

Public Participation and Freedom of Information in Environmental Decision Making



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Indonesia is Part of the World



- Actively involved in International Conferences
- Indonesia has ratified most MEAs

Indonesian Involvement in Environmental Protection



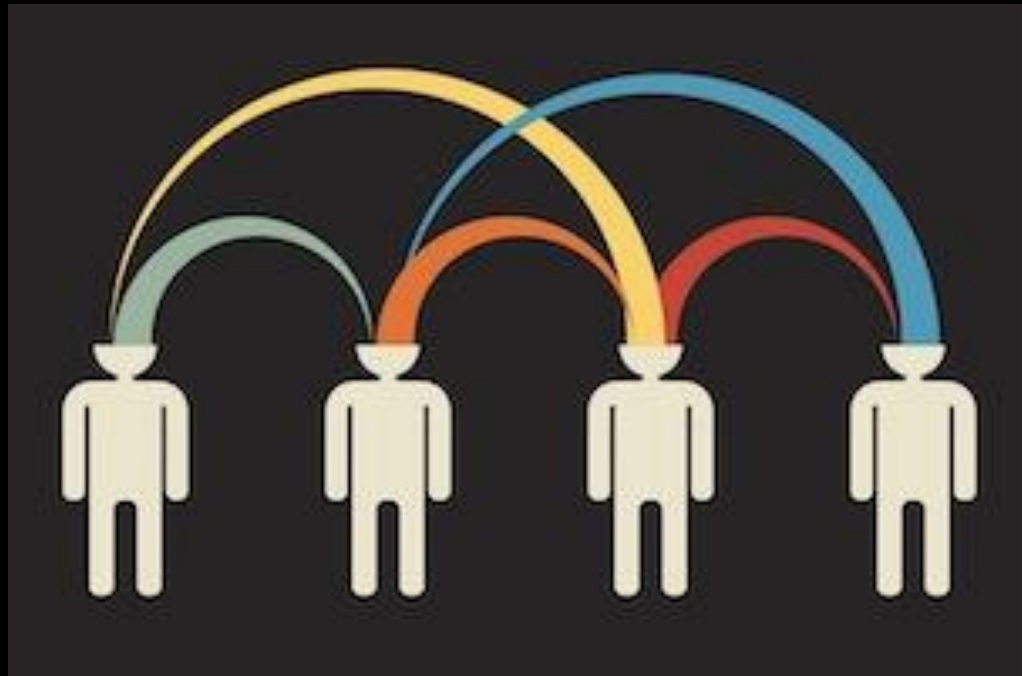
- Indonesia was actively involved in *Stockholm Declaration on Human Environment 1972*
- Prof Emil Salim (former Minister of Population and Environment) was a member of Brunthland Commission: Our Common Future 1983
- Actively involved in the 1992 Rio Conference

