

# **Environmental Law Policy in dealing with Global Crisis An Indonesia Perspective<sup>12</sup>**

## ***Abstract***

Environmental Law Policy has play important role in every countries. Today, most of human activities must consider the environmental aspect. However, Environmental Policy also brings pros and cons relating to its environmental law. For example : The increase of demand regarding natural resources as a result of population growth was seeing as an opportunity for some industry to gain profit like energy sector. On the other hand, some environmentalist wants better policy to control the use of energy especially the unrenewable ones.

Energy demand is projected to grow at least 50 per cent by 2030. This assumes that fossil fuels will be available to cover most of the demand increase. Unfortunately, energy-related carbon dioxide emissions are projected to increase faster than energy use by 2030. Pollution from burning fossil fuels and the related impact of acid rain constitute serious problems for Asia, and other countries. Thermal and nuclear power and solar cells generate waste disposal problems that may result in heavy metal soil contamination. Natural resources are overexploited by the increasing demand of human needs.

In recent year, international concern relating to the environment protection has increased, especially one relating to Global Warming. However since mid 2008, the world will no doubt experience a significant economic downturn. Of the many areas that will be impacted by the downturn, the environment stands out in particular. It's closely tied to the tempo of resource consumption, and significant efforts to ameliorate environmental decline will prove very expensive and out of reach for already-stretched budgets.

This situation may give a good impact or bad impact to the environmental protection. People may drive less, fly less and consume less energy or people also able to exploited more natural resources to survive from the crisis. In developing countries such as Indonesia, the crisis may cause more significant impact rather then the industrial countries. Even, before the crisis came, the environmental protection has face some significant problems such as the problem relating to monitoring system, the insufficient number of law enforcement officer and the lack of people concern and public participation.

Therefore, it needs a breakthrough to develop Environmental Policy to build sustainable development in Indonesian, especially in dealing with the global crisis. This condition has raise some question where we should bring our environmental policy to preserve the environmental without slowing down the economic itself.

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## **Introduction**

Indonesia as one of the developing countries has long since established laws and formal governmental structures to address their serious environmental problems (since 1970's). As a part of environmental legal system, they have promoting the use of economic incentives and other market-based strategies as the key to more effective environmental protection.

After decades of rapid urbanization, population growth, and industrialization, Indonesia is now home to many of the world's most severe environmental and natural resource problems. Increasingly, they are crafting regulatory policies to address these problems, relying principally on conventional command-and-control (CAC) approaches: legal mandates requiring firms and farms to take certain actions (such as treating wastewater) and prohibiting them from taking others (like clearing forests). Although maybe in some sectors Indonesia have made enormous progress, the overall the track record is mixed at not good enough. The reasons are well known. Written regulations are often riddled with gaps and inconsistencies.<sup>3</sup>

In normal economy condition, Indonesia has already dealing with lots of difficulties in making their own environmental policy to protect the environment and to preserve conservation in order to support sustainable development. Moreover, since mid 2008, the condition of global economic was turn down, as an impact of high numbers of nonperforming loan from property industry in the United States. The result then Global Crisis in almost every countries in this planet. This condition had made significant impact for environmental management in most companies in Indonesia.

However, despite global crisis has cause more pressure in environmental management in Indonesia, from environmentalist perspective in Indonesia believes that this crisis still have the opportunity to pursue a better environmental management and protection in Indonesia. For example, As result of crisis some industries may collapse and the positive side of it is it will reduce pollution and with smaller number of industries left it will give opportunity for the government to make better monitoring system.

This paper will try to give Indonesian perspective of Environmental Law Policy in Indonesia as one of the developing countries, especially in dealing with global crisis which already made more pressure on environmental management in Indonesia.

