

The Participatory Forestry Management System in Indonesia

Naoyuki SAKUMOTO

IDE/JETRO

Abstract: Presently, the volume of illegally harvested logs far exceeds that of legally harvested logs in Indonesia. Participatory forest management is widely recognised as the most efficient method to meet the demands of sustainable forest management and sustainable utilization of forest products to support forest dependent people. However, sustainable forest management cannot be realized without mutual understanding and positive participation. In the decentralization process in Indonesia that started in January 2001, the role of local autonomy is being consolidated whilst that of participatory forest management is becoming more important. In order to analyze these themes, three topics are studied here : (1) the legal aspects of the participatory system and forest management ; (2) LEI and the Forest Accreditation Programme in Indonesia ; and (3) international treaties and agreements relating to the environment, with special reference to public participation. Under the first of these topics, an analysis of laws and regulations relating to the environment and forest management is presented. Chapter 10 of Forestry Act No. 41, 1999 provides for the rights and responsibilities of the community as well as the supporting role of the government in promoting community participation. However, subsequent Government Regulations need to be issued in support of this Act. Not only legal ambiguities but also a lack of legal support for participatory forest management still exist in Indonesia. In a consideration of the second topic, the development of LEI (Eco-label System in Indonesia), the tasks this programme must undertake, and the forest certification system in general are studied. Presently, there are various opinions relating to the LEI programme. Some are very positive but others are not. It could be said that the programme is still in the development process. In order to tackle illegal logging, both enlightened measures such as forest certification and regulatory measures such as sanctions must now be harmonized. A discussion of the international treaties and agreements in the area of the environment that Indonesia has already signed is presented in a treatment of the third topic. It is true that various provisions for the enhancement of public participation relating to the environment can be found in international treaties and agreements. Through a domestication process, Indonesia has instituted many environment-related domestic laws and regulations. Both hard laws and soft laws are becoming important tools for enhancing public participation in forest management. Here, the Ramsar Convention is highlighted in a case study of public participation. Progress in international environmental law provides a good opportunity for a developing country such as Indonesia to develop its legal infrastructure for such public participatory management.

Key words : participatory forest management, public participation, *adat* law, LEI, forest certification system.

Introduction

Large-scale illegal logging in developing countries continues apace and is now of serious concern worldwide. According to media figures, two-thirds of the total volume of timber produced in Indonesian forests are derived from illegal operations. As such, sustainable forest management is now of immediate and pressing environmental significance in efforts to mitigate global warming, reduce the loss of biodiversity, as well as to support the sustainable subsistence of local people dependent on forests in developing countries. Tropical forest destruction is a global issue in the sense that the demand for timber comes largely from developed nations, and as such solutions cannot be found without international cooperation between developed and developing countries. However, issues surrounding the sustainability of the forest resource also remain of particular local concern in the sense that local people dependent on forests must develop their own methods for sustainable forest management.

In resolving these issues, however, it is clear that simply advocating a total logging ban is inappropriate and insufficient, since the forests and their products are a major source of income for those who depend on them economically and socially. This means that sustainable

management in forestry cannot be realized without the understanding and the positive participation of local people. Participatory forest management is generally recognised as the most effective method to meet the objectives of sustainable forest management and forest resource utilization, and so support the demands of forest-dependent people.

However, sustainable forest management cannot be achieved by means of a participatory framework alone. Without the establishment of a comprehensive framework for the sustainable management of forests and the sustainable use of forest products in a broader sense, the protection of both the forest resource itself and the livelihoods of those dependent upon it cannot be achieved in the long run.

The lack of a comprehensive legal framework remains one of the most significant obstacles to the realization of a participatory forest management system in Indonesia. Legal pluralism is still prevalent in Indonesia, hampering the development of a unified law at the local level. *Adat* or communal, indigenous law is regarded as 'the living law' and as the most reliable legal structure throughout Indonesia, excluding Java, Madura and Bali Islands¹. Despite its long history, Indonesia's legal system has not yet been universally integrated; national

legal reform is now being driven by the government of Indonesia as well as by those of overseas donor countries.

Generally speaking, three areas of uncertainty regarding Indonesia's legal system can be discerned: a lack of universality within the national legal system; the prevalence of *adat* laws; and the unpredictable course that decentralization may take in the future. Currently, formal forestry laws and an *adat*-based customary law co-exist in a dualistic legal system. Political change brought about by the drive towards democratization that has swept through the entire country resulted in the enactment in 1999 of two bills relating to decentralized governance and resource management.

Three salient concerns relating to sustainable forest management (SFM) can also be identified from a legal perspective in Indonesia. First is that the fragile participatory system is insufficiently supported by the formal legal framework. As a result, laws relating to forests have not been fully aligned and enforced. Second is that whilst *adat* laws are heavily relied upon at the local level to order communal life, they are ineffective in enforcing common standards in certain situations, such as modern financial transactions with external groups or individuals², as well as in preventing illegal logging. Third is that decentralization in Indonesia, a process that has been triggered by recent moves towards democratization, has spurred the devolution of environmental management authority to the regions. However, the lack of management capacity to cope with policy formulation and implementation, and the insufficient provision of regulations at the local government level, have become a matter of urgent concern as local governments emerge from 32 years of debilitating dictatorial rule under President Suharto.

In this article, three topics relating to public participation in forest management are analysed. These are:

- (1) The legal aspects of the participatory system and forest management (Part I).
- (2) LEI and the Forest Accreditation Programme in Indonesia (Part II).
- (3) The domestication of international treaties and agreements relating to the environment, with special reference to public participation (Part III).

¹These islands were placed under central rule during the Dutch colonial period.

²It sometimes happens that a village head agrees to provide concessions to illegal logging companies without appropriate prior consultation with local communities. Local people are thus excluded from any participatory process and do not have access to information regarding such crucial transactions.

1 Part I Legal aspects of the participatory system and forest management

1.1 Legal aspects of the participatory system

Participatory movements have accelerated in the general drive towards decentralization in Indonesia. According to Hutabarat³, four types of decentralization can be distinguished; these are political, fiscal, economic and administrative decentralization. Political decentralization refers to a shift in emphasis from state to public decision-making. Fiscal decentralization focuses on granting greater financial responsibility to local governments and private organizations. Economic decentralization asserts privatization and deregulation by shifting economic control from the public to the private sector. Deregulation advocates a reduction in the legal constraints placed on the private provision of services and engagement in competition. Participatory movements in Indonesian forestry have gathered speed since the democratization process was triggered by the economic crisis of 1998, and as such should be analysed in the context of such a deregulatory movement. In order to effectuate the promotion of a community-based system for the management of Indonesia's forests, the legal foundations which support such a participatory system must first be strengthened.

1.2 Framework of the participatory system under national constitution and laws relating to the environment

In order to understand the basic structure of the participatory system in Indonesia, a clear picture of how decentralization has developed within the national constitution is required. Under the 1945 constitution, Indonesia adopted a unified governmental structure as a founding component of national philosophy. This stance had initially been declared in the historic Youth Pledge in 1928, which has since become the basis of Article 1 of the present constitution. In 1949, Indonesia briefly adopted a federal system of government (becoming the Federal Republic of Indonesia) under the direction of the Netherlands, though this was abandoned within a year and replaced by a unified republic.

Not until Act No. 22 on regional governance and Act No. 41 on forestry were promulgated in 1999, did central government delegate its authority over forest management to local governments as part of the broader process of decentralization. Article 11 of Act 22/1999 asserts in general terms that most functions, including those relating to forestry matters, be devolved to regency or district level. However, as Hutabarat points out, nine proposed government regulations on forestry approved for

³Silver Hutabarat. Forestry Developments with regard to Decentralization. The Indonesian Quarterly Vol. XXIX No. 2, 2001. pp. 151-158.

drafting, have not yet materialised⁴. In the absence of such regulations, local governments are unable to effectively enforce local regulations within a clear national framework. So as to gain a better understanding of the general framework of the participatory system under the present legal system, an assessment of the national constitution and relevant laws and other regulations related to the environment is presented.

1.2.1 The national constitution

The 1945 constitution states that Indonesia's natural resources are to be used to attain the maximum possible public prosperity. That is, natural resources, and thus prosperity, must be sustainably perpetuated for the benefit of current and future generations. Some of the political and legal issues currently constraining the wider promotion of a community-based sustainable ecosystem management, as identified by IGES's International Workshop report by Moniaga⁵, are as follows:

- The politico-legal concept of Hak Menguasai Negara (HMN) or state control. This has been the root cause of a de-legitimization of indigenous and other local, community-based rights over natural resources
- Unequal legal access to natural resources at all levels
- Centralization of the decision making process
- A lack of substantive democracy

Article 33 (3) of the 1945 constitution states that "land and water and their natural riches are controlled by the State and are to be utilized for the maximum prosperity of the people". Moniaga suggests that this assertion of state control serves as the legal foundation upon which ultimate authority over land, forests and other natural resources has been maintained by central government (HMN). Moniaga refers to a "romanticism about the role of the state under the Constitution that is likely [to have] contributed to the formulation of the concept of HMN as the highest territorial rights over the land" and, furthermore, that "many legal scholars and practitioners still accept this romanticism". Both the Basic Agrarian Act (BAL) of 1960 and the Basic Forestry Act of 1967, which was drafted in line with national development policy and facilitated the commercialisation of the forest resource, further empowered the state with regard to resource use. Specifically, Article 5 of the Basic Forestry Law of 1967 states that authority over all forest areas in

Indonesia is held by the government. This has served as a tool to legitimize the claims of the State to ownership of the forest resource and so dissolve the land rights of local communities, an aspect criticized by certain observers⁶.

The constitution declares a centralized, unified governmental regime as the guiding principle of the Indonesian political system, concentrating ultimate authority in the hands of central government. During the 32 years of Suharto's dictatorial rule, which continued until 1998, governmental power lay with the executive branch of the government. Within such an authoritarian political structure, constitutional principles such as distribution of power and the independence of the judiciary were ignored, and democracy was not guaranteed. Although the Basic Act on Local Governments was enacted in 1974, no decentralizing shift in power from central government to local authorities materialized, despite the provision of "decentralization" and "local autonomy" in Article 3. Rather, it served as a political exercise, extending the reach of the State over regional governments.

Following the fall of Suharto in 1998, President Habibie's government introduced MPR Resolution No. 15 of 1998 on Local Autonomy via the People's Consultative Assembly (MPR), and amended Articles 18, 18A and 18B of the 1945 Constitution in the second of two constitutional amendments made in 2000. Decentralization in the structure of government began in a horizontal manner, though local autonomy was introduced to accelerate democratization in a vertical manner at the local level. This was done so as to promote the active participation of local citizens in the work of local governments. Local autonomy under a unified system of government is not viewed as being contradictory, and therefore the introduction of such decentralization is regarded as being compatible with the framework of present constitutional law.

Regional autonomy is administered only at the province, regency and municipal level, and governors, regents and mayors, their respective heads, are elected in a democratic manner by general election. Article 18A defines the basic relationship in terms of the distribution of authority between central and local governments, as well as the relationship between regional governments. The relationship between central and regional governments on issues relating to finance, public services and the utilization of natural and other resources, is regulated by law.