List of MEAs that has been ratified



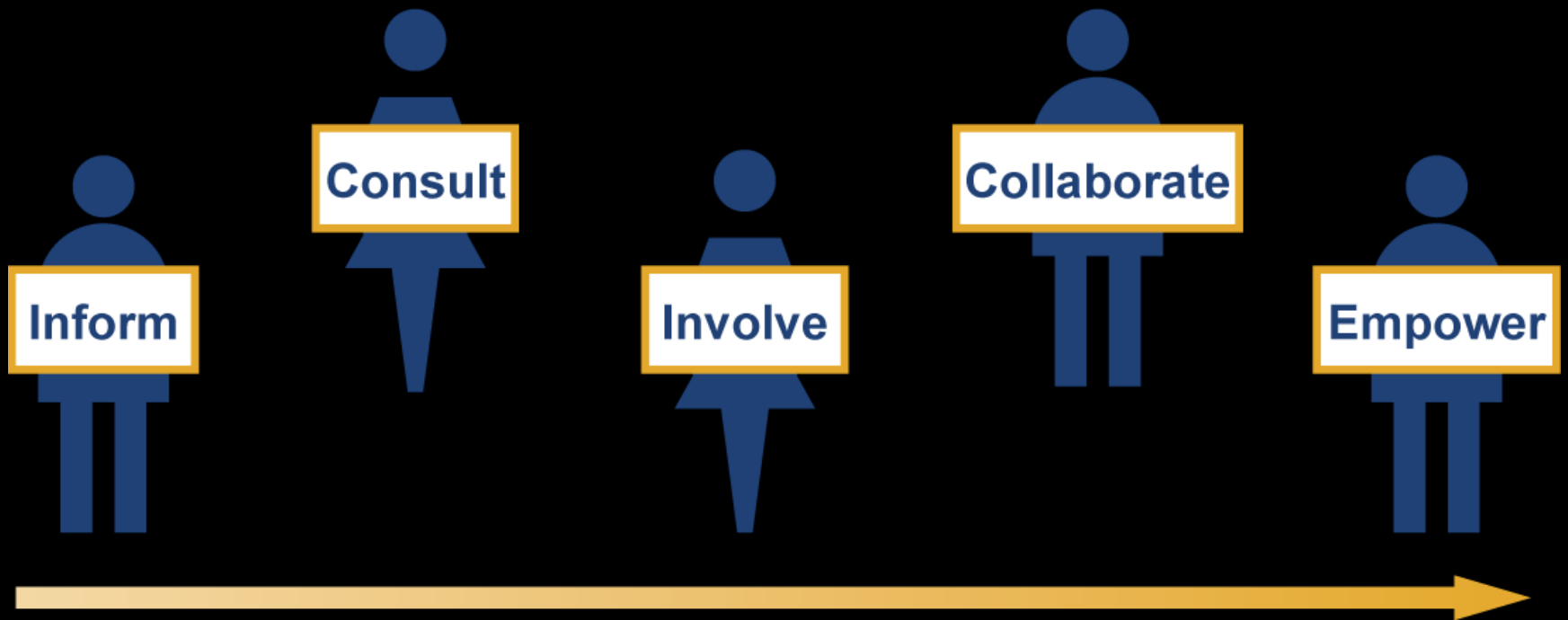
- Convention on International Trade in Endangered Species of Wild Fauna & Flora (CITES)
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat
- Vienna Convention for the Protection of the Ozone Layer
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes & Their Disposal
- Convention on Biological Diversity
- UN Framework Convention on Climate Change
- ASEAN Agreement on the Conservation of Nature and Natural Resources
- ASEAN Agreement on Transboundary Haze Pollution, ETC

Note: Most principles in these MEAs have been domesticated in National Legislation



Influence of MEAs to Indonesian Env' Legislation and Policy

What We Mean with Public Participation?



And of Course ...RIGHTS to Challenge/Sue the Government

Indonesian Way of 'domesticating' Public Participation



- Access to information,
- Participation in policy decision-making, and
- Access to justice,



What the Indonesian Law Says on Public Participation and Information

Environmental Protection and Management Act (EPMA) 2009



INFORMATION SYSTEM: Article 62

- (1) The government and regional governments **shall develop an environmental information system** to support the implementation and **development of policies on environmental protection and management.**
- (2) The **environmental information system** shall be formulated in an integrated and coordinative manner and **SHALL be publicly published.**
- (3) The environmental information **system shall contain** at least information about **the status of environment, map of environmental vulnerabilities and other environmental information.**

EPMA 2009

PUBLIC PARTICIPATION: Article 70

- 1) Communities **shall secure the equal and maximal right** and opportunity to **participate actively** in environmental protection and management.
- 2) The **public participation** may be in the form of:
 - (a) **social supervision**; (b) **suggestions, opinions, recommendations, objections, complaints**; and/or (c) **provide information** and/or report.
- 3) Public participation shall be intended to:
 - a. enhance awareness in environmental protection and management;
 - b. **enhance independence, capability of communities and partnership**;
 - c. boost the growth of capability and initiative of communities;
 - d. **encourage communities to conduct social supervision**; and
 - e. develop and preserve local culture and wisdom in the framework of the preservation of environmental functions.