## **Environmental Management in Indonesia**

Approaches to environmental management by law were being developed by ecologist in the early 1970's when much impact of developments has cause a lot of impact to the environment and human health. One of the famous environment book is "Silent Spring" that described concern about the use of pesticide for plantation and its impact for human health. In International level, people concern regarding environmental protection started growing since 1970's when United Nation facilitated the Declaration of Stockholm regarding

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<sup>3</sup> Edited from Allan Blackman, Environmental Policy innovation in Developing Countries, [http://www.rff.org/Publications/WPC/Pages/08\\_06\\_02\\_Environmental-Policy-Innovations-in-Developing-Countries.aspx](http://www.rff.org/Publications/WPC/Pages/08_06_02_Environmental-Policy-Innovations-in-Developing-Countries.aspx)

Environmental. Since then many environmental law (policy) were made by many countries including Indonesia.

Environmental issues in developing countries such as Indonesia always related to poverty and political issues. The challenges are how to educate people and government to set up environmental policy as a part of its main programme in their countries. For example, after reformation era in Indonesia (1999), Reformation process has contributed many discourses to the direction of Indonesia's politic, social and economic changes. But when we speak about environmental protection, only limited number of people or institution who pays enough attention to the environmental issues.

One of the environmentalist icons Mr Otto Soemarwoto (who has passed away) was trying to introduce new paradigm in environmental management which is call “atur diri sendiri” (self management). This new paradigm as a small part of innovative strategy to built people concern for environmental management that support sustainable development. Voluntary regulation is another environmental innovative strategy now receiving considerable attention. The term refers to programs and policies in which polluters voluntarily commit to environmental performance goals either unilaterally, in the context of an agreement with regulators, or within a program administered by regulators or a third party<sup>4</sup>.

Voluntary regulation or self regulation was considered as alternative approach to increase the efficiency of environmental management. This kind of regulation might have the opportunity to answer the barrier of implementation of Government Regulation. When we talking about implementation, even European Union (EU) or any other industrial countries still might have problems in their implementation of environmental policy. The success of the EU's policies must ultimately be judged by the impact they have on the ground, but despite many institutional initiatives, poor implementation remains a fact of life in Europe.

### Thinking Ecologically

Two fundamental premises, the first of which is our belief that global change in our natural surrounding must be reunderstood ecologically, i.e., in the terms of an inclusive, post-Darwinian, interdisciplinary science of the relationship of the earth's living. Development efforts during 1990s will comfort an increasingly complex and heterogeneous set of situation. Whereas ten or twenty years ago we could speak of developing countries as a whole, this is no longer possible, for differences between and within these countries has been continuously growing. We will begin by exploring some emerging features of the global context, address a few common misconceptions about climate change, and then delve more deeply into various developing country perspectives and approaches and their implications for attempts to resolve the apparent global change/global environment development dilemmas.

We face the context of a turbulent period of modern history which will force us to adapt our mindset, organizing concepts, and resulting approaches to action.

Lesson from developing country perspectives<sup>5</sup> :

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<sup>4</sup> Ibid

<sup>5</sup> Global Accord: Environmental Challenges and International Response, Nazli Choucri, editor. 1995, MA: MIT Press, p. 180

1. Data Analysis is commonly affected by politics and worldviews, which volitional purposes affecting any attempt to devise comprehensive indices. There is a need for evolution in the underlying concepts that guide thinking about relationships between data analysis, international politics and policy, and environmental management and development in general.
2. Each developing country will not speak in unison with a single “developing countries” perspective on global change after all, and it is necessary to go beyond stereotypes. In some cases developing countries will be rivals on the issues rather than allies. This might be considered another indicator of the “fractured global order”
3. More research and careful analysis in this are needed

In early 1960’s, environmental protection mainly as a response to pollution in the industrial countries. It relies on legal regulations to trade off amenity value of the environment against economic growth in the short term, primarily to protect human health and a few species of special interest. Promoting development and regulating its externalities are separate responsibilities, so that different institution in the government is often pursuing conflicting goals, or at least inefficient means of achieving them.

