sup>, (2) approve or reject waste disposal license applications<sup>41</sup>, (3) supervise the compliance of the party responsible for any business and/or activity with applicable environmental legislation<sup>42</sup> (4) order a mandatory environmental audit to the party responsible for any business and/or activity when non-compliance to legislation is observed<sup>43</sup>, and (5) establish special investigators for environmental crimes.<sup>44</sup> Table 3.1 summarizes MoE’s legal authority for compliance and enforcement.

**Table 3.1 Legal Authority of the MoE in Environmental Compliance and Enforcement**

No	Authority/Legal Mandate	Yes	No	Notes
1	Formulating policy, guidelines and strategies	√		
2	Formulating standards/guidelines	√		
3	Coordinating implementation of environmental management	√		
4	Issuing waste disposal licenses	√		
5	Inspecting the compliance of a business/activity	√		
6	Acquiring samples for analysis and obtaining access to business/activity records and locations	√		
7	Imposing self-monitoring, self-reporting and record keeping requirements on a business/activity	√		
8	Modifying, rejecting or terminating licenses or applications	√		Only for toxic and hazardous waste disposal license; air and waste water licenses are delegated to Regency/City
9	Filing a civil lawsuit	√		However the mechanism is unclear
10	Investigating criminal cases	√		filing a case through the police and public prosecutor
11	Imposing administrative sanctions		√	Only for issuing warning letters and imposing mandatory environmental audit
12	Imposing criminal sanctions		√	via court
13	Imposing civil law sanctions		√	via court
14	Conducting remedial actions		√	via court
15	Conducting emergency actions		√	

**MoE Authority related to Other Institutions.** Other governmental agencies also have related environmental compliance and enforcement authority. National line agencies, provincial and regency/city governments have authority to supervise and impose administrative sanctions, which exceeds MoE’s authority. In addition, national line agencies, and provincial and regency/city governments have the legal authority to investigate environmental crimes. Frequently, there are conflicts of authority between environmental investigators and other civil investigators in conducting investigations. For instance, conflicts may arise between MoE’s investigators and the Ministry of Forestry’s investigators or the Ministry of Agriculture’s investigators in investigating forest fires cases.

#### Key Challenges

- *Weak or limited authority.* MoE regulatory powers focus mainly on toxic and hazardous waste. MoE does not have the authority to impose significant administrative sanctions and to conduct remedial and emergency actions. The provision on the rights of environmental institutions to file a civil law

<sup>40</sup> Supra note 20, Articles 9 and 11.

<sup>41</sup> Ibid, Article 20.

<sup>42</sup> Ibid, Article 22.

<sup>43</sup> Ibid, Article 29.

<sup>44</sup> Ibid, Article 40.



suit to the court is not explicitly regulated. MoE, line agencies, the provincial government and regency/city government have overlapping enforcement authority. MoE, sector agencies and the police all have authority to investigate environmental crimes.

- *Overlapping authority especially as related to environmental crime.* MoE, line agencies, the provincial government and regency/city government have overlapping enforcement authority. MoE, sector agencies and the police all have authority to investigate environmental crimes.

### **3.2 Institutional Framework and Capacity Building**

***Relationship between Local and Central Governments.*** Based on the EMA 1997, the authority for environmental compliance and enforcement is coordinated by the Minister of Environment. The Minister of Environment may delegate its authority to a local government based on the ‘de-concentration principle,’ which means a central government authority can be implemented by its representative in the region. Under certain circumstances, the central government may involve or order the local government based on the ‘*medebewind* principle’ (assistance assignment).<sup>45</sup> However, based on Law No. 22 of 1999 as amended by Law No. 32 of 2004 regarding local government, the distribution of authority is based on the ‘decentralization principle,’ which means that environmental compliance and enforcement is conducted by the local government. The transitional period from a centralized to a decentralized administration system has created relatively complicated relationship and coordination between the central and local governments on environmental compliance and enforcement.

***Local Government Institutional Arrangements.*** Generally, an environmental management institution in a regency/city can be in the form of a Board/Agency (*Badan*), Services Unit (*Dinas*), Office (*Kantor*), or Division of a Board/Agency, Division of Services Unit or even Division of Office.<sup>46</sup> Every region chooses its own form of environmental management institution, depending on its administration policy. In detail, the breakdown of environmental management institutions at the regency/city level across Indonesia is as follows: Board/Agency (34%), Joint Services Unit (environmental management and other sectors together) (31.3%), Office (9.8%), Services Unit (8.3%), Division of Board or Division of Services Unit (5.6%) and the rest are other forms with less authority. At the provincial level, 99% of environmental management institutions are in the form of Board/Agency.

***Mechanism for Inter-Agency Coordination.*** The principal function of MoE is to formulate environmental policies and to coordinate the environmental sector and environmental impact control, including environmental compliance and enforcement. Since environmental law enforcement authority is shared by several institutions, coordination among them is vital for successful enforcement. One of the efforts to address this is a joint decree between the Minister of Environment, Attorney General and Head of the Indonesian National Police to set up an integrated environmental law enforcement team, which consists of a task force and a secretariat.<sup>47</sup> Members of the task force are MoE’s environmental civil servant investigators, National Police investigators and prosecutors from the Public Prosecutor of the Republic of Indonesia, whose authorities are to conduct investigations, prosecution and supervision based on their respective duties. Unfortunately, the team has yet to conclude any cases based on the joint decree.

In a provincial-level effort, the Province of Yogyakarta signed a joint regulation between the Governor, the Head of High Prosecutor’s Office, the Head of Local Police and the Head of Java’s Regional Environmental Management Center (*Pusreg*) to establish the Environmental Problems Settlement Task

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<sup>45</sup> Ibid, Article 12 (2).

<sup>46</sup> Government Regulation no. 41 of 2007 regarding Local Organizational Apparatus.

<sup>47</sup> Kep-04/MENLH/04/2004, Kep. 208/J.A/04/2004 and Kep. 19/IV/2004 dated 30 April 2004 regarding Integrated Environmental Enforcement (One Roof).

Force (STP2LH) and the Environmental Criminal Law Enforcement Task Force (STPLH).<sup>48</sup> This task force also addresses administrative law enforcement, environmental dispute settlement, criminal law enforcement, data and information exchange, dissemination of information and education and training.

**National Environmental Budget.** Referring to the Finance Note and State Budget (APBN) documents, the budget allocation for 'environmental functions' is 1% in 2008, which is an increase from 0.4% in 2005. The environmental budget is part of the development budget used by several ministries, departments and other institutions. Although MoE's budget has also been growing, its percentage of the total allocation for environmental functions has been decreasing, from around 17% in 2005 to 7.7 % in 2008. Meanwhile, MoE's environmental law enforcement budget in the three years from 2005 to 2007 averaged 10% of the total MoE's budget.<sup>49</sup> Apart from that, the National Police and the Public Prosecutor also have their own environmental law enforcement budget.