Special Note:
*Hymenopus
coronatus*
(known as
orchid mantis)

Environmental Impact Assessment (EIA)



- EMPA has special Chapter on EIA (Articles 22 to 33) and elaborated in *Gov Reg No 27/2012 on Environmental Permit*.
- Every project that have significant impact to Environment requires EIA.
- Every step on EIA requires the involvement of the Public.

EIA Appraisal Commission



EIA-AC shall consist of representatives of:

- a. **environmental institution;**
- b. relevant technical institutions;
- c. **specialists in the field of relevant business and/or activity;**
- d. specialists in the field related to impacts arising from business and/or activity;
- e. **communities members that has the potential to be affected;** and
- f. environmental organization (Env NGOs). **(Article 30)**



Access to Justice

Community Right to Sue



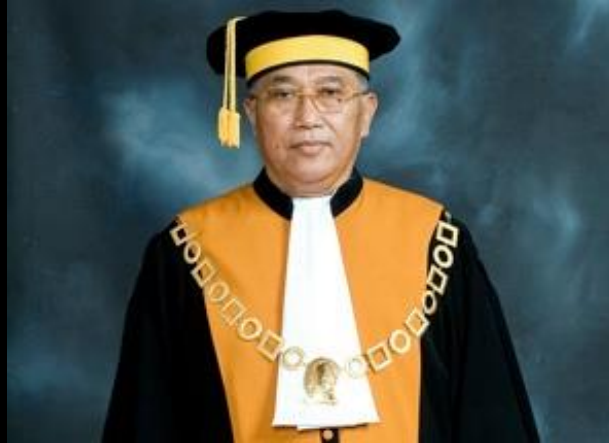
- (1) Communities shall have the **right to file class action** for their own interests and/or interests of communities if the **communities suffer** from loss attributable to environmental pollution and/or damage.
- (2) The **class action** may be submitted if there is a **similarity of fact, incident, legal basis, and demand** of community members. (Article 91)

Right of Env' NGOs



- (1) Environmental organizations **shall have the right to file lawsuit** in the interest of the preservation of environmental functions.
- (2) The right to submit lawsuit shall be limited to **demand for taking certain actions** without demand for compensation, except real cost or expenditure.
- (3) **Environmental organizations** may file lawsuit in the case of the following **requirements** being fulfilled: (a) in the form of statutory body; (b) affirming in their memorandum of association that the organizations are established in the interest of the preservation of the environmental functions; and (c) concrete activities have been executed in accordance with their memorandum of association for 2 (two) years at the minimum. **(Article 92)**

First Recognition of NGO standing



Public interest litigation in **environmental matters** in Indonesia was developed through the **recognition of legal standing of NGOs in 1988**, where the District Court of Jakarta granted standing to WALHI (an environmental NGO) in *WALHI vs Five Government Agencies and PT Indorayon Pulp and Paper* (commonly known as the *PT Indorayon case*). **This decision was made based on 1982 EMA**, where the right of NGO to sue was not yet clear.

*(The Late Justice: Paulus Lotulung-District Court
of Central Jakarta, No. 820/PDT.G/1998 PN. JKT.PTS)*



WALHI vs PT Freeport

Decision No.459/Pdt.G/2000/PN.Jak.Sel.



**Tailing
DAM**



Wanagon River

Banti Village & Amungme people

12 Km

WALHI vs PT Freeport

Decision No.459/Pdt.G/2000/PN.Jak.Sel.

*The claim was triggered by an incident on 4 May 2000 when toxic sludge was released from a collapse of tailing dam into the Wanagon River and Banti village that **killed four people, destroyed pig-sties, vegetable gardens and a burial ground** of the Amungme tribe in Banti village.*

*Freeport made a statement to the Special Commission of the Indonesian Parliament (DPR) and issued press releases: **it was caused by the 'Act of God'***

WALHI was not convinced by the statement and took a legal action in the District Court of South Jakarta on the basis of the failure to provide true and accurate information on environmental management .

WALHI also questioned the validity of the defendant's 1998 Annual Report.