1.2.2 Regional autonomy acts of 1999

Local autonomy has been brought about by two fundamental pieces of legislation, both enacted in 1999; these are Act No. 22 on Regional Autonomy and Act No. 25 on Financial Balance between Central Government

⁴ These are: forestry planning; forest management; urban forests; *adat* forests; forestry research & development, education, training and extension; people's participation in forestry management; forest reclamation and rehabilitation; forest protection; forestry control / inspection. Ibid., p. 155.

⁵ Sandra Moniaga. Advocating for Community Based Forest Management in Indonesia's Outer Islands: Political and Legal Constraints and Opportunities. A paper presented at an IGES International workshop. Seven issues are pointed out in the original article, of which four are quoted here.

⁶ Mia Siscawati. Underlying Causes of Deforestation and Forest Degradation in Indonesia: A Case Study on Forest Fire. IGES International Workshop Paper, pp. 52-53.

and Local Governments. As defined in Article 1 of the Regional Autonomy Act, “decentralization” means the transfer of authority from central government to the autonomous regions, though within the framework of the unified state of the Republic of Indonesia. Furthermore, in the preamble to the Act, it is stated that “in the implementation of regional autonomy, it is essential that the principles of democracy, the participation of the people, the equitable distribution of welfare and justice, and the awareness of the potential and diversity of the regions be emphasized”.

Under Act No. 22 of 1999, not only provinces but also regencies (*Kabupaten*) and municipalities (*Kota*) have become autonomous. Districts (*Kecamatan*), sub-districts and villages within a given regency no longer form part of the central government hierarchic structure. Article 10 states that “the Region has the authority to manage natural resources that are within its territory and is responsible to ensure a sustainable environment in accordance with existing legislation”.

The responsibilities of a province encompass both those issues which are of cross-district and cross-municipal significance⁷, as well as those which cannot or have yet to be implemented by constituent regencies or municipalities (Article 9). Regencies and municipalities have authority over public works, health, education and culture, agriculture, communications, industry and trade, investment, environment, land affairs, cooperatives and manpower (Article 11).

The latter Act No. 25/1999⁸ regarding the balance of fiscal authority between central government and the regions defines the sources of regional revenue as: Original Regional Revenues; Balance Funds; Regional Loans; and Other Legal Revenues. For the purpose of implementing decentralization, funds are allocated from the APBN or national budget (Article 2). Original Region-

al Revenue sources are outlined in Article 4⁹. The Balance Funds¹⁰, including the General Allocation Fund and the Special Allocation Fund, that originate from the national budget (APBN) are allocated to the regions (Article 6~10). Regional Loans to finance some part of the regional budget may also be issued with the approval of APRD (Article 11). In order to meet pressing requirements, Emergency Funds may also be sought from the APBN (Article 16).

Government Regulation No. 25 on the Authority of the Central Government and the Authority of a Province as an Autonomous Region was enacted in 2000 to regulate the details of Act 22. Under this piece of legislation, authority over the use of natural resources on a macro-basis lies with central government. The following is a list of responsibilities assigned respectively to central government, the provinces and the regencies, which pertain to the environment and forestry (Articles 2~4, Government Regulation No. 25/2000).

1.2.2.1 Responsibilities of Central Government with regard to the environment and forestry (including plantations)

With regard to the environment, the Central Government has the authority to:

- a. Specify guidelines for the management of natural resources and the preservation of the functions of the environment.
- b. Regulate the management and utilization of marine resources situated in waters over 12 miles from the coast.
- c. Make an assessment of the environmental impact of activities that may potentially exert adverse effects on the community in general; pose a threat to national defense or security; impact on locations which straddle provincial boundaries; impact on locations in areas disputed by other states; impact upon marine localities within 12 miles of the coast; or impact on localities at international borders.
- d. Specify standards for environmental quality and

⁷ Examples of cross-regency and cross-municipal responsibilities are public works, communications, forestry and estates. Environmental control is also regarded as a province level responsibility in certain administrative areas (Elucidation, Article 9 of Act No. 22/1999).

⁸ The main objectives of Act No. 25/1999, according to its Elucidation are to: (a) utilize and improve regional economic capabilities; (b) create a regional financing system that is just, proportional, rational, transparent, participatory, accountable and correct; (c) realize a fiscal system that is balanced between Central Government and the Regions such that it reflects the division of authority with regards to public responsibilities. This fiscal system should be fully accountable, support the execution of regional autonomy by organizing a regional government, lessen the discrepancy between regions in terms of their ability to finance their autonomous responsibilities, and provide assurance of regional financial sources that originate from related regional areas; (d) become a point of reference for a region in the allocation of national revenue; (e) consolidate the regional government financial accountability system; and (f) become a main point of reference in regional finance.

⁹ Regional financial sources that are derived from related regional areas consist of regional taxation revenues, regional retribution revenues, separate regional wealth exploitation revenues and other legitimate basic regional revenues.

¹⁰ The Balanced Funds are a financing source derived from the following taxes (as well as from the General Allocation Fund and the Special Allocation Fund) and allocated to the regions: the Land and Building Tax; customs levied on obtaining rights to land and building; revenues from natural resources. Regional shares are allocated on the basis of each region's production potential. However, the regional share derived from revenue gained on natural resources in the forestry, general mining and fishery sectors are issued by central government as dictated in Article 6. See also Sjafrizal's 'Some Possible Impacts of Regional Autonomy: The West Sumatra Case' (The Indonesian Quarterly, Vol. XXX, No. 1. 2002. pp. 85).

regulate against environmental pollution.

- e. Specify guidelines for the conservation of natural resources.
- f. Specify guidelines for the management and protection of natural resources.

With regard to forestry (including plantations), the Central Government has the authority to:

- a. Specify criteria and standards for the management of forests, nature reserve areas, nature conservation areas, hunting grounds and plantation areas.
- b. Specify criteria and standards for the inventory and use of forest areas, nature reserve areas, nature conservation areas and hunting grounds.
- c. Preside over the gazetting of forest areas and over changes made to their status or function.
- d. Specify criteria and standards for management of forest areas, nature reserve areas, nature conservation areas and hunting grounds.
- e. Define the terms of management of nature reserve areas, nature conservation areas and hunting grounds, including the river systems within them.
- f. Draw up national plans for the management of forests and the development of plantations as a primary industry, as well as guidelines for land rehabilitation and soil conservation, and define boundaries for land planning and control.
- g. Specify criteria and standards for the setting of tariffs and contributory fees for forest utilization business licenses, first resource royalties, reforestation funds and investment funds for forest conservation expenses.
- h. Specify criteria and standards for the production, processing, quality control, marketing and distribution of forest and plantation products, including seedlings, fertilizers and pesticides.
- i. Specify criteria and standards for licensing procedures of forest area utilization, the utilization and collection of forest products, the utilization of environmental services, the operation of nature-related tourism, the operation of hunting grounds, hunting activities, captive breeding of fauna and flora, conservation and estate operations.
- j. Authorize business licenses on hunting grounds, hunting activities, conservation institutions and captive breeding programmes of protected fauna and flora, as well as implement the management of nature reserves and nature conservation areas as hunting grounds, including the river systems within them.
- k. Authorize licenses for cross-provincial nature-related tourism businesses and other businesses which utilize forest products and services.
- l. Specify the criteria and standards for management of forest areas including plantations, incorporating all elements of their utilization, maintenance, rehabilitation, reclamation, restoration, supervision and control.

- m. Specify criteria and standards for the conservation of ecosystems and their component biodiversity, encompassing sustainable protection, preservation and utilization in a forestry context.
- n. Specify the procedures and standards for the management of wild fauna and flora and their habitats, with particular reference to animals migrating over long distances.
- o. Issue licenses for the utilization and movement of protected flora and fauna and those listed in the appendices of the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora.
- p. Specify criteria and standards for the establishment of management principles of and measures safeguarding against natural disasters occurring in forest and plantation areas.

1.2.2.2 Responsibilities of the Province with regard to the environment and forestry (including plantations)

With regard to the environment, the Province has the authority to:

- a. Preside over cross-regency and cross-municipal environmental issues.
- b. Specify environmental regulations for the management and utilization of marine resources situated between four to 12 miles from the coast.
- c. Specify regulations and safeguards for the conservation of water resources across regencies and municipalities.
- d. Make an assessment of the environmental impacts (AMDAL) of activities which potentially exert adverse impacts on the community in general or whose location encompasses more than one regency or municipality.
- e. Exert control in the implementation of conservation programmes across regencies and municipalities.
- f. Specify environmental standards on the basis of national environmental standards.

With regard to forestry (including plantations), the Province has the authority to:

- a. Specify guidelines for the inventory and mapping of forests/plantations.
- b. Determine and safeguard the boundaries of production forests and protection forests.
- c. Specify guidelines for the implementation of a forest boundary system, and revise the boundaries of production forests and protection forests.
- d. Establish a zoning system in areas where plantations cross regency or municipal boundaries.
- e. Specify guidelines for the establishment or extension of support for the management of great forest parks.
- f. Impose a system for the division and control of land and primary resources in the design of plantations which cross the border between regencies

- or municipalities.
- g. Draw up macro plans for forestry operations and plantations that cross regency or municipal boundaries.
 - h. Specify guidelines for the management of erosion, sedimentation and land productivity in river systems that cross regency or municipal boundaries.
 - i. Specify guidelines for the rehabilitation and reclamation of production forests and protection forests.
 - j. Issue licenses for cross-regency/municipality plantations, operations engaged in the utilization of timber-based forest products or non-protected flora and fauna, and other operations processing forest products.
 - k. Supervise the use of seedlings, fertilizers, pesticides, tools and machinery in the forestry and estate sector.
 - l. Preside over the observation and modeling of plant pests and over integrated pest control programmes undertaken on forestry and plantation plants.
 - m. Preside over the rehabilitation, reclamation, silviculture, cultivation and processing of forests and plantations.
 - n. Preside over the management of cross-regency/municipality great forest parks.
 - o. Specify guidelines for determining the tariffs levied on the utilization of non-timber forest products collected from cross-regency/municipality sites.
 - p. In cooperation with the central government, define the area, function and status of forests, and preside over changes made to them, in the framework planning and spatial design of a province based on an agreement made between a province and its constituent regencies/municipalities.
 - q. Specify guidelines for the protection and safeguarding of forests in cross-regency/municipality areas.
 - r. Provide support for the implementation of education and technical training programmes, and for applied research and development in the forestry sector.