Nowadays, environmental protection has enter into a transitory phase which made necessary by the tensions inherent in the overly reductionist, short-term view of frontier economics. Debate about sustainable development is now open; it should remember that sustainable development is an idealistic goal, not a strategy. It is a sort of vague “motherhood” or mission statement for the planet, but it does not specify how we are to accomplish the mission. It appears that two competing strategic paradigms of how to achieve sustainable development are emerging: Resources Management and Eco Development. Both are more inclusive, more realistic and less polarized replacements for the frontier economics and deep ecology paradigms<sup>6</sup>

Today, economic approach to the environmental management policy has play important rules. Environmental Policy will be considered as visible is the valuation of its economic is reliable. Moreover, every environmental policy also must be politically viable, because policy is a political decision. Despite of all these concern above, market-bases instrument have been applied gradually in environmental management policy, which was a part of “atur diri sendiri (self regulatory).

In normal situation, the “self regulatory” may be visible in Indonesia, many industries has already concern about the environmental, and put their environmental management as integrated plan with their main company plan. Even, some of these companies have done the environmental management beyond what regulation asked. But today, Indonesia once again dealing with bigger environmental issues as an impact of global crisis.

#### Indonesia Economic Brief

Like many other developing economies, Indonesia has had to cope with the immediate ripple effects of the turmoil and crisis of confidence that has disrupted the global financial system

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<sup>6</sup> Ibid, p. 184

since mid-September, while at the same time preparing for an anticipated growth slowdown and continued tight liquidity in the coming quarters<sup>7</sup>

Real GDP growth had accelerated to a ten-year high of 6.3 percent in 2007. And Indonesia was the only major economy in East Asia that did not experience a growth slowdown in the first half of 2008, despite unstable global markets and a slowing world economy. The assessment was that Indonesia would weather a moderate global slowdown relatively well, due to its size, robust domestic demand, the diversity of its exports and export destinations, as well as a record of prudent fiscal management. With its relatively open capital account, a significant foreign presence in stock and bond markets, and the legacy of the 1998 crisis (which left Indonesian investors sensitive to exchange rate movements and prone to capital flight) Indonesia is subject to “externally mobile capital”. The greater financial exposure, combined with sharply falling commodity prices and large gross financing needs, has manifested itself in a falling stock market, dramatically higher domestic and international bond yields and credit default swaps as well as depreciating exchange rate. In the context of a global liquidity crisis, spikes in risk aversion and volatility in financial markets, this exposure leaves Indonesia susceptible to sudden capital outflows<sup>8</sup>.

Precautionary measures have been taken to anticipate problems including providing the legal authority for the Government to intervene in financial institutions, to raise the deposit insurance limit, and reduce budget financing pressures as well as more immediate steps to provide needed liquidity in both dollar and rupiah markets.<sup>9</sup>

With economic crisis, many industries will face difficulties with cash flow. Maybe some of them have to cut down their employee number, while some others maybe have to dealing with bankruptcy. When company and government have problems with economic issues, the main priority will be how to save the company or how to initiate tight money policy for the government. With tight money policy, environmental protection may come as third of even last priority in dealing with crisis. But as ecology itself, in the reality at the end people will try to find balance of its nature, so does environmental protection. Maybe with economic crisis, some industries will shut down, energy demand will decrease, and industrial activities will slow down. The positive side of this condition is, it means less oil and gas will be use, less pollution from industries and maybe less effort for monitoring.

In dealing with environmental management as a policy, there are some factors that influencing the domestic process figure most prominently the following<sup>10</sup> :

1. Natural resources endowment
2. Absorptive of the environment
3. Size and quality of the population
4. Availability of investment capital
5. Cost of defence

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<sup>7</sup> Indonesia Economic Briefnote, Indonesia Quarterly Economic Update *Battening down the hatches*, World Bank, 10 December 2008.

<sup>8</sup> Loc Cit

<sup>9</sup> Loc Cit

<sup>10</sup> Konrad G, Erik D and Paul, *Sustainable Development and Good Governance*, 1995, Martinus Nijhoff Publishers, p 96

6. Scientific and technologically capacities
7. Strength of government institution
8. Strength of the so-called informal sector
9. Geographical location of the country
10. Psychology of leaders and population, awareness of the environmental needs, shared experience, etc

Indonesia as of the richest country of potential natural resources and as the fourth largest number of populations and geographically lies between two continents and two oceans, which made environmental management as a big challenge. The regulation of environmental protection by the government is not an easy task. There is a fact that policy making process by the government is very complex and involving many factors and actors that has different interest one and another, because the policy making is not only reacts as a pressure from interest groups inside and outside the government but also as an agenda of interest from some other groups and leads the discussion into a condition where they have large access of control to main resources that has influence in the policy making process and by extending policy option from used to has.