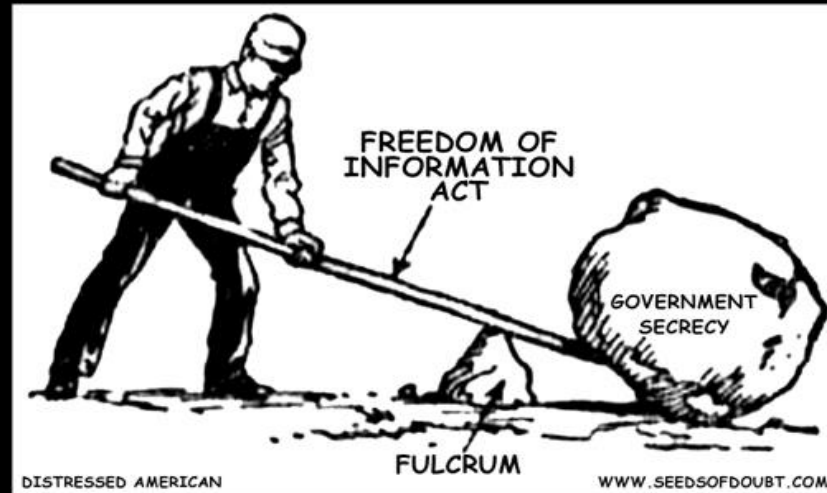
*WALHI asked **Freeport to do public apologies in 10 national newspapers international publications, national and international television.** WALHI also demanded that Freeport to take steps to minimise the risk of landslides occurring from overburdens and to minimise the toxicity of the sludge released so that it complied with the standards appropriate for the dam and the river.*

*The **District Court of South Jakarta** concluded that Freeport **had deliberately concealed information and had given false and inaccurate explanations, thereby misleading the public,** contravening Article 6(2) of the 1997 EMA. Based on that finding, the Court ordered the defendant to reform its waste management system and to minimise the risk of more rockslides into the Wanagon River. **It also ordered the company to reduce its toxic waste production so that it complied with water quality standards.** However, the Court rejected the public apology demanded by WALHI.*



Supporting Role of FOI Act-2008 on Environmental/Natural resources Management

Supporting Role FOI Act-2008



1. **Every Public Information is open and accessible** to every User of Public Information.
2. The **exception** to the Public Information is **strict and limited**.
3. The Applicant shall be able to **obtain every Public Information in prompt, low cost, and in a simple manner**.
4. Public Information that is **classified as confidential** information pursuant to **the law, ethics, and the interest of the public**, based on special consideration in terms of the consequences ... to protect a larger interest of the people. (Article 2)

Obligation of Public Institutions



- (1) A Public Agency **is obliged to provide and give and/or publish the Public Information** under its authority except information that is classified in accordance with the provision.
- (2) A Public Agency is **obliged to provide correct, accurate and not mislead public information**;
- 3) Public Agency **shall establish and develop an information and documentation system to manage the Public Information properly and efficiently**, so that it is easily accessible.
- (4) A Public Agency **is obliged to write down its reasoning for every policy** that it takes to comply with the right of every person to get Public Information. Etc... **(Article 7)**



VS



Indonesian Center of Environmental Law (ICEL) filed **a case to the Public Information Commission Tribunal**, due to the **Refusal of The Ministry of Environment and Forestry to disclose the concession maps within the Indonesian forest.**

ICEL asked the **Tribunal to access the “digital data of concessions” and satellite images of Aceh forest cover 2010-2013 (both in JPEG and SHAPEFILE Format).**

The Tribunal **Ordered** the Ministry of Environment and Forestry **to share all JPEG Format data/** but NOT SHAPEFILE Format. (Public Information Tribunal, 13 Feb 2015).

Note: ICEL will Challenge this decision to Administrative Court.

Conclusion

- (1) Indonesia has a sufficient legal basis for public participation.
- (2) Freedom of Information Act is playing a significant role in environment and natural resources management.
- (3) However, the full implementation of the existing laws are still problematic.
- (4) The Executive and the Judiciary has to enhance their capacity to respond to the increase demands of the people.



Thank You Osaka

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