1.2.2.3 Execution of Regency/Municipality responsibilities which relate to the environment

Regency/municipality responsibilities may be transferred to the ward of the province where full authority has yet to be or cannot be undertaken by the regency/municipality itself, as defined in Article 3 (2). This process is regulated by the following terms:

- a. A regency/municipality that has yet to or is unable to exercise one or a number of its authorities, may cooperate with other regencies/municipalities in order to do so, or may hand over responsibility to the province.
- b. The execution of an authority by means of cooper-

- ation with other regencies/municipalities or the handing over of responsibility to the province must be based on a decision made by the head of a regency/municipality with the approval of the regency's/municipality's legislative assembly.
- c. A regency/municipality head is obliged to submit his decision on the handing over of responsibility to the province to the governor and the President, with an additional copy addressed to the regional autonomy advisory council.
- d. Having obtained input from the regional autonomy advisory council, the President may approve or disapprove of the handing over of the said authorities.
- e. In the event that the President gives his approval, authority over the matter must be exercised by the province.
- f. In the event that the president fails to give his approval, authority over the matter must be exercised by the regency/municipality.
- g. In the event that the President does not give any response within a period of one month, the handing over of the said authority is considered as having been approved.
- h. In the event that responsibility is transferred, the province as an autonomous region must exercise the said authorities using funds allocated from the central and regional administrations.
- i. In the event that the province is incapable of exercising authority in the matter, the province shall hand over responsibility to the government by the same mechanism set forth in items c - h.
- j. In the event that a regency/municipality resumes its capability of handling a transferred responsibility, the province or the government is obliged to return them to the regency/municipality without seeking the president's approval (Article 4).

A number of problems and ambiguities remain within the system for consolidating regional autonomy in Indonesia, as pointed out by various domestic and international NGOs and donor institutions¹¹. Some of the ambiguities relate to the balance of authority between provinces and regencies/municipalities, difficulties in interpreting the regulations, the duplicity of legislation and so on. Correspondingly, MPR Resolution No. IV/2000 officially proposed an amendment to Act No. 22/1999, whilst MPR Resolution No. VI/2002 asserted that the regional autonomy acts were not being fully enforced and that they had brought about the duplication

¹¹For example GTZ, World Bank, Smeru and Infid point out related issues and problems on local autonomy in Indonesia. World Bank proposes four recommendations on the management of natural resources in Indonesia (World Bank. Indonesia: Environment and Natural Resource Management in a Time of Transition, 2001. pp. 121). LIPI team also submitted a revised draft of Act No. 22/1999 (Jakarta Post Oct. 29, 2002).

of roles and responsibilities between governmental organizations, loopholes in the application of laws, imbalances between local governments and other legal uncertainties. In response to such claims, the Ministry of Home Affairs stated at the Donors' Meeting on 26th September 2002 that it would carry out a detailed survey of local autonomy in 20 regions and conduct legal discussions after evaluating the data¹². However, Minister Oentart S. Mawardi, Director General of the Ministry of Home Affairs, stated that although the MPR had recommended that legislation be better coordinated, political decisions to revise the regional autonomy acts have yet to be made¹³.

1.2.3 Environmental Management Act of 1997

As an amendment of Act No. 3 of 1982, Act No. 23 concerning environmental management was enacted in 1997, to provide for the basic principles of environmental management. It also outlines the basic framework of the participatory forest management system with regards to individuals, groups and the community.

Article 5 of the Environmental Management Act stipulates that all groups and individuals are entitled to the following environmental rights: (1) the right to a good and healthy environment; (2) the right to access environmental information; and (3) the right to play a role in the various schemes of environmental management. On the other hand, groups and individuals also bear the following environmental obligations: (1) to preserve the continuity of environmental functions and protect and combat environmental pollution and damage; and (2) provide true and accurate information regarding environmental management in relation to any business or other activity undertaken.

With respect to the role of the community regarding environmental management, the Act seeks to ensure that "the community has the broadest possible opportunity to play a role in environmental management". In order to realize this role, the Act identifies the following principle aims: (1) to increase independence, community empowerment and partnership; (2) to develop community capacities and initiatives; (3) to increase community responsiveness in carrying out social supervision; (4) to provide suggestions for community-based environmental management; and (5) to provide information and reports on the various forms of environmental management.

Furthermore, this basic Act makes clear that the government must always take into account the religious values, culture, traditions and life styles of the different communities in determining national policies on environmental and land management. This is dependent on an increased environmental awareness in relation to

the various communities. As the Elucidation to the Act states, "...awareness of the communities has rapidly increased, as indicated among other things by the increase in the number and variety of community organizations. ... Also evident is the rise in community initiatives to preserve environmental functions, such that the community does not merely participate, but is also able substantially to play a role". In this Act 'community participation' is defined as the participation 'in efforts and in the decision making process concerning preservation of environmental support systems and carrying capacity' (Elucidation, Article 10)¹⁴.

1.3 Decree on Environmental Impact Assessment of 1999

According to Presidential Decree No. 10 on Environmental Impact Management of 1999, one of the functions served by AMDAL is, as stated in Article 3, to improve participation of all environmental partners in environmental impact control and the voluntary management apparatus. Article 11 (part four of the Decree on the Institutional Capacity Building, Human Resources and Environmental Partners), places particular importance on environmental partnerships. Under this article, a specific role, termed Deputy I, is assigned the task of improving the participation of environmental partners in terms of raising public awareness for environmental impact control. Article 19 stipulates that an analogous Deputy IV is assigned the task of ensuring law enforcement, resolving environmental disputes and coordinating development, and implementing, monitoring and evaluating the voluntary environmental management apparatus.

1.4 The participatory system under forestry law

1.4.1 Historical development of the participatory system

In the colonial period, the Dutch Governor General legalized a state forestry regime, whereby the use of forests that belonged to the State or the use of any forests based on *adat* law was punishable. This system, typical of colonial land use law, continued until the enactment of Basic Agrarian Act No. 5 in 1960.

The legal framework for the system of forest management adopted in the early days of Suharto's 32 year period of dictatorial regime is embodied by two basic acts. The first is the Foreign Investment Law of 1967, which emphasized the export of logs with minimal or no processing in order to achieve rapid economic development. Later, the export of raw logs was prohibited. The second piece of legislation is the Basic Forestry Act of 1967, under which the central government became the

¹²Ministry of Home Affairs, Republic of Indonesia. Consultative Group on Indonesia; 3rd Quarterly Review, Sept. 26, 2002.

¹³"Tak Ada Revisi UU Otonomi" (<http://www.kontan-online.com/html/politik.html>).

¹⁴Participation is defined as "a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them" (The World Bank Participation Sourcebook).

sole authority in controlling all kinds of forest land. Under the Basic Forestry Act, community-based rights to forests were annulled. That is, where the government wished to exploit any particular forest area, community rights could be neglected in order to access the forest resource at any time and place¹⁵. The Basic Agrarian Law of 1960 further empowered the Ministry of Forestry to determine and regulate legal relations between individuals and corporate bodies and forests, and deal with legal activities related to forests. It is therefore no exaggeration to say that the stance of forest policy in the 1960s was simply a continuation of colonial policy as first spelled out in the Agrarian Act of 1870 under the Dutch - though this piece of policy had at least recognized customary law as a basis for national land law¹⁶.

Government Regulation No. 62/1998 regulates the transfer of some of the central government's functions in relation to forest management to local governments. This has been succeeded by Government Regulation No. 6/1999, which stipulates the terms of forest management (HPH) and the rights for forest products utilization (HPHH). HPHH permits to forest lands not exceeding 100 hectares may be granted to the public, to cooperatives, state enterprises, regional state enterprises and private companies. *Adat* communities have also been allowed to take forest products for their daily needs within concession areas. Concession holders must allow for the widest possible participation of communities within their areas, informing them of planned activities and providing opportunities to take part in forest activities¹⁷. However, this permit system was replaced by the Minister of Forestry's Decree No. 310Kpts-II/1999, which was in turn superceded by Minister of Forestry's Decree No. 084/Kpts-II/2000, and then again by Minister of Forestry's Decree No. 5.1/Kpts-II/2001 on the Standardization and Criteria of Permits for wood-based forest products exploitation and for wood-based forest products collection (IUPHHK and IPHKK)¹⁸. When the two basic Acts on decentralization were enacted in 1999 (i.e. UU No. 22/1999 and UU 25/1999 regarding respectively local autonomy and the balance of financial authority between central government and local government), these regulations were subsumed under the present Forestry Act No. 41/1999.

¹⁵ <http://www.Forestsandcommunities.org/Country-Profiles/Indonesia.html>

¹⁶ Owen W. Lynch & Kirk Talbott. *Balancing Acts: Community-based Forest Management and National Law in Asia and the Pacific*. World Resources Institute, 1995. pp. 52-53.

¹⁷ John F. McCarthy. *The Changing regime: Forest and Property Reform in Indonesia*, Development and Change. Vol. 31 No. 1, 2000. pp. 121.

¹⁸ H. Syaokani H. R. *The Implementation of Decentralization in the Forestry Sector within the Framework of Sustainable Forest Management in the District of Kutai Kertatanegara*. Indonesian Quarterly Vol. XXIX No. 2, 2001. pp. 148.

1.4.2 Forestry Act No. 41 of 1999

Chapter 10 of Forestry Act No. 41 of 1999 concerns the roles and objectives of social participation in forestry; Article 68 provides for the rights of the community as follows:

1. Society has the right to enjoy environmental quality as derived from forests.
2. Communities have the right to utilize forests and their products according to the relevant laws.
3. Communities have a right to knowledge and information regarding plans for benefit sharing in relation to forestry and forest products.
4. Communities have the right to offer information, advice and ideas regarding forest development.
5. Communities have the right to oversee forest development, either directly or indirectly.
6. Communities affected by forestry operations and by forest disappearance may seek compensation for losses.
7. Individuals who have lost rights to property as a result of a decision to develop a forest area have the right to seek compensation in accordance with law.

Article 69 outlines the responsibilities of the community in taking care and protecting the forest resource from damage and destruction. In order to protect and rehabilitate forest areas, communities can request the support services of NGOs, the government or other third party.

Article 70 esteems the community in playing a role in the development of forestry. Under it, the government is responsible for supporting the participation of communities in forest-related activities which promote efficient and productive objectives. In order to develop the role of the community in participatory projects, national and local government may seek the assistance of the Forestry Stakeholders Forum. An additional Government Regulation on this matter is expected.

Whilst Article 68 of the Forestry Act provides for the rights of the community, Article 69 stipulates their responsibilities. Article 70 relates to the supporting role of the government in promoting community participation. Both a community's capacity to participate in forestry development and the supporting role the government must play in promoting this are likely to be enhanced by subsequent Government Regulations. However, environmental law in Indonesia still faces many problems relating to the inefficiencies and ineffectiveness of its enforcement. The following is a list of legal issues which currently constrain environmental law enforcement in Indonesia, as identified by WALHI, an influential environmental NGO in Indonesia, at a seminar on the 'country assessment on the implementation of the Earth Summit' in January 1997.

1. The gap between concept and implementation. Typically, once policies have been discussed and legalized, further problems which may arise in their implementation are neglected.
2. The lack of an integrated and holistic working

framework. The existing development approach is sector-oriented and individualistic, rather than universal, in nature.

3. The patriarchal bias in Indonesian politics. This does not sufficiently allow for the development of civil society.

4. The lack of human resources in the civil services.

5. A weakness in law enforcement and dissemination of information to the public, especially with regard to environmental law, and the interdependence of the legal and political systems.

6. A highly centralized system of government which is not appropriate to Indonesia's geography and population.

7. The greater emphasis placed on economic interests above environmental and social concerns.

Critically, 'legal pluralism', whereby different legal systems co-exist together in different regions and with respect to different aspects of law, remains prevalent in Indonesia. Amongst forest-dependent communities, both formal forest law as well as *adat* law may be simultaneously in use. Now, amid the development of the legal process itself, as well as of the formal forestry law provided by government, customary *adat* law is being increasingly integrated. However, the fragility of the formal national legal system remains one of the most serious problems facing the development of an equitable and universal law.