As a balance in the policy making process, societies involvement in the process as a public participation will play important rules. Societies involved in the process of policy making process are expected to perform a broad spectrum of function which are not necessarily different from traditional societies, unless the environmental dimension<sup>11</sup> :

1. Basic needs of individual and groups have to be met without jeopardizing the state of the environment
2. Economic Growth and development have to be assured without compromising the environment; investment are sought at home and abroad, scientific and technology capacities have to be improved; export opportunities have to be explored
3. Human dignity has to be protected by means of human rights and social justice. A minimum standard of democracy, which includes in particular a certain participation of the public, facilities movement towards stability, which again reflects the satisfaction of aspirations shared by a majority
4. Protecting the environment is either a component part of the above mentioned functions; or it is autonomous functions which may constrain come of the others.

Many of the above functions have to rely on support from outside:

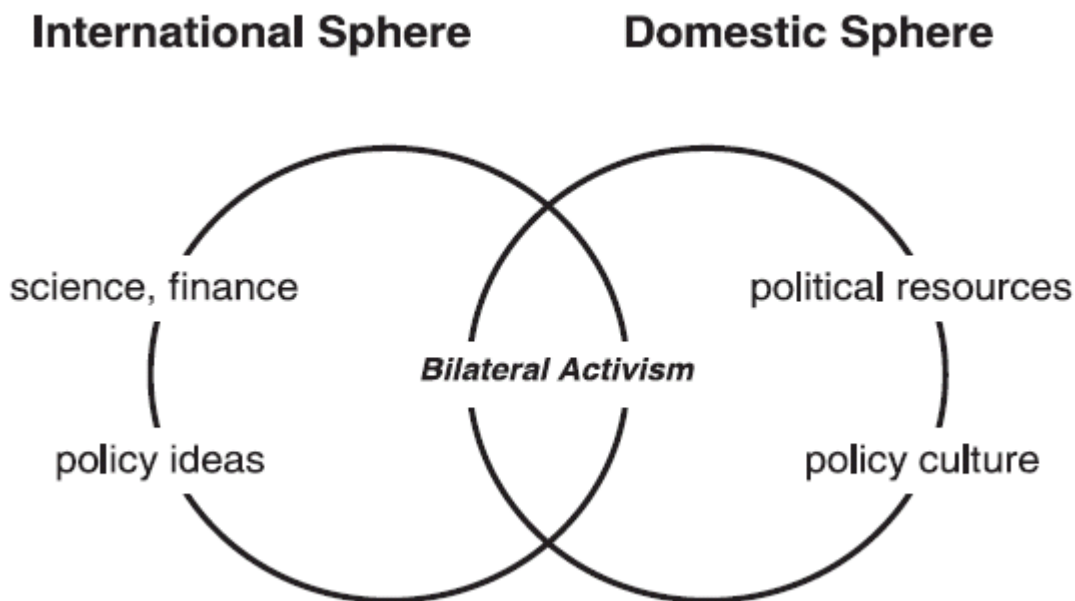
1. Sometimes basic needs cannot be met by local authorities unless they receive considerable support from donor government and international agencies. Too strong a reliance on foreign support may however create new situation of dependence and discourage the full deployment of local capacities
2. For economic growth and development many Third World governments count on the influx of private investments, official development aid, etc. The same applies to science and technology. Countries importing capital and knowledge need in addition certain structure that is able to digest inputs from abroad. The free flow of investments depends on the attractive of recipient countries, their local investment code, tax advantages offered, facilities for repatriation of funds, etc

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<sup>11</sup>Ibid, p 98

In relation with international involvement in environmental law making process, support from donors will bring important contribution to its process, especially with the capacity building process in its relations of the implementing of regulation. However, as countries who try to find its own characteristic, international involvement sometimes considered as a violation of Indonesia sovereignty.