**Local Environmental Budget.** The environmental management budget in a region might come from the Local Budget (APBD), including the Locally Generated Revenues (PAD), or from the Special Allocation Fund (DAK) for the environment sector from the central government. The budget from APBD varies, depending on the local policy. The local governments in Sulawesi, Maluku and Papua regions, for example, have agreed to allocate a significant 'environmental budget' in the 2008 APBD of around 3-5% of the total APBD.<sup>50</sup>

**Special Allocation Fund (DAK) for the Environment Sector.** The DAK for the environment sector is based on the idea that environmental degradation in the regions, in particular water, air and soil quality, causes appreciable losses for the national economy as a whole. In addition, there is an indication that the local budget allocation for the environment sector is very limited and cannot keep up with the escalation of environmental problems. The DAK for the environment sector is generally directed at the protection of water resources, water pollution prevention and rehabilitation of water pollution, especially river water. The DAK for the environment sector is sometimes used to buy equipment, such as laboratory equipment to investigate environmental cases.<sup>51</sup> One of the problems in allocating the DAK for the environment sector is that the budget is delivered to the regions without considering the status or standing of the environmental management institutions in the receiving region. Another challenge is that even though environmental management institutions play a very important role, environmental compliance and enforcement is rarely allocated in the local budget, either at the provincial or municipal/city level.

**Human Resources and Capacity Building.** In general, there are insufficient human resources to support effective environmental compliance and enforcement in Indonesia. There are only 476 environmental inspection officers (PPLH) that are distributed in 20 out of 33 provinces in Indonesia. Only 397 environmental civil servant investigators (PPNS) are responsible for 30 provinces. At the MoE only 6% of the 894 employees work within the law enforcement unit. The educational background of MoE employees, however, is relatively high, with 75% of them being university graduates.

**Professional Conduct.** Until now, the disciplinary mechanism for violations of ethical and professional conduct related to environmental compliance and enforcement falls under regulations for all civil servants, which is the Government Regulation no. 30 of 1980. Minor disciplinary sanctions consist of verbal warnings, written warnings and notice of dissatisfactions. Moderate disciplinary sanctions consist of suspending regular annual salary increases for a maximum of one year, one-level salary reduction for

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<sup>48</sup> Decree no. 25 of 2006, Decree no. 76/D4.1/09/06, Decree no. B/2836/X/2006 and Decree no. 23/PPLH-Reg.4/09/2006 regarding Integrated Environmental Law Enforcement.

<sup>49</sup> What is referred to as the environmental law enforcement fund is the budget for the Deputy for Environmental Compliance, who performs the law enforcement function at the MoE.

<sup>50</sup> <http://www.suarasurabaya.net/v05/kelanakota/?id=a596f0b4adf377b0b15b93ed41e343fb200745932>, accessed on 3 November 2007, 16:16:40

<sup>51</sup> Note from national workshop on environmental law enforcement in Indonesia. Jakarta, 30 July 2007.

the maximum of one year, and suspension of promotion for a maximum of one year. Major disciplinary sanctions consist of one-level demotion for a maximum of one year, release from office, honorable termination without request, and dishonorable termination.<sup>52</sup> The MoE is actively preparing an internal regulation regarding disciplinary sanctions for MoE employees/officials. MoE employees who are accused of corruption are subject to the Anti-Corruption Law as long as the action meets the criteria of corruption, such as bribery, blackmail and conflicts of interest.

### **Key Challenges**

- *Weak coordination between the central and local governments.* The four main challenges are: (1) lack of coordination in monitoring and inspection activities; (2) lack of strategy in sharing cases between the central and local governments; (3) weakness in reporting and data exchange between regency/city governments, provincial governments and the MoE; and (4) lack of consistency in implementing environmental compliance and enforcement programs among regency/city governments, provincial governments, and the MoE.
- *Weak coordination between agencies with sector responsibilities.* The role and function of MoE in coordinating the planning and implementation of environmental compliance and enforcement policy among sectoral agencies has not been well implemented.<sup>53</sup> Coordination is limited in formulating the policy between ministries, departments and other government institutions; monitoring sector institutions issuing business licenses and the local governments; and investigation and prosecution.
- *Limited financial resources for environmental compliance and enforcement.* The main financial source for environmental compliance and enforcement programs is the state budget (APBN), which to date has proven insufficient.
- *Insufficient human resources at all levels.* The number of inspectors and investigators is insufficient, while recruitment and placement of quality staff remains weak. Government officers who have been trained as environmental inspectors or investigators are often not placed in units relevant to inspection and investigation.<sup>54</sup> Behavioral supervision, integrity development and remuneration is inadequate.

### **3.3 Compliance Monitoring and Inspection**

***Gathering and Releasing Information on Compliance.*** Several units at the MoE collect information on compliance from the regulated community using their own methods. The Deputy for Environmental Pollution Control acquires data on industrial compliance through inspection/supervision, drawing on both PROPER (see section 3.6) and non-PROPER mechanisms. The MoE Deputy for Environmental Systems Management acquires data on the implementation of environmental management plans (RKL) and environmental monitoring plans (RPL) submitted by businesses/activities. The Deputy for Environmental Compliance acquires data from public complaint units.

Referring to the elements of inspection reports, based on the State Minister of Environment Decree no. 56 of 2002 regarding the General Guidelines for Environmental Compliance Inspection for Inspectors, MoE should have data on: (1) types of environmental licenses and other related licenses owned by an operator; (2) status of company compliance with the requirements; (3) condition of pollution monitoring equipment; (4) history of instrument use and maintenance; (5) availability of data/records on environmental management; (6) company compliance on emission standards and other operational

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<sup>52</sup> Government Regulation no. 30 of 1980 regarding Civil Servant Discipline, Article 6.

<sup>53</sup> *Supra* note 20, Articles 9 and 11.

<sup>54</sup> Note from national workshop on 'environmental law compliance and enforcement in Indonesia'. Jakarta, 30 July 2007

requirements; (7) implementation of the agreed upgrading requirements; and (8) records on any indication of data manipulation and the quality of instruments. MoE is yet to have comprehensive and publicly accessible data, however, on the compliance status of a business based on the chemical elements, industry type and license type. At the moment, only information about company ratings from the PROPER program is publicly accessible.

**Licensing Mechanisms.** Licenses related to environmental cover a wide range of functions and authorities. There are two types of licenses related to environmental protection in Indonesia, environmental licenses and environment-related licenses.

**Table 3.2 Environmental Protection Licenses**

No	Type of License	Main Function	Authorities
1	License to engage in business/to operate an activity, e.g., industrial licenses, mining concessions, logging concessions, license to transport hazardous waste	Legality for operating an activity and also used for environmental protection	Sectoral ministries, e.g., Ministry of Industry, Mining, Forestry, and Transportation
2	Nuisance license	Protecting people from smell and noise	Head of Regency/Mayor
3	Site license	Insuring consistency with spatial planning	Head of Regency/Mayor
4	Building licenses	Insuring consistency with spatial planning	Head of Regency/Mayor
5	License to discharge waste water	Water and soil pollution control	Head of Regency/Mayor
6	License to dump	Environmental protection and pollution control	Minister of Environment
7	License to operate hazardous waste facilities	Pollution control	Minister of Environment

Source: Rachmadi, 2006

Note: Number 1 is usually referred as “environmental protection related” licenses, and numbers 2-7 are usually referred to as “environmental protection” licenses.