2 LEI and the forest certification system in Indonesia

2.1 The eco-label system in Indonesia (LEI)

2.1.1 Development of the forest certification system

Forest certification became a matter of intense discussion in the late 1980s when environmental NGOs (including for example Friends of the Earth, World Wildlife Fund and Greenpeace) started their green label campaigns against tropical forest destruction. Such NGOs lobbied ITTO, the body which represents the international forestry industry. ITTO agreed at the Bali Conference in 1990 that all tropical wood traded should come from sustainably managed forests by the year 2000, and began conducting studies on developing guidelines, criteria and indicators for Sustainable Forest Management (SFM). However, at that stage it did not proceed beyond an academic concern. Nonetheless, in 1993 the Forest Stewardship Council (FSC) was founded with the support of WWF, other environmental groups and several corporations such as the British retailer B & Q. In 1995, FSC became a legal entity and accredited four independent certifiers to audit forestry operations and award forest certificates.

The aim of the certification system is to make timber production more ecologically and socially responsible, as well as economically viable, by grading timber sources to allow consumers to choose on these grounds¹⁹. The

certification system was quickly accepted as one of the most promising instruments with which to realize sustainable forest management. Around 90 million hectares of forests in 35 countries have now certified, including 20 million hectares under the Forest Stewardship Council scheme.

In response to the FSC initiative, various alternative certification schemes emerged. Presently, there is no unified certification system based on common principles for sustainable forest management and different forest certification schemes and initiatives are under development throughout the world²⁰.

At the Earth Summit Conference in Rio de Janeiro in 1992, the world failed to reach agreement on the forest convention supported by G7 and FAO. Chapter 11 of Agenda 21 underlines the need for the rapid development of SFM Criteria and Indicators and recommends that UNCSSD be established as an intergovernmental panel on forests to promote inter-disciplinary dialogue on an international level.

2.2 Development of Lembaga Eko-label Indonesia (LEI)

The Indonesian government formulated IFAP (Indonesian Forestry Action Plan) in 1992 for the purpose of

¹⁹ Certification (source: <http://www.gn.apc.org./dte/Ccert.htm>)

²⁰ Various efforts at the international and governmental level have been made. The Nordic Forest Certification scheme was launched in 1995 by six main organizations representing forest owners and forest industries of the Nordic countries. In the US, the forestry organization A.F. & P.A. drew up a joint policy for sustainable forest management; the SFM policy of the Forest Stewardship Council (FSC) is also widely accepted. The FSC is a forest certifying organization based in Mexico with ten fundamental principles for SFM. ISO (International Organization for Standardization), as part of its ISO 14000 system, is working on developing a forest certification system with Finland, Norway and Sweden. The Eco Management and Auditing Scheme (EMAS) of the EU has been examining the possibility of standardizing forest certification. In addition to these, there are also a variety of forest certification schemes under development throughout the world. Some of the major ones are CSA (Canadian Standards Association), SFI (Sustainable Forestry Initiative) and PEFC (Pan European Forest Certification). Furthermore, national certification schemes are also being developed in many countries. These national approaches are classified into five categories: (1) processes common to several stakeholders, as in Finland, Norway, Canada and Malaysia; (2) voluntary action models created by industry, as in the US and Indonesia; (3) standards developed by national certification bodies, as in Indonesia, Ghana and Brazil; (4) FSC national certification standards, as in Sweden, the UK, Bolivia and Brazil; (5) labeling schemes developed by countries importing the products, as in the Netherlands and Germany. (Source: Background Information on Forest Certification:

<http://www.ffcs-finland.org/eng/esittely/taustatiedot/sertifointijarjestelmat-e.htm>)

developing sustainable forest management, and established a consultative group to discuss HPH (logging concessions) and HTI (industrial timber estates). In 1993, the government issued decrees on Criteria and Indicators (C & I) for SFM and Technical Guidelines for Forestry Management (No. 252/1993, No. 576/1993, No. 610/1993 and No. 208/1993). In addition, some Ministerial Decrees on punitive measures were provided (No. 493/1989, No. 393/1994).

LEI was established in 1994 as a non-governmental independent forest certification organization with the support of the Indonesian government. Dr. Emil Salim, as Minister of the Environment, established a working group on LEI whose duty it was to define a set of C & I for SFM and to design a decision-making process within the certification system as well as a formal institutional arrangement for LEI. LEI officially obtained juristic status on 6th February 1998. LEI subsequently developed its own certification C & I for SFM which were agreed upon and accepted in mid-1998 by the industry and the government; these were revised in 1999 and now form the foundation of the Indonesian eco-label scheme. The Indonesian National Standardization Agency has since adopted the principles developed by LEI as the official guidelines for SPFM (Sustainable Production Forest Management).

The mission of LEI is to²¹: (a) develop the SPFM certification system; (b) develop an accreditation system to monitor the implementation of credible environmental and SPFM certification systems; (c) develop the capacity of HRD and environment and natural resource management certification systems; (d) ensure the correct implementation of eco-labeling certification systems; and (e) to encourage the development of policy relating to sustainable environmental and natural resource management.

For the development of SPFM, the principles of LEI's certification system²² make specific reference to the following elements: (a) voluntary input; (b) the establishment of a multi-stakeholder participation process; (c) the application of standards that meet principles internationally agreed upon; (d) transparency in the decision-making process; and (e) implementation by an independent third party.

The certification programme is intended to foster change in forest management principles and thereby create a supply of sustainably produced timber. For this purpose, forest certification systems must aim "to make timber production more ecologically and socially re-

sponsible and economically viable by grading sources so that consumers can choose on these grounds"²³. In a broader context, however, certification systems should be recognised as one of several complementary measures, including political and legal measures, to solve forest related problems. The eco-label procedure is voluntary and the auditors may request the submission of full documentation including annual management plans and reports for examination before the field inspection is conducted. The inspection criteria include social and environmental indicators as well as those relating to production, administration and financial management. Local communities can also contribute to the assessment process. Certificates are good for 5 years though they can be withdrawn prior to expiry if the conditions are not satisfied²⁴.

2.3 Joint recognition process with FSC

Two major forest certification systems exist in Indonesia: the LEI scheme and the FSC Scheme (Forest Stewardship Council Scheme). Although these two systems are different in origin and have been developed independently, discussions began in 1994 to reach an agreement on a joint certification programme (JCP). In September 1999, LEI and FSC signed a memorandum of understanding (MOU) and produced a Joint Certification Protocol on 20th September 2000. As a result, FSC and its accredited certification bodies, and LEI and its assessors, now carry out joint evaluations using both FSC-accredited assessment systems and the LEI's criteria and indicators. FSC requires certification bodies to take account of regional and national standards and so any certificate awarded must comply with both sets of requirements. However, as the elements of either system

²¹Ecolabel News (Warta Ekolabel). LEI Quarterly News Letter, Vol. 1 p. 20, August/October 2000. See also the attached Appendices: list of LEI standards; the certification process; MOU between LEI and FSC; JCP between LEI-accredited certification bodies and FSC-accredited certification bodies; certification systems in Indonesia; and FSC Principles.

²²Ibid (Ecolabel News), p. 3 and p. 20.

²³<http://www.gn.apc.org/dte/Ccert.htm>. According to the paper 'Forest Certification and Ecolabeling of Indonesian Forest Products' by M.P.L. Tobing, wood ecolabeling schemes are unlikely to be viable in Indonesia unless: (a) they are market-driven and cost-effective; (b) wood sources can be traced from forest to product (chain of custody); (c) the price of labeled products and other market signals of sufficient strength feed back to forest managers; (d) they are objective and practical, credible and reliable; (e) they are operated on a voluntary basis for concession-holders; and (h) they are non-exclusive, i.e. not based upon the certification principles of a single, government-approved agency, such as LEI: "... ideally, the system should develop along the lines of the ISO 9000 quality assurance scheme which allows both state and private enterprise certifiers..." (Mimeo, Jakarta, 2001, p. 5). Furthermore, this paper proposes the following options for policy reform such that a credible and practicable forest certification and ecolabeling scheme may develop in Indonesia: (a) open entry into the privately-funded ecolabeling service industry; (b) increased government demand for certification services; (c) the development of a viable LEI system; (d) deregulation of opportunities for certified management units; and (e) voluntary certification.

²⁴ibid.

are different, efforts are being stepped up to make specific rules governing the joint certification programme and so harmonize LEI and FSC systems²⁵.

According to the MOU agreed on between LEI and FSC in 1999, FSC²⁶ hopes to develop a role for itself in system maintenance and the supervision of certification system implementation, capacity building and the accreditation of certifiers. It is also intended that FSC will provide certification services for newly developed certification systems and assist LEI to prepare Indonesian organizations and companies that are interested and ready to function as forest certifiers. For this purpose, all LEI's Criteria and Indicators will be used by all certification bodies operating in Indonesia, while LEI and FSC will continue to collaborate in the review of LEI's standards and certification systems.

All formal certification assessments must be publicly announced in the first instance both electronically and through the media. Certifiers must gather information from all stakeholders, including local communities, civil society groups and companies, before a company's operations can be certified. The certification team should meet with stakeholders during the field assessment and hold a public consultation. Inputs may be verbal or in written form, conveyed via email, fax or letter, and can be submitted to the certifiers at any time after the potential certification has been announced. Companies often ask certifiers to make an initial visit in order to advise

them on how much work they must do to be eligible for full certification assessment. These 'scoping visits' are usually confidential and are not announced in advance. Any stakeholder can formally challenge a certification decision under both the FSC and LEI systems, if, for example, a community feels that there has not been adequate consultation or that the company is not respecting its customary rights.²⁷

Out of ten applicants, four companies had been granted interim accreditation by LEI as of July 2000. These are PT TUB International, PT Superintending Company of Indonesia, SGS Indonesia and PT. Mutu Agung Lestari. Under the joint certification system, the LEI system is presently regarded as being in a development stage, with its principles of forest certification being supported by FSC. Although LEI's C & I are made public through its own set of guidelines, there remain many inadequacies in the system with regard to representing a substantial counter-measure to illegal logging. Nonetheless, LEI's eco-label system should be viewed not as a comprehensive legal instrument, but as a developing regulatory body and a complementary tool which operates at the market level with the support of a well-informed, environmentally aware public.

2.4 Comment and opinion

The following is a list of general comments pertaining to forest certification, based mainly on material collated from the internet by the author.

- (a) The standards of LEI certification are becoming more demanding than those of FSC. LEI does not allow its accredited certifiers to provide certification for any operations which convert natural forest to non-forest uses such as palm-oil plantations or settlements, even where conversion is regarded as legal. Whilst LEI are taking a firm stand against illegal logging, social criteria such as the recognition of rights to tenure are not being made sufficiently stringent. Decision-making structures are not open and transparent. (Source: <http://www.gn.apc.org/dte/Ccert.htm>, June 2001).
- (b) At a meeting involving a number of Indonesian NGOs on 21st April 2001, an official statement questioning the certification of forest concessions in Indonesia was issued, highlighting the concession system's basic disregard for native customary (*adat*) rights. The statement asserts that if the present situation continues, indigenous people and local communities' rights will be seriously undermined. They called upon LEI and FSC for a halt in all scoping visits, pre-assessment and assessment activities with concessionaires (HPHs), as well as an immediate moratorium on the issu-

²⁵ See attached Appendix 4, Details of Joint Certification Work, <http://www.sustainableforestgtz.org/m@in/eng/en-certf.htm>.