In a context of global concern and national sovereignty, the resources brought to bar on the environmental policy in developing countries are of two types: those closely associated with a given domestic political system, and those whose essential productive dynamic resides beyond that society's borders. Accordingly, we think two spheres of influence affecting environmental policy in developing countries: an international sphere and a domestic sphere.<sup>12</sup>



**Figure 1 the Spheres of Influence Framework**

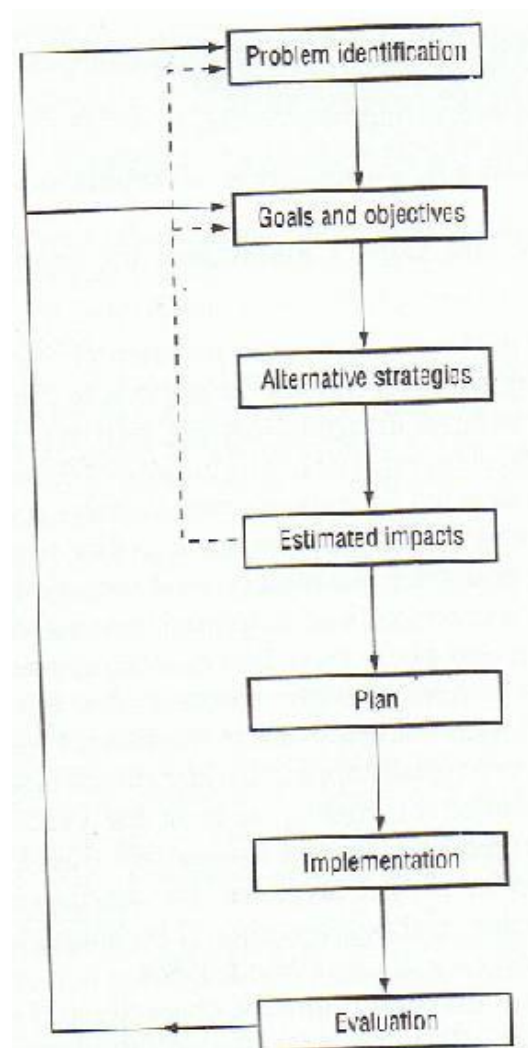
National policy reform is a prerequisite for improved stewardship of global environment. Today, the country benefits from an entrepreneurial environment ministry, high-level bipartisan political support for conservation and one of the best protected areas systems in the world.

Having in mind, that there are many factors in environmental law making process, one of the important tools is how to develop impact assessment to its policy making. Such as, Environmental Impact Assessment will be required for every activity that have impact to the environment, dealing with policy making in environmental protection also needs assessment to improve efficiency of the environmental policy. These are many reasons why impact assessment is often marginalized from planning and management<sup>13</sup> :

<sup>12</sup> Paul F Steinberg, *Understanding Policy Change in Developing Countries : The Spheres of Influence Framework*, Global Environmental Politics 3:1, p16

<sup>13</sup> Ibid, Environmental assessment p 66-67

1. It is unusual to find an ecologist or sociologist in charge of the planning or management process; an economist or lawyer is more likely
2. Impact assessment is not seen as central, so is not fully integrated into planning and decision-making
3. Development contracts are bid for, which means keeping costs down, and this may mean that impact assessment is seen as peripheral and therefore underfunded or cut back
4. Managerial classes in developing countries seek to control development and select approach that profit them, but which may also fail.



**Figure 2: the rational comprehensive model of decision-making – one of the best known prescriptive models.**



From assessment model above, every policy suppose to be made base on problems identification, but in Indonesia even though environmental policy has already started with the problem identification, but the implementation often more political than what have been plan before.

In such condition like this, Indonesia need more innovative product of environmental policy. Recently, Indonesia promote “the environmental performance rating of business” so called “Proper”. Proper is a system for rating the environmental performance of industries and for publicly announcing the ratings. The PROPER system is based on publishing a single indicator of environmental performance. The program is expected to serve two objectives:

- (1) Promote compliance with existing regulations; and
- (2) Reward firms whose performance exceeds regulatory standards. PROPER works in parallel with, not as an alternative to environmental regulations and enforcement.