Licenses “related” to environmental protection are all licenses to conduct a business/activity with a significant impact on the environment (Nos. 1, 3, and 4, above).

- Mining authorization (*kuasa pertambangan*) issued by the Minister of Energy and Mining.<sup>55</sup>
- Community mining permit (for small-scale and local mining that use simple tools for self-earnings) issued by the governor.<sup>56</sup>
- Regional mining permit (for non-strategic and non-vital excavated objects) issued by the governor.<sup>57</sup>
- Industrial business license issued by the Ministry of Industry.<sup>58</sup>
- Water use rights license issued by the Central Government for inter-province river zones, inter-state river zones, and nationally strategic river zones; issued by the governor for inter-regency/city river zones; and issued by the regent/mayor for river zones within a regency/city.<sup>59</sup>
- Water business rights license issued by the Central Government for inter-province river zones, inter-state river zones, and nationally strategic river zones; issued by the governor for inter-regency/city river zones; and issued by the regent/mayor for river zones within a regency/city.<sup>60</sup>

<sup>55</sup> Law no. 11 of 1967, Article 17.

<sup>56</sup> Government Regulation no. 32 of 1969, Articles 5(2) and (3).

<sup>57</sup> Ibid, Article 47.

<sup>58</sup> Law no. 5 of 1984, Article 13, Jo Government Regulation no. 13 of 1987, Articles 3 & 5.

<sup>59</sup> Law no. 7 of 2004, Article 8.

***Relationship Between EIA and Business Licenses.*** Based on Article 18 (1) of the EMA 1997, every business and/or activity that has a significant impact on the environment must undertake an environmental impact assessment (EIA) to obtain a license to conduct a business. The license includes conditions and obligations to carry out environmental impact control. In issuing a license, it is compulsory to address: (1) spatial management plans; (2) public opinion; and (3) considerations and recommendations of authorized officials who are involved with the business and/or activity. The decision to issue a license must be made public.<sup>61</sup>

The current licensing system not only entails a high cost to industries because they need to get several licenses for an activity, but also creates challenges for consistent law enforcement. As a result, Indonesian environmental lawyers have proposed the concept of an integrated license. There are at least four concepts on integrated environmental licensing (Rahmadi, 2006).<sup>62</sup>

***Compliance Monitoring (Supervision).*** MoE's authority in conducting "supervision" includes: monitoring performance, requesting an explanation, making copies of documents and/or taking necessary notes, enter premises, taking samples, inspecting equipment, inspecting installations and/or transportation equipment, and requesting explanations from the party responsible.<sup>63</sup>

The standard operating procedures in compliance monitoring conducted by official supervisors are based on MoE Decree no. 56 of 2002 regarding General Guidelines of Environmental Compliance Inspection for Environmental Inspectors. Based on this decree, the inspection process consists of four stages: preparation, implementation, evaluation and reporting.

At the preparation stage the inspector should: (1) prepare administrative documents, such as the assignment letter, identity card, travel document (official travel letter) and the transcript form needed for performing inspection; (2) review related regulations/documents/reference; and (3) prepare the necessary equipment, such as a voice recorder, camera or handy cam, safety equipments, sampling equipments, vehicles, inspection report form, etc.

Activities at the implementation stage are: (1) explaining the purpose of inspection; (2) preliminary meeting to introduce the inspection team and explaining details on any matters related with inspection; and (3) examination of business/activity location. The objective of the examination is to understand the company policy, company organization, health and safety, compliance planning, business/activity reporting, general physical condition of the business/activity, any change in production process, etc.; (4) interviewing, which should be conducted to collect information and data needed in performing inspection, through open interview and structured interview; (5) sampling; (6) taking pictures/photos/videos; (7) documenting all collected data in a detailed, systematic and clear manner; and (8) the representative of the business/activity must be informed about the findings of the field inspection.

At the evaluation stage, the inspector must re-review field data and facts, whether they are complete and in line with the general guidance for inspection or still need additional data gathering. Finally, at the reporting stage, the inspector should make an environmental inspection report containing information collected from the inspection. The information should be well-managed and arranged to enable use in law enforcement efforts or in improving environmental management performance.

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<sup>60</sup> Ibid, Article 9 (1).

<sup>61</sup> *Supra* note 20, Article 19.

<sup>62</sup> Rahmadi in Faure, et. al, *Environmental Law in Development; Lesson from the Indonesian Experience*, Edward Elgar, 2006.

<sup>63</sup> *Supra* note 20, Article 24.

As detailed and exhaustive as the compliance monitoring guidelines are, the above steps are often not fully implemented due to the limited resources of the MOE, and other challenges.

***Self-Monitoring and Self-Reporting.*** Per Articles 5 (2) and 6 (2) of EMA 1997, MoE has the authority to develop a comprehensive self-monitoring and self-reporting system. As yet, MoE has not exercised this authority, and instead there are several pollution control regulations with self-monitoring and self-reporting requirement, such as Government Regulation no. 41 of 1999 concerning EIA/AMDAL, Government Regulation no. 82 of 2001 concerning Water Pollution Control, Government Regulation no. 41 of 1999 concerning Air Pollution Control and also in several local pollution control regulations such as West Java Governor Decree no. 6 of 1999 concerning Waste Water Standards for Industry in West Java. Implementation of these various requirements, however, has been limited.

### **Key Challenges**

- *Licensing systems are complex and fragmented with overlapping authority.* In most cases, a division of authority between the agency issuing the licenses and the one monitoring the licenses creates efficiency and coordination challenges. The coordination and division of work between central and regional government duties on monitoring are still weak, and there is no clear coordination mechanism.
- *Lack of implementation of compliance monitoring guidelines.* Although detailed procedures are established for all phases of compliance monitoring, lack of sufficient resources to enforce environmental laws prevent compliance monitoring from being implemented effectively and on a widespread basis.
- *Lack of clear regulation and guidance on self-monitoring.* There is no standard operating procedure for the gathering, collection, record keeping and reporting of environmental performance by the company. There are also no clear regulations that detail the administrative or criminal sanctions when businesses fail to comply with the self-reporting requirement.

### **3.4 Enforcement Response**

Based on the EMA 1997, the MoE has the authority to enforce administrative, criminal and civil legal requirements, with certain limitations. Administrative law enforcement, especially for conducting supervision, is based on the stipulations in Articles 22 and 24 of the EMA 1997 and other relevant regulations.<sup>64</sup> Criminal law enforcement is based on Chapter VIII Article 40 and Chapter IX Articles 41 to 48 of the EMA 1997 and other relevant regulations.<sup>65</sup> Civil law enforcement is based on Chapter VIII (Articles 30 to 39) of the EMA 1997 and other relevant regulations.<sup>66</sup>

***Enforcement Response Process at the MoE.*** The MoE typically detects any possible violations of environmental regulations through complaints by the public, from direct findings by inspectors or from mass media coverage. The Deputy Assistant for Complaint Management then verifies or collects information in collaboration with related units at the MoE. The verification results are reported to the