²⁶ FSC is an independent, international non-profit organization that promotes responsible forestry. It was established in 1993 with the main office in Mexico. The three principle features of FSC are as follows: (1) membership organizations are representative of the full spectrum of parties involved in forestry; (2) the auditors employed are independent certifiers and not connected to the industry or to consumer groups; and (3) component principles and criteria are determined by international agreement. Funding sources of FSC are charitable foundations, donor government, membership subscriptions and accreditation fees. Around 90 million hectares of forest in 35 countries are certified including 20 million hectares under the Forest Stewardship Council Scheme. Their premise is that environmentally aware consumers are willing to pay more for environmentally friendly forest products. There are a number of FSC accredited certification bodies throughout the world. FSC members are composed of three interest groups (economic, environmental and social). Those operations evaluated and monitored by FSC can use chain-of-custody certificates and FSC logos on their timber and other products. Indonesia was selected by FSC, along with 14 other major exporter nations, as a target country for improved forestry standards. However, there is criticism that FSC does not pay sufficient attention to domestic forestry laws in ensuring its principles and methods are compatible. As of August 2000, the FSC mission is to "promote environmentally appropriate, socially beneficial, and economically viable management of the world's forests".

²⁷ Greenpeace International, August 2000 (grosoan@dialb.greenpeace.org.).

ing of any certificates, until core issues relating to *adat* rights are resolved between all stakeholders. They also contend that the certification of HPHs in the current situation is contrary to efforts aimed at securing indigenous and community rights, since no independent analyses have been undertaken regarding FSC's Principles 2 (tenure and use rights and responsibilities) and 3 (indigenous peoples' rights) in relation to Indonesian legislation. The behaviour of certification bodies such as SGS in the Diamond Raya case and Smart Wood in relation to the granting of several certificates to Perum Perhutani, are cited as examples of inadequate consultation methodologies. (Source: an article based on information from 'Indonesian NGOs calling for an immediate halt in scoping, assessments and issuing of certificates to HPHs/KPHs', 21st April 2001, received from Kim Terje Loraas (wrm@wrm.org.uy, The Rainforest Foundation), 30th April 2001.

- (c) The classification of certification as a market-based instrument and debates about green markets have led to a common assumption that certification only makes sense where there is a discerning market, i.e. a market that favors products from well-managed forests. In consequence, it is often considered that certification is an unjustified burden on forest managers whose products are not destined for green markets. This paper questions these assumptions based on an initial review of information from certified forest operations from around the world. We suggest that some of the commercial advantages of certification are not reliant on the preferences of green consumers. However, our main contention is that certification has merit as a public policy instrument, quite independently of its marketing function. We think that certification can offer opportunities for policy development both when standards are being developed, and when they are used in field assessments. (Source: WWF).
- (d) To date, the impact of certification on trade has been very limited and very country specific. Although Western European countries and the United States have shown interest in certification, major Asian timber importers such as Japan, the Republic of Korea and China have not. From the producer side, major exporting countries such as Indonesia, Malaysia, Sweden, Finland, Canada and Ghana are moving towards development of certification schemes, partly as a means of encouraging improved forestry practices, but largely to avoid future trade difficulties or to gain a market advantage. (Source: FAO).
- (e) The volume of certified products entering the market is relatively small because of the limited supply and the lack of demand, and there is there-

fore little evidence of the positive or negative market impact of certification. It remains unclear whether a strong demand will develop in the future for certified wood, and whether it will command a premium price. A further, critical unanswered question is whether certification will, as it was originally intended to do, significantly contribute to improved forest management in developing countries (where deforestation is greatest). There are also concerns that certification may intentionally or unintentionally act as a non-tariff barrier to trade and discriminate against those unable or unwilling to become certified. At present, certification seems to be used mainly as a marketing tool, to increase market share and/or to ensure continued or improved market access. (Source: FAO).

- (f) The Forest Stewardship Council (FSC) has continued to expand the area of forests certified by its accredited certifiers. Most is in Europe and the United States. Sweden and Poland alone account for 66 percent of the total, and the United States another 10 percent. Some areas requiring further attention include: continued work to determine factors for evaluating forest management and reliable ways of measuring them; procedures for tracking wood from the forest to the market; and analysis of the degree to which there are linkages between criteria and indicators at the national and management-unit levels, and between the latter and forest product certification. (Source: Forestry Information Notes, forestry-information@fao.org; <http://www.fao.org/forestry>).

3 Domestication of international treaties and agreements relating to the environment with special reference to public participation

3.1 Public participation in Indonesia and international treaties

Legal reform has been enforced in Indonesia, especially since Indonesia's economic crisis in 1997 and the ensuing period of democratization which toppled Suharto's leadership. In the climate of political change, Indonesia has ratified a number of international treaties and agreements relating to the environment, as well as those relating to ILO or human rights.

For a country such as Indonesia, with its legal system unconsolidated and in a developmental stage, there is the potential for the international channels created by the ratification of these environmental treaties and agreements to support the development of a domestic system for public participation. No part of domestic law can stand alone in this process of globalization²⁸. In this section, an assessment of Indonesia's system for public participation and its development as influenced by international environmental treaties and agreements is pre-

Table 1 International treaties and agreements relating to the environment and their status in Indonesia.

Title of international treaty or agreement	Date of Signature	Status in Indonesia: date entered into force	Status under domestic law	Remarks
International Plant Protection Convention	6 th Dec'57	21 st June '77 (ratification) 14 th Nov '90 (acceptance of amendment)	KP2/77	
Convention on the Continental Shelf	8 th May '58			
Convention on Fishing and Conservation of the Living Resources of the High Seas	8 th May '58			
Convention on the High Seas	8 th May '58	10 th Aug '61 (ratification)	UU 19/61	
Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water	23 rd Aug '63	8 th May '64* (ratification)		20 th Jan '64*
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies	14 th Feb '67*			1 st Jan '67*
International Convention on Civil Liability for Oil Pollution Damage	29 th Nov '69	1 st Sept '78 (ratification) 30 th Nov '78 (entry into force)		
Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar)		8 th Apr '92 (ratification) 8 th Aug '92 (entry into force)	KP48/91	
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage		1 st Sept '78 (accession) 30 th Nov '78 (entry into force)		
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction	21 st Jun '72	19 th Feb '92 (ratification)	KP58/91 KP89/91	
Convention concerning the Protection of the World Cultural and Natural Heritage		6 th Jul '89* (acceptance)	KP17/89	6 th Oct '89* (entry into force)
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	28 th Mar '79	28 th Dec '78 (accession) 28 th Mar '79 (entry into force)	PP8/99	
International Convention for the Prevention of Pollution from Ships as modified by the Protocol of 1978	21 st Jan '87 (except Annexes III, IV & V)	21 st Jan '87 (entry into force)		
Convention on the Physical Protection of Nuclear Material	3 rd Jul '86*	5 th Nov '86 (ratification) 8 th Feb '87 (entry into force)	KP49/86 KP64/86	8 th Feb '87*
United Nations Convention on the Law of the Sea	10 th Dec '82	3 rd Feb '86 (ratification)	KP82/93	
Agreement relating to the Implementation of Part XI of	29 th Jul '94*			28 th Jul '94*

Table 1 Continued.

the United Nations Convention on the Law of the Sea of 10 December 1982				
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	4 th Dec '95			
International Tropical Timber Agreement 1983	13 th Jun '84*	9 th Oct '84 (ratification)	KP49/84 KP35/84	1 st Apr '85*
Convention for the Protection of the Ozone Layer	24 th Sept '92	26 th Jun '92 (acceptance)		
Protocol on Substances that deplete the Ozone Layer	21 st Jul '88*	26 th Jun '92 (ratification)		24 th Sept '92*
Amendment to the Montreal Protocol on Substances that deplete the Ozone Layer	24 th Sept '92	26 th Jun '92 (ratification)		
ASEAN Agreement on the Conservation of Nature and Natural Resources	9 th Jul '85	10 th Jul '86 (ratification)	KP26/86 KP43/86	
Convention on Early Notification of a Nuclear Accident	26 th Sept '86	12 th Nov '93 (ratification) 13 th Dec '93 (entry into force)	KP87/93	
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency	26 th Sept '86	12 th Nov '93 (ratification) 13 th Dec '93 (entry into force)		
Convention on Conditions for Registration of Ships	26 th Jan '87			
Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal		20 th Dec '93 (accession)		
Framework Convention on Climate Change	21 st Nov '94	5 th Jun '92	UU6/94	
Convention on Biological Diversity	5 th Jun '92	21 st Nov '94	UU5/94	
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction	13 th Jan '93			
International Tropical Timber Agreement 1994	21 st Apr '94	17 th Feb '95 (ratification)	KP4/95 LN. 4	
International Convention to combat desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa	15 th Oct '94	28 th Aug '98 (ratification)	KP135/98	
Convention on Nuclear Safety WTO	20 th Sept '94		UU07/94	

Source: Based on information primarily provided by the Ministry of Environment, Indonesia, as of August 2001. The author has modified the data after cross checking with IUCN data as of March 2002 available on the internet from ENTRI (IUCN) (entri@ciesin.org). Indonesia has already signed 68 environment related international treaties and agreements according to the IUCN data.

N.B. *in the remarks column indicates that different dates were quoted by different sources.

UU=Act; PP=Government Regulation; KP=Presidential Decree

sented.

3.2 The status of the international conventions on the environment in Indonesia

Indonesia has ratified the following international environmental treaties and agreements. The table shows how international treaties and agreements relating to the environment have been incorporated into domestic laws and regulations. The column 'status under of domestic law' illustrates how domestic laws and regulations have been instituted within Indonesia in relation to certain international environmental treaties and agreements.

3.3 Domestication of international treaties and agreements relating to the environment

Some of the major international treaties and agreements relating to the environment have already been domesticated in Indonesia, since being signed and ratified. These may be categorized as below, according to the level of the law or regulation applied in their domestication.