Foremost in the development of PROPER was to ensure that it was well articulated to all stakeholders to ensure that everyone understood them. Further, the program needed to be accurate and its evaluation and the rating process had to be transparent to lend it credibility. To ensure this, BAPEDAL chose to rate only 187 companies in the program’s first year.

Exceed Compliance	Gold	All requirements of <b>Green</b> , plus similar levels of pollution control for air and hazardous waste. Polluter reaches high international standards by making extensive use of clean technology, waste minimization, pollution prevention, recycling, etc.
	Green	Pollution level is lower than the discharge standards by at least 50 percent. Factory also ensures proper disposal of sludge, good housekeeping, accurate pollution records, and reasonable maintenance of the waste water treatment system.
In Compliance	Blue	Factory only applies sufficient effort to meet the minimum discharge standards.
Not In Compliance	Red	Factory makes some effort to control pollution, but it is not sufficient to achieve compliance.
	Black	Factory makes no effort to control pollution, or causes serious environmental damage.

**Table 1. Listing of the ratings and their requirements.**

As tools of environmental enforcement, Proper has considered as an effective tools of environmental enforcement. Unfortunately, Proper from legal perspective has not sufficiency legal basis as a law enforcement tools. In developing countries as Indonesia, especially with era of reformation, people always demand a legal basis for every government policy. In condition like this, normative framework needs to be implemented as a part of capacity building for environmental management in Indonesia.

As the preceding suggests, two classes of organizing principles prevail in institutions of political economy, natural resources and the environment. One is *cooperation* which includes principles such as equal representation, public participation, full disclosure, information sharing, and consensus. The other is *efficiency* which includes division of labour, economies of scale, specialization, streamlining (e.g., making government more businesslike), intensification (e.g., extracting more pulp for a hectare of forest; getting more GDP for a litter of water) and conservation (e.g., using fewer kilowatts of energy to emit a given amount of light)<sup>14</sup>.

As intuitive and popular as cooperation and efficiency are, both suffer from “normative neutrality.” One can cooperate to protect a forest just as well as one can cooperate to clear cut it. One can and efficiencies in harvesting so as to save trees just as well as one can and efficiencies to get every last bit fiber off an acre of forest land. When incentives line up on the side of return on investment and growth, cooperation and efficiency lean toward clear cutting and fibber extraction, toward ever more economic activity, toward spurring material and energy throughput in the economy<sup>15</sup>

Cooperation and efficiency are thus no more suited to reversing the trends and promoting sustainable practice than they are at stimulating those trends and thwarting sustainable practice. Cooperation and efficiency do not distinguish between environmental improvement and sustainability. They do not address two defining characteristics of contemporary environmental trends:

1. the increasing “*criticality*” of environmental threats, problems characterized by irreversibility and non-substitutability, threshold and synergistic effects (“surprise”), long time lags between cause and effect and, consequently, limited predictability and manageability. Climate change, biodiversity loss, topsoil erosion, persistent toxics, and declining freshwater availability are examples of such threats.
2. The increasing ease of *exporting the risks* of critical threats and *escaping responsibility* for their creation. Globalization, privatization, and diminishing state capacity conspire with technological innovation and market manipulation to skew the benefits and costs of economic activity, to create the illusions of environmental progress (e.g., local pockets of pristine and healthy environments, especially among those who can buy their way out of degraded environments) while vast areas around the world are degraded and huge waste sinks such as the oceans and atmosphere are filled<sup>16</sup>.

## Conclusion

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<sup>14</sup> Thomas Princen, *Principles for Sustainability : From cooperation and efficiency to sufficiency*, Global Environmental Politics 3:1, p 39

<sup>15</sup> Ibid, p 40

<sup>16</sup> Loc Cit

Facing global economic crisis, Indonesia find difficulties in dealing with improvement of Indonesia environmental policy, the increasing number of political parties and the agenda of General Election in year 2009 has also contributed a challenge to environmental protection in Indonesia. However the turndown of economic has also bring positive side such as the decreasing number of pollution and energy demand, which can contributed to better air quality.