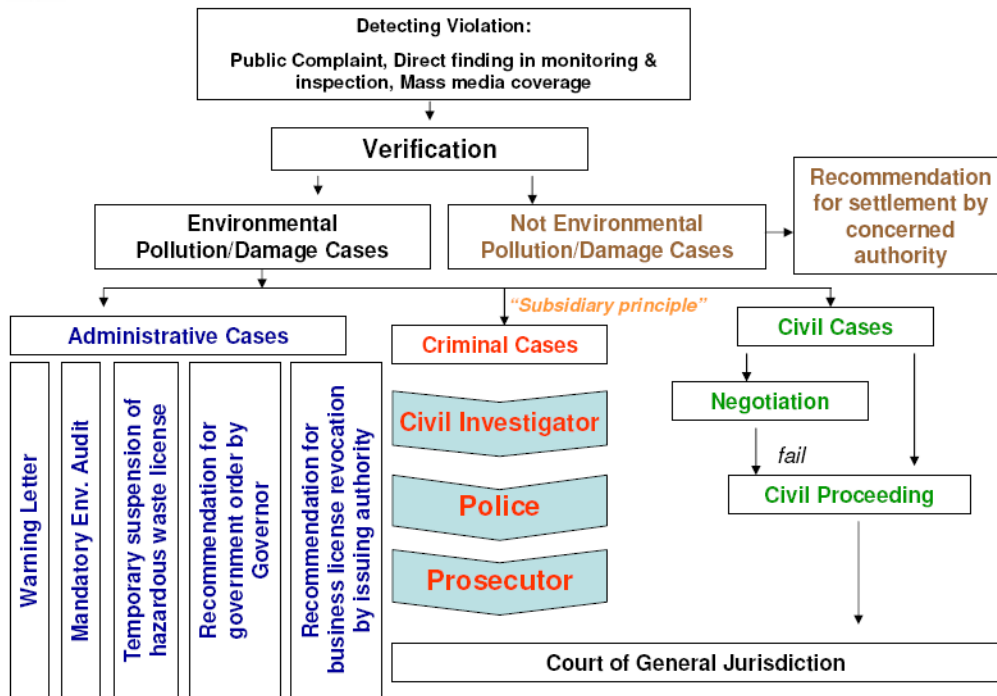
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<sup>64</sup>The implementation of supervision is conducted based on the Minister of Environment Decree no. 7 of 2001 regarding Environmental Inspection Officer and Regional Environmental Inspection Officer, the Minister of Environment Decree no. 56 of 2002 concerning the General Guidelines for Environmental Compliance Inspection for Inspectors, the Minister of Environment Decree no. 57 of 2002 concerning the Work Procedure for Environmental Inspection Officer at the Ministry of Environment, the Minister of Environment Decree no. 58 of 2002 concerning Work Procedure for Environmental Inspection Officer in the Provinces/Regencies/Cities.

<sup>65</sup> Other laws and regulations such as forestry, mining, irrigation, waters, health, conservation, cultural heritage, biodiversity and Exclusive Economic Zone, Law no. 8 of 1981 concerning the Criminal Procedure Code.

<sup>66</sup>The Civil Code (Article 1365), Civil Procedure Code, Government Regulation no. 54 of 2000 concerning Environmental Dispute Settlement Service Provider Institutions, Chief of Supreme Court Decree no. 1 of 2002 concerning the Procedural Guidance on Class Action Lawsuits.

Deputy for Environmental Compliance. If a business/activity is in violation but the case is not a criminal case, then the Deputy Assistant for Administrative Law Enforcement imposes an administrative sanction in the form of an obligation to conduct an environmental audit, a warning, or a temporary license suspension (specific for toxic and hazardous waste). Another alternative is for the Deputy Assistant for Civil Law Enforcement to file a civil lawsuit in court or undertake negotiation. Below is the flow chart of law enforcement response in MoE.



When a case is classified as a criminal case, it can be referred to the regional government or directly handled by the MoE. If directly handled, then the MoE sends a Notice of the Start of An Investigation (SPDP) to the Prosecutor’s Office and through the National Police Headquarters Department for Coordination of Civil Servant Investigators (PPNS). After the investigation process (action, summoning and examination of suspects, examination of witnesses, examination of expert witnesses and filing), a case presentation is carried out. Afterwards, MoE investigators submit the case files to the Public Prosecutor’s Office through the National Police Headquarters (Supervisor Coordinator of PPNS) to be tried in the District Court.

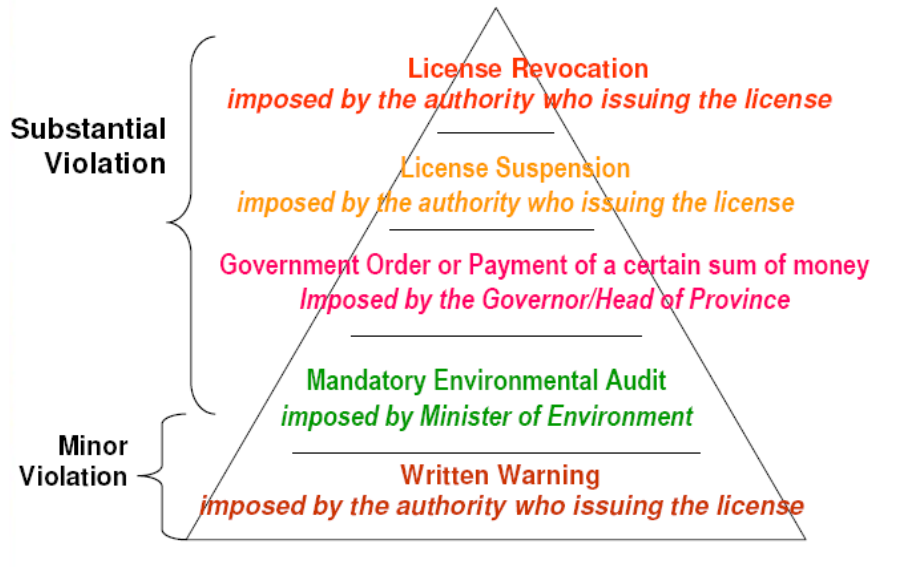
**Administrative Law Enforcement Procedure.** The EMA 1997 stipulates three types of administrative sanctions, namely: government order (*paksaan pemerintah*),<sup>67</sup> payment of a certain sum of money,<sup>68</sup> and revocation of business/activity license.<sup>69</sup> The SMinister of the Environment, however, has no authority to impose any of the three administrative sanctions. Rather, the Governor/Head of Province has the authority over the “government order” sanction and “payment of a certain sum of money” sanction. The “revocation of business/activity license” sanction is the authority of the official issuing the business license, which depends on the type of business. The Minister of the Environment is only allowed to submit a request to the Governor/Head of Province to impose a sanction of a “government order” or a

<sup>67</sup> *Supra* note 20, Article 25 (1)

<sup>68</sup> *Ibid*, Article 25 (5)

<sup>69</sup> *Ibid*, Article 27 (1).

“payment of a certain amount of money” or a request to the official issuing the business license to “revoke the business/activity license” of the business/activity that has polluted/damaged the environment. See the pyramid of administrative sanctions (below) based on EMA 1997 and related environmental regulations.