- (i) Act Level (*Undang-Undang*)
 - Convention on the High Seas, incorporated under Indonesian Act No. 19 of 1961
 - Framework Convention on Climate Change, incorporated under Indonesian Act No. 6 of 1994
 - Convention on Biological Diversity, incorporated under Indonesian Act No. 5 of 1994
- (ii) Presidential Decree Level (*Keputusan Presiden*)
 - International Plant Protection Convention, incorporated under Indonesian Presidential Decree No. 2 of 1977
 - Convention on Wetlands of International Importance especially as Waterfowl Habitat, incorporated under Indonesian Presidential Decree No. 48 of 1991
 - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, incorporated under Indonesian Presidential Decrees No. 58 of 1991 and No. 89 of 1991
 - Convention concerning the Protection of the World Cultural and Natural Heritage, incorporated under Indonesian Presidential Decree No. 17 of 1989
 - Convention on the Physical Protection of Nuclear Material, incorporated under Indonesian Presidential Decrees No. 49 of 1986 and No. 64 of 1986

- United Nations Convention on the Law of the Sea, incorporated under Indonesian Presidential Decree No. 82 of 1993
- International Tropical Timber Agreement, 1983, incorporated under Indonesian Presidential Decrees No. 49 of 1984 and No. 35 of 1984
- ASEAN Agreement on the Conservation of Nature and Natural Resources, incorporated under Indonesian Presidential Decrees No. 26 of 1986 and No. 43 of 1986
- Convention on Early Notification of a Nuclear Accident, incorporated under Indonesian Presidential Decree No. 81 of 1993
- International Agreement, 1994, incorporated under Indonesian Presidential Decree No. 4 of 1995
- International Convention to combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, incorporated under Indonesian Presidential Decree No. 135 of 1998
- (iii) Government Regulation Level (*Peraturan Pemerintah*)
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), incorporated under Indonesian Presidential Decree No. 8 of 1999

3.4 Participatory systems reflected in international environmental treaties and agreements

Various provisions for the enhancement of public participation relating to the environment can be found in international treaties and agreements. This section illustrates how articles relating to public participation have been introduced in the relevant international treaties and agreements, and examines how they have affected Indonesian environmental law through their domestication.

Generally speaking, provisions relating to public participation can be found in both 'hard' and 'soft' laws in the international environmental policy. Some of the international environmental treaties and agreements that include provisions for public participation are discussed in a separate IGES study²⁹.

However, there are some inherent problems with identifying which domestic laws and regulations in Indonesia are specifically compliant with which international treaties and agreements. Furthermore, it is difficult to identify which part of certain domestic legislation complies with which part of the provisions laid down by international law. Two of the main reasons for this are:

(a) Despite recent legal reform, domestic laws in Indonesia remain scattered and fragmentary. There are many out-dated and uncoordinated laws and regulations that should be deleted or amended. This means that the Indonesian legal system in some areas is not hierarchical or systematic in its structure. As a result, although the

²⁹ Government Regulation No. 25/2000 provides in Article 5 that: (1) international commitments which have already been signed or which shall be made by the Government shall also apply to all autonomous regions; and that (2) treaties and cooperative projects between a region and an overseas institution/agency established on the basis of the authority of an autonomous region may not contradict the provisions of similar treaties made by the government.

major domestic laws and regulations which correspond to major components of international treaties can be identified (as in Table 1), it is difficult to draw conclusions on the direct compliance of domestic laws with their international counterparts, in the absence of an in-depth comparative study.

(b) As already discussed, legal pluralism is still prevalent in Indonesia. Despite being regarded by some as primitive, irrational and outdated, customary *adat* laws remain the 'living law' in many circumstances, particularly with regard to community participation in the utilization and management of environmental resources, including forests and fisheries. Over hundreds of years, communities have depended on such law to protect themselves from external pressures such as forced labour, and to define themselves in the face of colonial administrations and oppressive dictatorships, especially in the outer islands. National or official law is now penetrating to all regions under the banner of legal reform. However, the integration of a broader diversity of law through legal reform is necessary for Indonesia to cope with modern trends in globalization and to redress the legal legacy of past governments.

For these two reasons, it is essential within the scope of the present study to limit the terms of the analysis. Indonesia has already signed or ratified many international environmental treaties as explained above. In this context, there are two methods of developing an assessment of international influences on domestic public participation in Indonesia. The first is to identify concrete provisions on public participation in the international environmental treaties and agreements that have been signed or ratified by Indonesia. The second is to identify those articles relating to public participation in the relevant domestic laws and regulations existent in Indonesia.

3.4.1 Provisions for public participation made in international treaties and agreements

The following is a list of the international environmental treaties and agreements signed or ratified by Indonesia and complemented by major domestic laws and regulations which include provisions related to public participation explicitly or inexplicitly.

(i) United Nations Framework Convention on Climate Change (1992), incorporated as Indonesian Act No. 6 of 1994.

- Article 4 (1) on Commitments refers to the need to "encourage the widest participation in this process, including that of non-governmental organizations".

- Article 6 on Education, Training and Public Awareness states that "the Parties shall: (a) Promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with national laws and regulations, and within their respective capacities: (i) the development and implementation of educational and public awareness programmes on climate change and its effects; (ii) public access to information on climate change and its effects; (iii) public participation in addressing climate change and its effects and developing adequate responses.

- Article 6 (6) states that "any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted".

(ii) Convention on Biological Diversity, incorporated as Indonesian Act No.5 of 1994.

- Articles 14, 15, 23, 25 and 31 of the Convention include provisions related to public participation. Article 14(1)(a) on Impact Assessment and Minimizing Adverse Impacts accommodates the potential for "where appropriate ... public participation in such procedures".

- Article 23 (5) on the Conference of the Parties states that "any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object".

- Article 25 (1) on the Subsidiary Body on Scientific, Technical and Technological Advice stipulates that "this body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise". Furthermore, it refers to "the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge". It also affirms the need for the full participation of women at all levels of policy-making and implementation for biological di-

²⁹ (a) 1991 Convention on the Environmental Impact Assessment in a Trans-boundary Context (Espoo Convention, Articles 4(8) and 4); (b) 1992 Convention on Biological Diversity (CBD, Articles 8 (j) and 14 (1) (a)); (c) 1994 International Tropical Timber Agreement (ITTA, Article 1 (j)); (d) 1994 Convention to Combat Desertification (Articles 3 (a), 9 (1), 10 (2), 13 (1) (c), and 19 (1) (a)); (e) 1998 Convention on Access to Information and Public Participation in Decision-making and Access to Justice in Environmental Matters (Arhus Convention, Articles 2 (4), (5), 6 (1), (2), (6), (7), (8), (9), 7, 8, and 9 (2)); (f) 1998 ITTO Criteria and Indicators for Sustainable Management of Natural Tropical Forests (Criteria 1 and 7); (g) Ramsar Convention (Resolutions 7 and 8); and (h) CBD Decision v/16 (Article 8 (j) etc.). (g) World Charter for Nature (Principle 23); (h) Rio Declaration on Environment and Development (Principles 1, 10, 22, 21 and 22); (c) Agenda 21 (Chapter 23); (i) Proposals for Action of IPF; and (j) Proposals for Action of IFF (This list was compiled largely by Mr. Komatsu of IGES Forest Conservation project IGES).

versity conservation.

- Article 32 (2) on the Relationship between this Convention and its Protocols states that “any contracting party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol”.

(iii) International Plant Protection Convention, incorporated as Indonesian Presidential Decree No. 2 of 1977.

- Article 8 (2) of the Convention states that “regional plant protection organizations shall function as the coordinating bodies in the areas covered and shall participate in various activities to achieve the objectives of this Convention”.

(iv) Convention concerning the Protection of World Cultural and Natural Heritage, incorporated as Indonesian Presidential Decree No.17 of 1989.

- The preamble to the Convention states that “it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value”.

- Article 10(2) of the Convention states that “the Committee (The World Heritage Committee) may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems”.

(v) International Tropical Timber Agreement, 1983, incorporated as Indonesian Presidential Decrees No.49 of 1984 and No. 35 of 1984.

- Article 24(1) of the Convention on the Establishment of Committees states that “the following committees are ..established as permanent committees of the Organization: (a) Committee on Economic Information and Market Intelligence; (b) Committee on Reforestation and Forest Management; and (c) Committee on Forest Industry”, and in Article 24(2) that “the Council may, by special vote, establish such other committees and subsidiary bodies as it deems appropriate and necessary”.

- Article 24(4) states that “participation in each of the committees shall be open to all members. The rules of procedure of the committees shall be decided by the Council”.

(vi) Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (Basel), incorporated as Indonesian Government Regulation No. 19 of 1994.

- Article 6 of the Convention states that “any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object”.

(vii) ASEAN Agreement on the Conservation of Nature and Natural Resources, incorporated as Indonesian Presidential Decrees No. 26 of 1986 and No. 43 of 1986.

- Article 16(2) of the Agreement on Education, Information and Participation of the Public in Training aspires to “as far as possible, organize participation of the public in the planning and implementation of conservation measures”.

(viii) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), incorporated as Indonesian Government Regulation No. 8 of 1999

- Article 9 (6) on the Conference of the Parties stipulates that “the United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but to not vote”.

- Article 7 states that “any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object: a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

3.5 Provisions made for public participation in domesticated international treaties: Case study of the domestication of the Ramsar Convention

The Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971, as amended by the Paris Protocol of 1982 and 1987 (the Ramsar Convention) protects the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic fauna and flora, especially waterfowl, as declared in preamble of the Convention. Any contracting party to the Convention is granted certain rights in order to achieve the objectives, since the problems it addresses are regarded as being of urgent national interest. Parties are also subject to its incumbent responsibilities for the wise use of wetlands (Resolution 2).

Articles relating to public participation in this Convention are found in Resolutions 6 and 7 under the directives for wise use of wetlands. These two Resolutions were amended in 1987. Resolution 6 (3) states that “the contracting party shall ensure that those responsible at all levels for wetlands management shall be informed of, and take into consideration, recommendations of such conferences concerning the conservation, management and wise use of wetlands and their flora and fauna”. Resolution 7 (1) stipulates that “the representative of the contracting parties at such conferences should include persons who are experts on wetland or

waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities”.

These Resolutions provide incentives for the involvement of local indigenous people under the objective of “wise use of the wetlands”. Stakeholders can be widely involved and participate in order to realize various roles at all levels for wetlands management.

Indonesian Presidential Decree No. 48 of 1991 on the Convention on Wetlands of International Importance especially as Waterfowl Habitat is the domesticated law that corresponds to this convention. This Decree is a short legal document composed of only two articles admitting the Convention comprehensively into domestic law. There are no concrete articles related to public participation in this Decree. However, individual articles of more general laws on environmental participation (i.e. the Environmental Management Act of 1997 and the Presidential Decree on the Environmental Impact Assessment No. 10 of 1999) make provision for this.

Similarly, Bio-diversity Act No. 5 of 1994, which corresponds to the International Convention on Biological Diversity, is also a short act comprising just two articles. However, in its supporting official elucidation, quite a long explanation is given to stress the importance of ratifying this Convention. Included is a long list of Indonesian laws and regulations which are relevant to this Convention. For example, it is stressed that since international laws and regulations pertaining to (amongst others) forestry, environmental management, fisheries, maritime law, eco-systems, world heritage, wetlands and endangered species are already applied in Indonesia, ratification of this convention is wholly compatible with the application of Indonesian law. It is, however, made clear in the explanation that a number of laws and regulations which are relevant to certain international treaties and agreements on the environment have to be examined prior to the ratification of such treaties and agreements.

Concluding remarks

A basic understanding of the legal conditions relevant to public participation in forestry is required to gain a full picture of the development of the process in Indonesia³⁰.

- (1) A full view of the overall trends in on-going judicial reform in Indonesia must be taken, covering

almost all areas of law. Judicial reform relates not only to basic governmental structure but also to some essential legal principles such as constitutionalism, separation of powers, interdependence of *adat* laws and formal law and the enforcement of laws and regulations. The Third Constitutional Amendment of November 2001 promulgated by MPR explicitly changed certain basic constitutional principles - the sovereignty of the people was explicitly declared; the role of DPR was upgraded; direct voting in presidential and vice-presidential elections by the people was adopted; and the Constitutional Court was established.