In its relation to environmental policy, the government need to make innovative policy with include public participation which also put economic valuation to its policy. Otto Soemarwotto ideas with “atur diri sendiri” “Self regulatory” is one of the innovation policy for Indonesia environmental policy. The positive response to this ideas is the increase number of Company who willing to develop their environmental management as a part of their Corporate Social responsibilities.

International framework and regulation also play role in environmental policy in Indonesia. As a part of global society, Indonesia needs to comply with international agreements and programmes, which need to be ratified in Indonesia, such as Protocol Kyoto. Even though, some people consider that International agenda sometimes is a violation to Indonesia sovereignty. That why only some international environmental law principles are reflected in Indonesia’s domestic legislation. It was something that we need to deals with.

Enforcement is one of the significant issues in Indonesia, but if environmental management more focus on monitoring and enforcement, than Indonesia will have problems on its implementation, especially related to its human resources and financial support. Therefore, Precautionary and active participation from all stake holder will be more effective, especially in the middle of global crisis.

A lesson from Proper in Indonesia is how to build access to information of the environmental management. PROPER demonstrates that environmental agencies should rethink their role, and consider moving beyond policies based solely on command-and-control or economic incentives. Rather, environmental authorities can gain leverage through non-traditional programs that harness the power of communities and markets.

The experience of PROPER and other similar programs elsewhere in the developing world lend credibility to the idea that environmental policy should not be directed solely to the relationship between regulators and the regulated. Rather, it is the inclusion of all stakeholders in a process that is well articulated, transparent and that provides both positive and negative incentives that has produced a program that is both innovative and, so far, shows every sign of success.

Finally, Indonesia Environmental Management in the context of environmental policy suppose to focus on the actual problems and capacity building in order to help Indonesia people to have better understanding about environmental protection and to help Indonesia people to have more access of information, as it was stated as their right according to Indonesian Environmental Act No. 23 year 1997.

## Reference

- Barry C F and Martha K F, *Environmental Economics – an Introduction* (fourth edition), 2006, McGraw-Hill Irwin
- C J Barrow, *Environmental and Social Impact Assessment – An Introduction*, Centre for Development Studies, University of Wales Swansea, 1997, Oxford University Press Inc
- Daud Silalahi, *Hukum Lingkungan dalam sistem penegakkan hukum lingkungan Indonesia*, 1999, Alumni.
- Dimitris S and Valerie J A, *The International Political Economy of the Environment – critical perspectives*, 2001, Boulder London
- James E. Krier, *Environmental Law and Policy – reading, materials and notes on air pollution and related problems*, 1971, The bobbs-Merrill Company Inc
- Konrad G, Erik D and Paul, *Sustainable Development and Good Governance*, 1995, Martinus Nijhoff Publishers
- Nazli Choucri, *Global Accord: Environmental Challenges and International Response*, 1995, MA: MIT Press
- Otto Soemarwoto, *Atur Diri Sendiri – Paradigma baru pengelolaan lingkungan hidup – Pembangunan Ramah Lingkungan berpihak pada Rakyat, Ekonomis, Berkelanjutan*, 2001 Gajah Mada Press
- Otto Soemarwoto, *Menynergikan Pembangunan dan Lingkungan Hidup – Telaah Kritis Begawan Lingkungan*, 2005, Percetakan Negeri PD Anindya
- Paul F Steinberg, *Understanding Policy Change in Developing Countries : The Spheres of Influence Framework*, *Global Environmental Politics* 3:1, February 2003, MIT Press
- Paul Wapner, *World Summit on Sustainable Development : Toward a post-Jo'burg Environmentalism*, *Global Environmental Politics* 3:1, February 2003, MIT Press
- Peter P R and friends, *Measuring Environmental Quality in Asia*, 1997, The division of engineering and applied sciences, Harvard University and Asian Development Bank
- Ruth G B and Clifford Russell, *Environmental Policy for Developing Countries*, <http://www.issues.org/18.3/greenspan.html>
- Thomas Princen, *Principles for Sustainability : From cooperation and efficiency to sufficiency*, *Global Environmental Politics* 3:1, February 2003, MIT Press