**Civil Law Enforcement Procedure/Environmental Dispute Settlement.** Based on Article 30 of the EMA 1997, an environmental dispute settlement may be conducted through an out-of-court settlement or in-court/litigation. An out-of-court dispute settlement may be undertaken by the disputing parties themselves (*negotiation*) or by a neutral third party who has no authority to make any decision (*mediation*) or by a neutral third party who has the authority to make a decision (*arbitration*). Meanwhile, an in-court dispute settlement in district court is limited to disputes between polluter (an individual or a legal entity) and the victim of the pollution (an individual or a legal entity) or in an administrative court (State Administrative Court) if the parties in dispute are the polluter (an individual or a legal entity) and a state administrative body or official.

The MoE has a role in conducting advocacy and facilitation in the enforcement of civil law. The advocacy role is conducted by encouraging the party suffering the loss to enforce their rights (through a class action, out-of-court settlement), encouraging NGOs to file a lawsuit using the mechanism of NGO legal standing, or filing a lawsuit upon the state’s loss on the environment or as the defendant in the court.

In 2006, MoE had five civil cases that were settled in court and seven civil cases that were settled out of court by MoE. From a number of cases settled by the MoE, there were several problems related to payment of compensation, inadequate compensation for the loss due to weak technical evidence, prolonged negotiations and lack of good faith on the part of companies to settle the case (especially in the out-of-court settlement).

Similarly, the reasoning and the amount of compensation of five civil cases decided by the courts were not adequate, since the judges seemed to have failed to include the cost of environmental degradation in their judgments. In addition, the judgments also failed to include some main principles of environmental law as the main grounds of their decisions.



***Legal Standing of Environmental Management Institutions.*** The EMA 1997<sup>70</sup> provides a legal ground for any government institution responsible for environmental impact control (including the MoE) to file a lawsuit “for public interests” if the public suffers due to pollution and/or damage to the environment such that it affects the community’s way of life. However, the legal standing mechanism of government institutions, as stated in article 37 (2) EMA 1997 is unclear. Moreover, the legal standing of government institutions to act for the interest of the public is less than the legal standing of the government to deal with the loss of the state and/or the environmental rehabilitation costs caused by ecological damages, which has not been explicitly regulated in the EMA 1997.

***Criminal Law Enforcement.*** The criminal sanction for environmental crimes according to the EMA 1997 may be in the form of: (1) a jail sentence between 3-15 years;<sup>71</sup> (2) a fine between Rp 100,000,000 and Rp 750,000,000 (between US\$ 10,000 – US\$ 80,000);<sup>72</sup> or (3) accessory penalties. Accessory penalties may be in the form of: (1) confiscation of benefits from the crime; and/or (2) closing part of or an entire company; and/or (3) rehabilitation of the impact of the crime; and/or (4) obligation to do what was neglected without any rights; and/or (5) nullification of what is neglected without any rights; and/or (6) to place the company under reprieve for a maximum period of three years.<sup>73</sup>

Criminal responsibility for an environmental crime may be imposed on an individual or a legal entity. If the crime is committed by or on behalf of a legal entity, company, union, foundation or other organizations, then the criminal sanction is added by a third of the punishment (Article 45 EMA 1997). The criminal sanctions for a legal entity are in the form of fine and accessory penalties (Articles 46 and 47 EMA 1997).

The MoE divides criminal cases into three components, namely: (1) environmental criminal cases (obtained from the results of PROPER evaluations); (2) environmental criminal cases of forest/land fire; and (3) strategic environmental pollution and/or damage cases. By 2006 there were 18 cases being investigated, one case at P19 stage (legal dossier not yet completed), two cases at P21 stage (complete and ready to be tried at the court) stage, seven cases were tried and one case was sentenced. The cases have not yet been resolved.

Several clear obstructions to enforcement of environmental criminal law resulting in failure to foster deterrence, includes: the limited capability of law enforcement personnel (civil investigators (PPNS), the police and prosecutors) in investigating environmental cases; overlapping laws and regulations; and the absence of a special budget for handling the cases. Consequently, criminal cases have lengthy settlement and resolution periods.

### **Key Challenges**

- *Complex criminal and civil enforcement processes.* Criminal and civil enforcement depends heavily on the time-consuming trial process. The severity of the punishment depends on the judge’s discretion, and the Supreme Court has not issued any guidelines concerning the handling of environmental cases.
- *Lack of consistency and limited use of administrative penalties.* The fragmentation of authority to impose administrative sanctions across various agencies, including sector agencies (such as the Departments of Industry, Forestry, Mining, etc.), provincial governments, regency/city governments, and the Minister of Environment, has resulted in inconsistent administrative sanctions.

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<sup>70</sup> Ibid, Article 37 (2).

<sup>71</sup> Ibid, Articles 41- 44.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, Article 47.

- *Overlapping authority in investigation and prosecution of criminal cases.* The police and MoE's civil servant investigators both play a role in the investigation process, which leads to coordination problems and inconsistencies. Environmental investigators are usually not involved when the case is being handled by the police. The Public Prosecutor's Office also often deems cases unacceptable for presentation to the court.

### 3.5 Compliance Assistance and Promotion

**Compliance Assistance.** The MoE maintains a website ([www.menlh.go.id](http://www.menlh.go.id)) that provides information on: environmental laws and regulations, ISO 14001 certifications, environmental training and education schedules, PROPER, management of hazardous waste, soft loans, cleaner production, environmental technology, EIA process, etc.

MoE also issues guidelines on environmental management for industry and provides technical assistance on waste management for small-scale industries, although as of 2006 this was limited to only two industrial centers.<sup>74</sup> Technical assistance for waste management for small industries focused on: (1) businesses using water in a large volume in its production process, (2) businesses using materials or additives categorized as toxic and hazardous substances, (3) activities generating a significant amount of solid waste, and (4) location in an industrial center.<sup>75</sup>

**Compliance Promotion.** The EMA 1997 requires MoE to promote compliance by the regulated community by implementing voluntary compliance instruments, such as environmental standardization at the production level (for instance ISO 14000) and promoting environment-friendly technologies. In 2004 the MoE established the Center for National Cleaner Production (*Pusat Produksi Bersih Nasional/PPBN*) to facilitate, promote and catalyze the development and implementation of cleaner production in Indonesia. Unlike cleaner production centers in other countries, the Center in Indonesia does not deal directly with the industry/company, but rather uses established Indonesian service providers.<sup>76</sup>

**Clean River Program (Prokasih).** Prokasih is an industrial wastewater pollution control program that covers all types of industry, hotels and hospitals, domestic and industrial estates that discharge wastewater to a river. MoE began this program in 1989, and it was renewed in 2003 with the objectives to accelerate compliance improvement of industry, increase the efforts of all parties (central and local governments and industry) in controlling pollution, and decrease pollution loading to the river.

To join this program, the participating company must sign a declaration letter that contains the company's statement that it will improve its wastewater treatment performance to comply with wastewater standards before disposal. The declaration is made by the company and witnessed by MOE, the relevant governor and regent/mayor. The declaration letter is a commitment to comply with the environmental regulations within a certain period of time, considering technical and administrative matters.