- (2) Decentralization of governmental powers in Indonesia is a matter of national concern. Political power, once concentrated in the hands of the president, is now being devolved to local governments with the development of local autonomy, initiated in January 2001. However, it is fair to say that, generally speaking, Indonesian politics remains in a chaotic situation.
- (3) The participation of the public in environmental activities has political, economic and socio-cultural ramifications. If viewed as a means to achieve democratization, public participation must be supported by decisive governmental initiatives in order that such a decentralized system can be substantially affected. Decentralization means devolution of central powers to local governments. As yet, the level of integration of authority throughout Indonesia's political infrastructure remains minimal with much yet to be achieved. Socio-economic obstacles are still existent. The Indonesian philosophy *Pancasila* and the national principle of *Bhinneka Tunggal Ika* (unity in diversity) embody the challenges of developing a unified and universal social and legal structure relevant to a pluralistic society.
- (4) The role of *adat* law is a vital element in the development of local governments and civil society. Given the vacuum which exists in official law, legal certainty and predictability can be conveyed nationwide by *adat* approaches where they serve as a living law, particularly in the outer islands. However, formal law is replacing *adat* law under the banner of modernization and is gradually penetrating to the local level, despite the fact that many socio-cultural considerations, such as legal awareness, social discipline and community participation, are supported by indigenous *adat* law and traditional communal values. On the other hand, *adat* laws are now being challenged in legal disputes and transactions which are well beyond their inherent capacity.

³⁰The author was provided with several lists of such relevant laws and regulations by the Indonesian Ministry of Environment, in order to study compliance with international treaties and agreements. For instance, 25 laws and regulations are listed as being of direct relevance to the ratification of the Bio-diversity Convention's Cartagena Protocol. Similarly, 15 laws and regulations are listed in connection with agreement to the Hazardous Waste treaty, and 11 in connection with the Convention on Migratory Birds.

Appendix 1 List of LEI standards

LEI Standard 5000	Framework for the Sustainable Production Forest Management (SPFM) System
LEI Standard 5000-1	Sustainable Natural Production Forest Management (SNPFM) System
LEI Standard 5000-2	Sustainable Plant Forest Management System
LEI Standard 5000-3	Sustainable Community-based Forest Management System
LEI Standard 5000-4	Sustainable Non-Timber Forest Product Management System
LEI Standard 5001	Timber Tracking System
LEI Standard 5002	Forest Product Labeling
LEI Standard 5005	Terms and Definitions Relating to Sustainable Production Forest Management
—LEI Guideline series 55—	
LEI Guideline 55	Resolution Guideline: Appealing against a Certification Decision
—LEI Guideline series 99—	
LEI Guideline 99	Sustainable Production Forest Management (SPFM) Certification System
LEI Guideline 99-00	Requirements, Guidelines and Work Procedure for SPFM
LEI Guideline 99-01	General Requirements of the SPFM Certification Institution
LEI Guideline 99-02	General Requirements of the SPFM Certification Field Assessor
LEI Guideline 99-03	General Requirements of the SPFM Certification Expert Panel
LEI Guideline 99-10	Requirements, Guidelines and Training Procedure of the SPFM Certification Programme
LEI Guideline 99-11	Training Guidelines for SPFM Certification Field Assessors
LEI Guideline 99-12	Training Guidelines for the SPFM Certification Expert Panel
LEI Guideline 99-13	Training Guidelines for SPFM Certification Trainers
LEI Guideline 99-14	General Criteria for SPFM Certification Training Institutions
LEI Guideline 99-15	General Criteria for SPFM Certification Personnel Training Institutions
—LEI Technical Document—	
Document LEI-01	Verifier and Verification Toolbox for Assessment Criteria and Indicators of the Sustainable Natural Production Forest Management (SNPFM) Certification System
Document LEI-02	The Intensity Scale of Sustainable Natural Production Forest Management and its Indicators
Document LEI-03	Academic Document for Certification System of Sustainable Natural Production Forest Management (SNPFM)
—LEI Academic Document—	
Document LEI-03/2	Sistem sertifikasi pengelolaan Hutan berbasis masyarakat lestari

Appendix 2: The certification process

The Sustainable Production Forest Management (SPFM)

system is essentially conducted on the collective principles of voluntarism, transparency, independence, participation, non-discrimination, empowerment and accountability. The process separates the data gathering elements from the decision-making stage, and also involves several stakeholders. The whole certification process consists of four stages:

1. Pre-Field Assessment Stage

The Pre-Field Assessment is a series of preliminary activities designed to increase the efficiency of the actual evaluation, paving the way for a more expeditious certification process based on an increased understanding of the relevant information. Those management units which do not meet the necessary standards at this stage, will not continue onto the certification process. The Pre-Field Assessment consists of:

(a) Screening by Expert Panel I:

Document evaluation

Field scoping

Decision-making and submission of recommendation.

(b) Decision by certification board

2. Field Assessment & Community Input Stage

(a) Field Assessment

At this stage, data collecting and analytical processing are carried out by Field Assessors, based on the SPFM criteria and indicators. The procedure for the field assessment is regulated by separate guidelines.

(b) Community Input

Community Input is carried out simultaneously with and is complementary to Field Assessment, in order to provide local communities with the opportunity to actively participate and submit data and information, covering both the positive as well as the negative effects of the evaluation of management units. The Certification Body openly announces this opportunity to the public.

Any Community Input is submitted to the Certification Body for consideration by Expert Panel II, which makes a final decision on certification.

3. Performance Evaluation & Certification Decision-Making Stage

Performance Evaluation is the process by which a management unit is evaluated, based on SPFM criteria and indicators. A set of standard conditions is compared to those found on the ground, in order to rank the application and make a decision on certification. Recommendations to the management unit are also made. The Field Assessment Report, Community Input and the results of the screening process by Expert Panel I, are all treated as sources of information in the decision-making.

A decision on SPFM Certification is made by Expert Panel II of the SPFM Certification Body whose membership, work procedures and recommendations to the management unit are all regulated by separate guidelines.

4. Certification Decision Stage

The Certification Decision is the process by which the decision taken by the Expert Panel II may be endorsed as a Certification Body Decree. In the event that a management unit is granted certification, the Certification Body shall openly announce the event through the mass media, and disclose the decision in a sealed notification to all relevant parties in the government, NGOs and various groups/associations concerned.

To maintain the credibility of the Certification Decision, the Certification Body will periodically monitor and assess the already certified management units. The surveillance activity will be carried out by a team of qualified individuals equivalent to the Expert Panel or to the Lead Field Assessors.

Source: Lembaga Ekolabel Indonesia (LEI)

Appendix 3 Memorandum of understanding between Yayasan Lembaga Ekolabel Indonesia (YLEI) and the Forest Stewardship Council (FSC), September 1999

The Board of Trustees of YLEI (the Indonesian Eco-labeling Foundation):

(a) Accepts the mission of the foundation to develop eco-labeling certification systems in Indonesia, including a sustainable forest management certification system, along with its long-term responsibilities in system maintenance and supervision of the system's implementation, capacity building and accreditation of certifiers.

(b) Recognizes the interim role of LEI (the Indonesian Eco-labeling Institute, the executive division of YLEI) to provide certification services for newly developed certification system (s), while assisting YLEI to prepare Indonesian organizations and companies that are interested and ready to function as certifiers, including forest certifiers.

(c) Recognizes the importance of a joint certification arrangement between LEI, FSC-accredited certifiers and future YLEI-accredited Indonesian certifiers, to serve the objectives of establishing Indonesia's forest certification system, as part of YLEI's capacity building programme to help prepare Indonesian forest certifiers.

The Executive Director of the FSC (Forest Stewardship Council):

(a) Recognizes the importance of a joint certification as an interim arrangement to accommodate the need for closer collaboration between FSC and YLEI.

(b) Accepts the motion passed at the Second General Assembly of FSC Members in June 1999 on the establishment of a working group to develop policy and protocol governing FSC recognition of standards and systems that have been developed independently.

Both Parties, YLEI and FSC, commonly agree that:

(a) The Criteria and Indicators of YLEI standards will be used by all certification bodies operating in Indonesia. The Criteria and Indicators to be used will be the version that incorporates the recommendations from the joint field work and workshop of August/September 1999 and additional comments from Indonesian stakeholders.

(b) YLEI and FSC will continue to collaborate in the review of YLEI standards and a certification system for Indonesia. This collaboration will include detailed comparison of the YLEI standards and system, and FSC requirements, based on field experience through the Joint Certification Programme.

(c) FSC will study mechanisms for the assessment and recognition of YLEI standards for Indonesia in the absence of an FSC Working Group. This issue will be treated by the Working Group to be set up by the FSC Board.

(d) YLEI is to become an accreditation body for forest certifiers. YLEI and FSC will continue to study the issues surrounding Mutual Recognition at the level of certification and accreditation with the aim of strengthening and formalizing the relationship in due course.

(e) FSC and YLEI will collaborate through simultaneous assessments and joint certification by LEI or YLEI-accredited certification bodies and FSC-accredited certification bodies in accordance with the ground rules set-out in the Joint Certification Protocol. Additions to the ground rules by an FSC-accredited certifier are acceptable if they are necessary for the fulfillment of the accreditation contract between that certifier and FSC.

(f) YLEI/LEI and FSC have agreed to improve communication links to ensure progress in their collaboration.

(g) Specific rules governing the Joint Certification Program shall be defined in a separate Joint Certification Protocol attached to the Memorandum.

(MoU signed in Jakarta, 3rd September 1999, by Prof. Dr. Emil Salim, Chairman of the Board of Trustees, Yayasan Lembaga Ekolabel Indonesia, and Dr. Timothy Synnott, Executive Director, Forest Stewardship Council)

Appendix 4 Joint certification protocol (JCP) between LEI-accredited certification bodies and FSC-accredited certification Bodies, October 2001

This protocol refers to a joint certification programme between FSC-accredited Certification Bodies (FSC-CBs) and LEI-accredited Certification Bodies (LEI-CBs) for natural forest management by concessionaires in Indonesia. All FSC- and LEI-accredited certification bodies currently working in Indonesia will be bound by this protocol for the period of its validity. The JCP is intended to operate for one year or until revised or renewed. Any revision before one year will need the agreement of all parties. This protocol is part of the two Memoranda of Understanding between FSC and LEI dated 3rd September 1999 and 18th October 2001.