During 2003-2006, the number of declaration letter ('Superkasih') signatories increased from 45 to 249. Of these, 65 were agro industry companies, 149 manufacturing companies and 35 from other types of companies. These companies were located in seven provinces, five river basins (DAS) and two coastal and sea areas. In 2007, MoE reported that only 25 companies out of the 119 companies in four provinces (Riau, Central Java, Banten and Batam and Riau Islands) actually complied with their declaration letter

<sup>74</sup> The MoE provided technical assistance to build and manage wastewater treatment facilities for small scale industrial centers in 2006, for tofu/tempeh and tapioca industries.

<sup>75</sup> Ministry of Environment, Deputy III on Pollution Control Unit. 2006 Annual reports.

<sup>76</sup> <http://www.ppbn.or.id>

terms. In the course of their 2007 program evaluation, MoE discovered the reporting mechanisms and indicators for success given by the companies to local governments and the MoE were not clear.

**Blue Sky Program (Prodasih).** Since 1996, the MoE has been implementing the Blue Sky/Clean Air Program, which is an air pollution control program for mobile and stationary sources that also uses a 'declaration letter' instrument. The Blue Sky program at the central government level is coordinated by MoE and is implemented in every Regency/City with the assistance from the Governor/Provincial Government. Four provinces (DKI Jakarta, West Java, Central Java and East Java) were designated as a priority for Blue Sky Program in 1996.

**Compliance Data Management.** In general, the data on compliance of the regulated community in MoE are recorded on paper and are distributed across various units at the MoE. There are at least four Deputies that keep data on environmental compliance, namely: (1) Deputy I for Environmental Systems Management, which receives self-monitoring and self-reporting documents and RKL/RPL reports; (2) Deputy II for Environmental Pollution Control, which receives the results of monitoring and supervision; (3) Deputy IV for Toxic and Hazardous Substances and Waste Management, which receives the results of monitoring and supervision of B3 and B3 Waste management; and (4) Deputy V for Environmental Compliance, which receives complaints from the public. Since 2006, efforts have been made to improve the database system, by building a web-based application system, accessible to the public or companies. A licensing system database has also been developed for applications and for granted licenses.

### **Key Challenges**

- *Limited effectiveness of declaration letter programs.* While innovative in seeking corporate commitments for environmental performance, the Clean River and Blue Sky programs have not succeeded in ensuring effective compliance due in part to weak results tracking and reporting mechanisms.
- *Paper-based, uncoordinated data management systems.* Environmental agencies face significant challenges in operating effective compliance and enforcement programs due to the lack of a coordinated information management system that outdates and relies on paper records.

### **3.6 Economic and Other Incentive-based Instruments**

**Rating Program for Business Performance in Environmental Management (PROPER).** MoE initiated PROPER in 1995 to foster company compliance by providing reputation incentives through public disclosure of a rating of the company's environmental performance. While it was expected that companies with significant environmental impacts would participate in PROPER, due to resource constraints, the program focuses on companies that fulfill four criteria in three types of industries.

The four criteria for companies are: large and significant environmental impact, considerable environmental pollution and degradation, listing in the domestic or foreign capital markets and export-orientation. The three types of industry are: (1) manufacturing, infrastructure and services, including pulp and paper, textile, cement, automotive, iron and steel smelter; (2) mining, energy, oil and gas, including mineral mining, coal mining, power plant, oil and gas exploration and production, oil and gas refinery and distribution, and the like; and (3) agro industry and forestry industry, including palm oil processing, sugar factory, crumb rubber, tapioca and the like.

During the early years of implementation from 1995 to 1997, company assessments and subsequent ratings focused on compliance with wastewater standards. Since 2002, the performance assessment has covered seven aspects of environmental management: water pollution, air pollution, toxic and hazardous

waste and substances, environmental impact assessment, environmental management system, natural resources use, and community development, participation. The MoE Deputy for Environmental Pollution Control and the Deputy for Toxic and Hazardous Waste and Substances Management at the MoE jointly developed and implemented this program.

PROPER has proven a successful program for Indonesia, and has been recognized worldwide as a model for public disclosure programs. The number of PROPER participants has increased every year from 95 companies in 2003 to 521 in 2007. In 2007, MoE reported that companies' overall rate of compliance with environmental regulations, however, was still relatively low at only 48%, though the mining, energy, oil and gas sectors showed a higher compliance rate at 61%.

As to the effectiveness of PROPER, from December 1995 to March 1997, the compliance rate of 213 companies increased by 9.4%.<sup>77</sup> From 2004 to 2005, the compliance rate of 251 companies in the manufacturing sector increased by 13.14%. The number of waste disposal licenses has also increased.<sup>78</sup>

The validity of the PROPER assessment, however, has been questioned, since it does not accommodate public comment, which compromises program credibility and leads to low public acceptability of PROPER ratings. Other challenges are the limited number of environmental inspectors compared to the number of PROPER participants; the uneven capacity of local environmental laboratories; the weak coordination among MoE inspectors, provincial inspectors and regency/city inspectors; and the weak coordination between the Deputy for Environmental Pollution Control and the Deputy for Toxic and Hazardous Substances and Waste Management. These challenges, though not all unique to the PROPER program, have undermined its overall effectiveness.

***Import Duty Exemption on Pollution Control Equipment.*** Since 1997, the MoE in cooperation with the Directorate General of Customs and Excise at the Ministry of Finance has given an exemption or reduction of duties for imports on pollution control equipment and materials used by manufacturing industries.<sup>79</sup> The equipment includes installations, machine and machinery and its equipment and spare parts that are solely used for waste processing. Examples are aerators, belt presses, chemical pumps, air pollution control equipments, etc. Materials include chemical additives. To obtain an exemption, the company must seek authorization from the Directorate General of Customs and Excise, with a recommendation from MoE.

***Environmental Soft Loans.*** MoE has environmental soft loan programs<sup>80</sup> for micro, small and medium enterprises to invest in environmental pollution control and improve production efficiency. The target group of these programs are companies that have potential to pollute and are financially credit-worthy though not bankable.

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<sup>77</sup> <http://www.menlh.go.id/proper/html/item-1-2.htm>, accessed on 17 November 2007.

<sup>78</sup> Rasio Ridho Sani, *The Effectiveness of Inspection to Improve Compliance*, Focus Group Discussion on the reflection and evaluation of environmental compliance and enforcement in Indonesia, Jakarta, 27 June 2007.

<sup>79</sup> See Article 26 (1) d Law no. 10 of 1995 concerning Duty (State Gazettes Republic of Indonesia Year 1995 Number 75, Additional State Gazettes Republic of Indonesia Number 3612) as amended by Law no. 17 of 2006 (State Gazettes Republic of Indonesia Year 2006 Number 93, Additional State Gazettes Republic of Indonesia Number 4661), Finance Minister Regulation no. 101/Pmk.04/2007 concerning The Exemption of Duty on Equipments and Materials Used in Environmental Pollution Control, which replaced Finance Minister Decree no. 136/Kmk.05/1997.

<sup>80</sup> These programs are Japan Bank for International Cooperation Pollution Abatement Equipment (JBIC-PAE) and Industrial Efficiency and Pollution Control (IEPC) Kreditanstalt für Wiederaufbau (KfW phase 1 phase 2), and Debt for Nature Swap (DNS) programs.

**Table 3.2 Comparison of Four MoE’s Environmental Revolving Fund Schemes**

Criteria	JBIC-PAE	IEPC-KfW stage 1	IEPC-KfW stage 2	DNS
Target Group	Small-, medium- and large-scale enterprises, being a legal entity, potential to pollute	Small- and medium-scale enterprises (assets less than 8 billion rupiahs), being a legal entity, potential to pollute	National small- and medium- scale enterprises (assets less than 10 billion rupiahs) , being a legal entity, potential to pollute	Micro- and small-scale enterprises, being a legal entity, potential to pollute
Credit limit	Unlimited	3 billion rupiahs	5 billion rupiahs	500 million rupiahs
Interest rate	According to Central Bank interest rate	9-14 %	2 % under the market price	Profit sharing
Collection periods	3-20 years	3-10 years	3-10 years	3-7 years
Grace periods	0-3 years	0-3 years	0-1 year	0-1 year

Sources: MoE, 2007

Investment that can be funded generally are pollution control equipment, wastewater treatment plants, air pollution control installations, solid waste processing plants, waste recycling plants and consultation services. Investments that are not eligible for funding are taxes, factory buildings, warehouses and anything that is unrelated to environmental pollution control.

To receive funding, the company submits a loan application to the executing bank. After the bank reviews the financial aspects, the MoE reviews the technical aspects based on the request of the executing bank. After the executing bank receives the technical review from MoE, it then requests the funding from the Ministry of Finance (MoF). After the executing bank receives the funds from MoF, the bank releases the funds to the company.<sup>81</sup>

MoE reported that the total amount of environmental soft loans released in the period of 2001–2004 reached Rp 90 billion to 147 companies. From that number, 52 were large-scale companies and 48 small- and medium-scale companies.

**Voluntary Environmental Audit.** While the EMA 1997 requires the government to develop a policy on environmental audit, there is no clear direction. At present, there are only a few companies that have carried out voluntary environmental audits. One of them is the State Electric Company (PLN) at its Maninjau Lake location, West Sumatera Province, in an effort to show PLN’s compliance with environmental regulations. As of 2003, only 245 companies in Indonesia are ISO 14001 certified.

**Sources of Environmental Funding.** At present, all financial resources from ecosystem restoration or other compensation, and fines and penalties are directed to the state account, either as a non-tax state revenue (PNBP) or tax revenue. These amounts are not insignificant and could provide a basis for environmental investments if they were channeled to a separate environmental fund controlled by MoE. For example, in 2004 a company responsible for a forest fire in Riau Province made a compensation payment of around Rp 5 billion (± US\$ 555,000) to MoE.

**Key Challenges:**

- *Lack of economic-instruments programs like pollution charges.* Indonesia lacks a comprehensive policy and legal framework to implement the full range of economic instruments programs, which leads to a patchwork of policy solutions.

<sup>81</sup> See Finance Minister Regulation no. 24 /PMK.06/2006 regarding the Management of the Main Account for Environmental Revolving Fund

- *Improving the effectiveness of PROPER.* While PROPER has been a groundbreaking program for Indonesia in raising awareness and improving industry performance, public perceptions of its accuracy undermine its effectiveness.

### 3.7 Indicators to Measure Program Success

For every activity planned by MOE, there is at least an output indicators and in many cases outcome indicators. While MoE's guidelines for performance indicators – from input to impact indicators – are not developed solely in the context of compliance and enforcement, there are indicators that capture compliance and enforcement results related to enforcement response, incentives programs (e.g., Clean River Program, PROPER and economic instruments), and capacity building. MOE, however, is only at the early stages of developing and tracking indicators and targets.

#### Key challenges:

- *MoE's performance indicators are unclear and difficult to measure.* Vague indicators have allowed differing interpretations, and difficulties in communicating the success of environmental compliance and enforcement programs to the public.<sup>82</sup>
- *Limited capacity to gather information to measure progress.* Capacity challenges limit government ability to accurately evaluate the effectiveness of programs.

### 3.8 Public Participation in Environmental Compliance and Enforcement

**Access to Information.** In general, public rights to information are guaranteed under the Constitution<sup>83</sup> and other laws and regulations, among them the EMA 1997. The Constitution gives every individual the rights to have access to information on the environment,<sup>84</sup> requires every business and/or activity to provide correct and accurate information concerning its environmental management<sup>85</sup> and obliges the government to provide information on the environment and disseminate it to the public.<sup>86</sup> No law exists, however, that specifically sets out requirements for access to public information. As a result, there are no standard/fixed rules on the mechanism, the types and kinds of information that should be accessible and minimum service standards. In addition, legal certainty for the violation of rights to information, both in terms of sanctions and recovery of violated rights.

**Public Participation in the EIA Process.** Article 31 (1) Government Regulation no. 27 of 1999 concerning EIA/AMDAL stipulates that stakeholders must be engaged in the development of terms of reference, appraisal of the terms of reference, environmental impact analysis, environmental management plan and environmental monitoring plan. For that purpose, the Decision of the Head of BAPEDAL no. 8 of 2000 concerning Public Participation and Disclosure of Information in EIA Process was issued. It states that the initiator is obliged to announce its work plan for a period stipulated in the regulation, respond to the input provided and consult the public prior to developing the environmental impact analysis terms of reference.

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<sup>82</sup> Note taken from National Workshop on Environmental Compliance and Enforcement, 31 July 2007 in Jakarta.

<sup>83</sup> Article 28 F UUD 1945 (Second Amendment, 2000). "Everybody has the right to communicate and to obtain information for personal and social development, has the right to seek, obtain, own, keep, process and deliver information using all kinds of available channels."

<sup>84</sup> *Supra* note 20, Article 5 (2).

<sup>85</sup> *Ibid*, Article 6 (2).

<sup>86</sup> *Ibid*, Article 10 (8).

**Public Complaint Mechanisms.** The MoE has a public complaint mechanism for suspicion of pollution or environmental damage based on the Minister of Environment Decree no. 19 of 2004.<sup>87</sup> Any individual who is aware of, suspects and/or suffers losses due to environmental pollution and/or damage may file a complaint in writing or verbally to a range of local and national governmental officials. The MoE receives the complaint via: (1) letter; (2) completed Complaint Form uploaded to MoE's website; (3) direct complaint; and (4) mass-media coverage.<sup>88</sup>

The public has made use of this mechanism, and from 2002 to 2006, complaints increased from 54 to 246. To ease the public burden in filing complaints, several regional complaint management centers have been established. At present there are complaint centers in 21 of 33 provinces. Six regencies/cities have received MoE assistance to build a complaint center.

**Public Enforcement of Environmental Civil Law.** In civil law enforcement, citizens may file a lawsuit, both through a citizen lawsuit procedure or a class action. The strict liability principle can be applied in cases with large and significant environmental impact. In addition, environmental NGOs may use their legal standing to file a claim in a legal civil action for environmental rehabilitation or real compensation for costs incurred in managing the impacts of pollution and/or environmental destruction.