1. LEI-CBs and the FSC-CBs agree that the process of joint certification should be open, transparent and co-operative and that all parties will benefit from the process.
2. The JCP among LEI-CBs and FSC-CBs will cover co-operation throughout all stages of the certification process to gain experience in working together and an understanding of each other's systems, and to assist LEI and FSC to prepare the ground for formalizing the institutional relationship between them as stated in the MoU of 18th October 2001.
3. FSC, LEI and the accredited certification bodies agree that the JCP will meet all requirements under both FSC and LEI certification systems.
4. Under the JCP, all parties agreed that the Criteria and Indicators of LEI will be used by all certification bodies operating in Indonesia. This means that FSC-CBs will use all LEI C & I, including those exceeding the requirements of the FSC, as well as any additional FSC requirements, not included in the LEI C & I.
5. Only an FMU that passes both LEI and FSC system requirements will be certified. The FMU will receive both an LEI certificate and an FSC certificate. The FMU will be allowed to use both LEI and FSC logos.
6. At the application stage, the FMU will be sent guidelines prepared jointly by the LEI-CBs and FSC-CBs explaining the certification process under the JCP.
7. Contractual arrangements will be determined by the FMU and the collaborating LEI CB and FSC CB on a case-by-case basis.
8. Under the JCP, an FSC scoping is not compulsory. Past experience indicates that typically a scoping is required. Prior to signing a contract between an FSC-CB or an LEI-CB and an FMU, a document completeness review shall be performed by the LEI-CB, and the need for an FSC scoping visit shall be determined by the FSC-CB.
9. The FSC-CBs and LEI-CBs agree to use a single team
 - In the case of a joint LEI screening and FSC scoping process,

- In field assessment
 - In surveillance visits if possible
10. Public consultation is a fundamental component of the FSC and LEI systems and therefore also of the JCP. It starts with a joint public announcement a minimum of 30 days before a field assessment takes place. Consultation shall take place on national, provincial and district levels. All interested stakeholders shall be involved.
 11. Upon positive decision, public summaries of the certification reports will be made available in both Bahasa Indonesia and English and will include a full description of the joint certification process.
 12. Results of each step of the JCP shall be shared between both the LEI-CB and FSC-CB.
 13. The appeal process will follow each system's requirements.
 14. Suspension or termination of the certificate will follow the procedures of each CB. Decisions will be made by consensus between the CBs.
 15. LEI and FSC may send observers to monitor implementation of the JCP. Other interested parties (NGOs, government officials, project members, etc.) can observe the field work, provided that the FMU agrees.
 16. The details of the certification steps under the JCP are described in Table 1.
 17. Any violations of the JCP procedures will be resolved between the collaborating parties.

Table 2 Certification process under JCP.

No	Action Step	Responsible parties/person
1.	FMU sends application and delivers all required documents to LEI CBs and/or FSC CBs. CBs communicate with respective partner CB.	FMU and LEI CBs and/or FSC CBs
2.	a. Document Completeness review by LEI CB b. Decision about scoping by FSC CB	LEI CB FSC CB
Action Step		
	Joint Screening/Scoping*	LEI-CB Screening, no FSC-CB scoping*
3.	Contracting between FMU and CB(s) (FMU and LEI CBs and/or FSC CBs)	Contracting between FMU and CB (LEI CB)
4.	CBs put together joint workplan and teams for LEI screening process and FSC scoping process. Teams meet before field visit. (LEI CB and FSC CB)	LEI CB puts together workplan and team for LEI screening process (LEI CB)
5.	Screening/scoping step I: document review and clarification of corporate statement (LEI CB and FSC CB)	Screening step I: document review and clarification of corporate statement (LEI CB)
6.	Screening/scoping step II: Joint Field Visit (Single team) with LEI-CB facilitator and optional observers from LEI-FSC/NGOs (LEI CB/EP I and FSC CB)	Screening step II: Field Visit with optional LEI-CB facilitator and optional observers from LEI-FSC/NGOs (LEI CB/EP I)
7.	Screening/ scoping step III: EP I decision (LEI CB) and combined or joint report writing by both CBs (LEI CB/EP I and FSC CB)	Screening step III: EP I decision (LEI CB) and report writing by LEI-CB (LEI CB/EPI)
8.	a. If EP I decision = fail: back to (1) Application/process restarts, FSC CB awaits EP I approval (LEI CB) b. EP I decision = pass: proceed to field assessment (FMU) Note: joint notification of EP I/scoping results to FMU	a. If EP I decision = fail: back to (1) Application/process restarts, FSC CB awaits EP I approval (LEI CB) b. EP I decision = pass: proceed to field assessment (FMU)
Action Step		
9.	Notification to proceed: the FMU contacts LEI/FSC-CB. CBs communicate with respective partner CB.	FMU – FSC/LEI CBs
10.	Contracting for field assessment	FMU – FSC/LEI CBs
11.	CBs develop joint work plan and single team to do assessment based on LEI and FSC system requirements.	LEI/FSC-CBs
12.	Joint public announcement (minimum 30 days before field assessment) in Bahasa Indonesia and English.	LEI/FSC-CBs
13.	Joint field assessment, including public consultation on national/provincial and local levels. The FGD (regional consultation forum) and other key persons need to be involved.	LEI/FSC-CBs
14.	Joint fieldwork (including briefing/de-briefing) of FMU	FMU – LEI/FSC-CBs

15.	<p>Separate reporting</p> <p>a. LEI CB Assessor to EP II</p> <p>b. FSC CB Assessor to FSC-CB</p> <p>c. Both CBs send report to FMU for clarification</p>	<p>LEI-CBs</p> <p>FSC-CBs</p>
16.	Separate Decision making process with interim notification to FMU	LEI-CBs/EP II – FSC-CB
17.	<p>Combined decision and joint notification to FMU within 3 months after field assessment:</p> <ul style="list-style-type: none"> • Situation I: FMU passes in LEI and FSC system. • Situation II: FMU passes LEI system but does not pass FSC system. CBs jointly notify FMU that it has 6 months to meet FSC requirements. • Situation III: FMU passes FSC system but does not pass LEI system. CBs jointly notify FMU that it has 6 months to meet LEI requirements (see note below). • Situation IV: FMU does not pass either system. CBs notify that FMU has 6 months to meet both LEI and FSC requirements (see note below). <p>Note: Under LEI system, an FMU that does not pass LEI system is required to re-apply for field assessment within 6 months after the decision of certification. Otherwise FMU will be required to return to the screening process.</p> <p>Under FSC system, an FMU that does not pass FSC system is required to inform FSC CB when it is ready for pre-conditions or major CAR audit.</p>	LEI-CBs & FSC-CBs
18.	FMU completes administrative requirement to receive certificates (certification contract, fees)	LEI-CBs & FSC-CBs
19.	<p>a. Joint handing over of LEI and FSC certificates and other mandatory documentation.</p> <p>b. Public summary posted by CBs</p> <p>c. Joint public announcement</p>	LEI-CBs & FSC-CBs
20.	Joint surveillance visits by LEI-FSC CBs will take place once a year (unless the LEI system allows for fewer visits). Additional visits according to each CB's requirements.	LEI-CBs & FSC-CBs

* Responsible parties during the screening/scoping process are provided in brackets for each step.

Cecep Saepullah
PT. TUV International
Indonesia

Arifin Lambaga
Mutuagung Lestari

Jeff Hayward
SmartWood

Dradjad Wibowo
Lembaga Ekolabel Indonesia

Rolia Nurdiawati
Sucofindo

Imam Suseno
SGS ICS Indonesia SGS Forestry

Heiko Liedeker
Forest Stewardship Council

Appendix 5 Certification systems in Indonesia.

Company	Perum Perhutani+	Perum Perhutani+	Perum Perhutani+	Perum Perhutani+	PT Diamond Raya Timber	PT Xylo Indah Pratama	Perum Perhutani+	Perum Perhutani+
Location	Java and Madura	Cepu, Central Java	Kebonhardjo, Central Java	Mantingan, Central Java	Riau	Musi Rawas, South Sumatra	Lawu, East Java	Kendal, Central Java
Type of Concession	Plantation (mainly teak and pine)	Teak plantation	Teak plantation	Teak plantation	Natural forest (HCVF*)	Pulai (<i>Alstonia</i> sp.) plantation on private land	Pine plantation	Teak plantation
Area Certified (Ha)	Approx. 2 mill.	33,109	17,653	16,535	90,957	10,000	51,349	20,113
Certification Scheme	-	FSC	FSC	FSC	LEI FSC	FSC	FSC	FSC
Certifier	Smartwood	Smartwood	Smartwood	Smartwood	LEI SGS	Smartwood	Smartwood	Smartwood
Status	Suspended 1997	Certified	Certified	Certified	Certified	Certified	Certified	Certified
Date of Certification	1990	Oct. 1998	Oct. 1998	Oct. 1998	Mid 1999/April 2001, under joint protocol	March 2000	March 2000	March 2000

Appendix 5 Continued.

Company	Perum Perhutani+	Inhutani I	PT Austral Byna	PT Intracawood ^o	PT Erna Djuliawati	Perum Perhutani+	Perum Perhutani+	Perum Perhutani+
Location	Madiun, East Java	Labanan, East Kalimantan	Barito Utara, C. Kalimantan	Malinau, East Kalimantan	Central Kalimantan	Pemalang, Java	Bojonegoro, Java	Randu-Blatang Java
Type of Concession	Teak and eucalyptus plantation	Natural forest (potential HCVF*)	Natural forest (potential HCVF*)	Natural forest (potential HCVF*)	-	-	-	-
Area Certified (Ha)	31,264	83,240	294,600	250,000	184,206	-	-	-
Certification Scheme	FSC	FSC LEI	FSC LEI	FSC LEI	FSC LEI	FSC	FSC	FSC
Certifier	Smartwood	Smartwood/Mutu Agung Lestari	Smartwood/TpV	Smartwood/TpV	SGS Indonesia/SGS Qualifor	GFA/Terra Systems	GFA/Terra Systems	GFA/Terra Systems
Status	Certified	Assessment underway	Assessment underway	Assessment underway	Pre-assessment planned	Pre-assessment visit Feb. 2001	Pre-assessment visit Feb. 2001	Pre-assessment visit Feb. 2001
Date of Certification	March 2000	-	-	-	-	-	-	-

(+ now PT Perhutani; * High Conservation Value Forest; ^o joint venture between PT Inhutani I, PT Altracks and PT Berca Indonesia. Source: LEI)

Appendix 6 Forest Stewardship Council Principles (February 2000)

(Each principle has several qualifying criteria not stated here)

PRINCIPLE 1: COMPLIANCE WITH LAWS AND FSC PRINCIPLES

Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.

PRINCIPLE 2 2: TENURE AND USE RIGHTS AND RESPONSIBILITIES

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

PRINCIPLE 3: INDIGENOUS PEOPLES' RIGHTS

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories and resources shall be recognised and respected.

PRINCIPLE 4: COMMUNITY RELATIONS AND WORKER'S RIGHTS

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

PRINCIPLE 5: BENEFITS FROM THE FOREST

Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

PRINCIPLE 6: ENVIRONMENTAL IMPACT

Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

PRINCIPLE 7: MANAGEMENT PLAN

A management plan — appropriate to the scale and intensity of the operations — shall be written, implemented, and kept up to date. The long-term objectives of management, and the means of achieving them, shall be clearly stated.

PRINCIPLE 8: MONITORING AND ASSESSMENT

Monitoring shall be conducted — appropriate to the scale and intensity of forest management — to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

PRINCIPLE 9: MAINTENANCE OF HIGH CONSERVATION VALUE FORESTS

Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

PRINCIPLE 10: PLANTATIONS

Plantations shall be planned and managed in accordance with Principles and Criteria 1–9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.