*Standing to Sue.* EMA grants the rights of environmental organizations to file a claim for the interests of preserving the functions of the environment with the limitation on claims to perform a certain act without any claim for damages, except for the costs or real expenses (out of pocket expenses) incurred.<sup>89</sup> The environmental organization must fulfill several requirements, such as being a legal entity or foundation, the organization's constitution clearly states that the purpose of the organization's establishment is the preservation of the functions of the environment, and that the organization must have conducted activities in line with its mission.<sup>90</sup> Although the recognition of NGO's legal standing in Indonesian legal system has enabled environmental public interest litigations, Nicholson (2005) recorded that there are only a few cases filed with this procedure. Through 2001, only ten environmental public interest cases were filed with this procedure, mainly by well-resourced NGOs. From the ten cases, seven lost in District Courts, three won in District Courts and no cases won in the High Court.<sup>91</sup>

*Class Action.* The EMA 1997 is the first law in Indonesia with an enabling provision for the public to file a class action suit, which is the right of a small group of people to represent the larger public that suffer detriment based on the similarity of problems, legal facts and the claim caused by pollution and/or damage to the environment.<sup>92</sup> It is still too early to establish the relative effectiveness of the class action procedure towards the protection of public rights. Based on a brief review of several cases filed using the class action procedure in Indonesia, there are only a few cases that reached a binding decision (*in kracht*).<sup>93</sup> In the recent and celebrated Mandalawangi case, the Supreme Court awarded compensation to the victims of a land slide and obligated the government to provide adequate compensation and rehabilitate the degraded environment.

**Enforcement of Environmental Administrative Law.** In the enforcement of administrative law, the public as the third party has the right to make a submission to an authorized official to issue a government

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<sup>87</sup> This Decree of Minister of Environment replaces the Circular of the State Minister of Population and Environment of the Republic of Indonesia no. 03/SE/MENMOE/6/1987 concerning Procedure for Handling Environmental Pollution and Damage Cases

<sup>88</sup> MOE did not record the amount of the complaint received from each medium.

<sup>89</sup> *Supra* note 20, Article 38 (1) and (2).

<sup>90</sup> *Ibid*, Article 38 (3).

<sup>91</sup> David Nicholson, *Environmental Dispute Resolution in Indonesia*, Dissertation at Leiden University, 2005.

<sup>92</sup> *Supra* note 20, Article 37 (1).

<sup>93</sup> One example of successful cases is the class action lawsuit of Mandalawangi residents Vs Perhutani cq. Kepala Perhutani Unit III Jabar, the Government of West Java Province cq. Governor of West Java, and the Government of RI cq. The President of RI cq. Minister of Forestry. Verdict of the Supreme Court no. 1794 K/ Pdt/ 2004, dated 22 January 2007.

order (Article 25 (3) of the EMA 1997). However, the mechanism for the submission has yet to be established. Moreover, an individual or a legal entity that thinks that their interests are harmed by a state administrative decision (such as the issuance of an industrial business license) may file a written claim to an authorized administrative court, and demand that the State Administrative Decision be annulled or declared illegal, with or without a demand for damages and/or rehabilitation.<sup>94</sup>

**Key Challenges:**

- *Lack of law on access to information.* Since Indonesia does not have a law specifically setting out requirements for access to public information, the public does not have the tools and mechanisms to require government to reveal information on compliance and enforcement plans, decisions and outcomes.
- *Ineffective public complaint mechanisms.* While Indonesia has established a public complaint mechanism, there are too few complaint response centers, and the agency response is limited due to resource constraints and weak coordination.
- *Limited public assistance for citizen participation in enforcement.* Although Indonesian law provides for citizen's to bring legal action via available standing and class action provisions, in general victims lack the awareness of legal rights and resources to pursue claims, including their potential role in administrative and criminal actions. Legal aid that enables the public to gain access to justice is provided by environmental NGOs or legal aid institutions, rather than the government.

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<sup>94</sup> Law no. 9 of 2004 concerning the Amendment on Law no. 5 of 1986 concerning State Administrative Court, Article 53 (1).



#### 4.0 RECOMMENDATIONS

The proposed recommendations can be implemented immediately, though may require legal reforms of a relatively lower hierarchy (Government Regulation, Presidential Regulation, Presidential Decree, Ministerial Regulation, Ministerial Decree):

- ***Establish “green business license” and its supervision.*** Per Article 18 (3) EMA 1997, MoE should collaborate with relevant agencies to support integration of business licenses with environmental impact control measures. The MoE and the agency issuing the business license should issue a joint decree on guidelines for a new integrated permit that also contains the requirements for carrying out environmental impact control measures for the business license and a mechanism for its monitoring.
- ***Develop integrated permitting system.*** Applicable licenses such as the location permit, nuisance permit (*Hinder Ordonantie/HO*), building construction permit, liquid waste disposal license and emission disposal license need to be integrated into a comprehensive “environmental” license to increase the efficiency and integration of the licensing process. The business license needs to be reviewed and possibly downgrade to a “recommendation.” If the business license is maintained, then the position of other licenses (including the integrated environmental license) relative to the business license must be clarified. The principle of equality between different licenses (*specialiteit beginsel*) should be implemented.
- ***Establish comprehensive self-monitoring and self-reporting mechanism.*** Per the EMA 1997, MoE should cooperate with institutions issuing business licenses in developing technical guidelines on self-monitoring and self-reporting for large companies that detail requirements for monitoring, reporting, record-keeping, violations, etc. MoE will also need to work with large companies to enable effective program implementation.
- ***Strengthen the citizen complaint mechanism.*** To improve violation detection and response, MoE and regional environmental management institutions should simplify procedures and establish expanded complaint filing mechanisms that make use of hotlines, SMS systems, or the internet. Overall, the system needs improved efficiency and effectiveness.
- ***Increase capacity on inspection and monitoring.*** Despite a regulatory basis for inspection and compliance monitoring, MoE and related agencies lack an effective approach for gathering, managing and acting on compliance information, and should undertake a effort to build agency capacity and capabilities.
- ***Develop integrated environmental compliance supervision system.*** MoE, in cooperation with agencies issuing licenses, should develop guidelines on integrated supervision towards compliance with environmental permitting requirements per Article 22 of EMA 1997. These guidelines should define the scope of supervision, role sharing and supervision coordination between license issuers and environmental management institutions.
- ***Develop guidelines for administrative sanctions.*** To improve consistency, proportionality and legal certainty in the enforcement of administrative sanctions, MoE should cooperate with agencies issuing licenses and with local governments to develop guidelines for environmental administrative sanctions. The guidance should contain the types of sanctions, coordination mechanisms among authorities, and mechanisms for public participation for objection and appeal.

- ***Strengthen judicial capacity for the environment.*** The Supreme Court and MoE should lead an initiative to train and certify judges who will take on environmental cases, and should issue a bench book for environmental cases to improve consistency, proportionality and legal certainty in the enforcement of criminal, civil and administrative legal requirements. The Supreme Court should also consider establishing a special environmental court with due observance to the stipulation of Article 24 paragraph 3 of the Constitution.
- ***Improve and increase application of performance measures.*** While MoE has developed some performance indicators in line with national government requirements, these indicators and their application needs to be improved, and can provide a basis for priority setting and allocation of funding.
- ***Increase national government funding for compliance and enforcement.*** The central government should increase funding from the Special Allocation Fund (DAK) for environmental law enforcement based on performance measures.