



Environmental Protection Law

Laode M Syarif

*Hasanuddin University, Faculty of Law
and*

Partnership for Governance Reform in Indonesia





Why do we need Environmental
Protection Law ?



Drought and desertification

Photo: Darren Seiler

Jakarta







Maldives



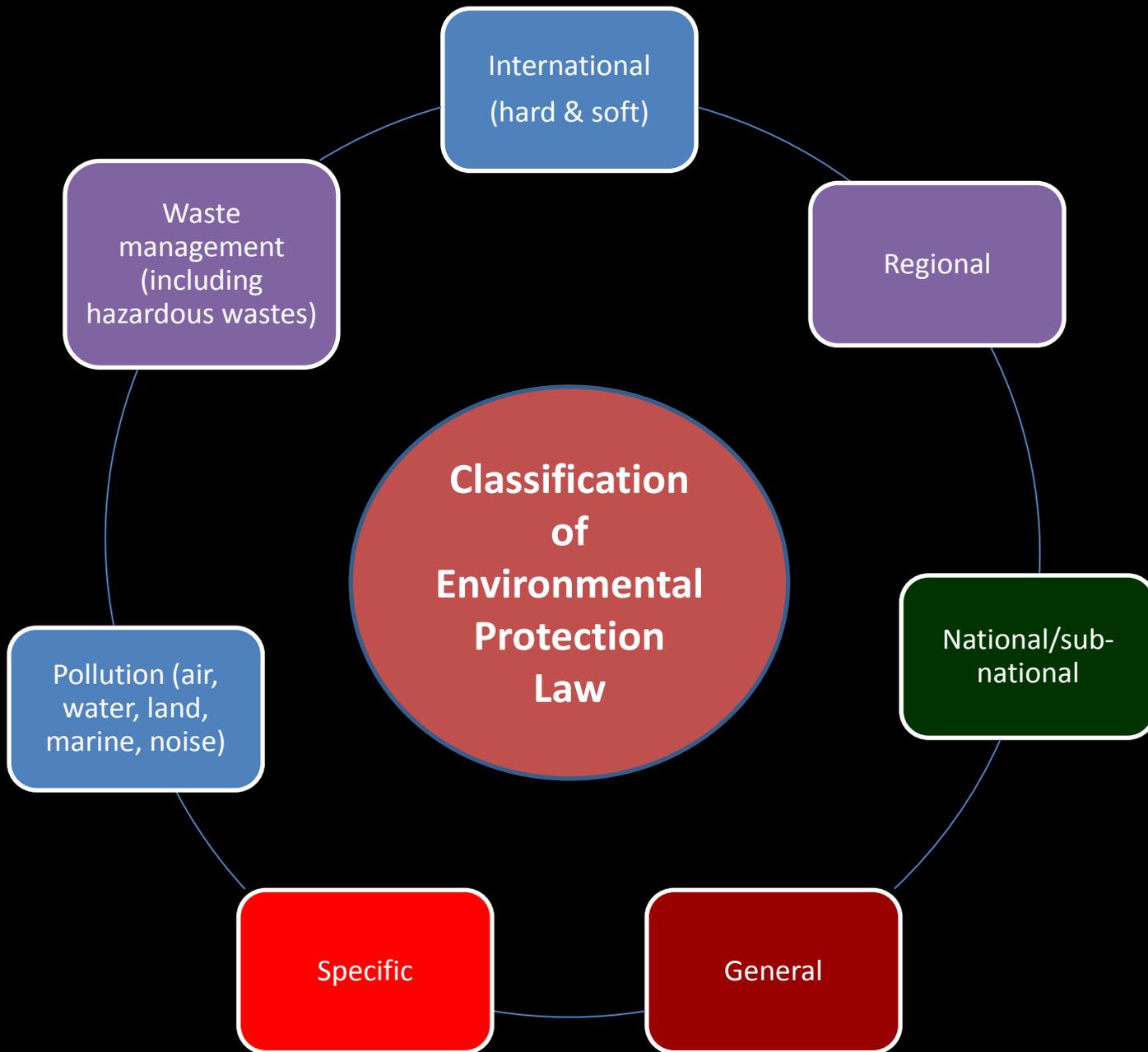
Environment Can/Can't Protect Itself



- Environment **CAN-NOT “HEAL” itself**, if the ‘pressure’ go beyond its carrying capacity.
- The ‘environment’ needs ‘**special protection**’, from human to preserve its quality and sustainability.
- Protection can be in form of “**technical solution**” and/or “**legal/policy**” intervention.



'Architect' of Environmental Protection Law



Note: International/regional aspect of this will be presented in Special Session

National Env Protection Law

General Env Law	Specific Env Law
Covers the 'whole/general aspects' of environment (general approach)	Covers specific sector/aspect of the environment (land, air, water, marine, forest, etc) (sectoral environmental aw)
Provide general legal frameworks to environmental protection	Provide detail regulation, provision, and standards to complement 'general environmental law'
Provide general principles, rules, standards, and mechanism	Set a special emission and affluent standards and some time provide an exemption from 'general env law'
Create an environmental institution and set a special working mechanism among government institutions and other stakeholders , etc	Establish special agency to deal with specific sector and the relationship of that agency with other agencies, etc

Example of General Env Law

- Environmental Quality Act, 1974 (Malaysia)
- Environment Pollution Control Act, 1999 (Singapore)
- Environmental Protection and Management Act, 2009 (Indonesia)
- Protection of the Environment Operations Act, 1997 (NSW-Australia), Etc...



Note: Some General Env Protection Laws are developed/consolidated from specific *Env Protection Act*. **Example: Singapore & NSW**

Content of “Gen Env” Protection Law

- ‘Domestication’ of International Principles into National Law;
- The right and obligation of people and government in environmental management and protection;
- Establishing national agency for the implementation national strategy on environmental protection;
- Determining the role of national and sub-national government in environmental protection and management;
- The right of people & public participation in environmental management, etc



Example of Specific/Sectoral Env Protection Law

- Clean Air Act, 1984 (South Australia-Australia)
- Clean Water Act, 2004 (Philippine)
- Biological Diversity Act, 2002 (India)
- Solid Waste Management Act, 2008 (Indonesia)
- Prevention of Pollution of the Sea Act, 1999 (Singapore),
- Fisheries Code, 1998 (Philippine)
- Mines and Minerals (Development and Regulation) Amendment Act, 2010 (India)
- Forestry Act 1927 (Pakistan), etc



Note: **(1)** Specific Env Protection Act (some time) served as an implementing legislation of General Env Protection Law. **(2)** Some time the contents of Specific Env Protection Act are contradictory with general

Content of Specific/Sectoral Env Protection Law

- **“Domesticating”** particular Multilateral Environmental Agreement: Ex- Prevention of Pollution of the Sea Act, 1999-Singapore is to give effect to the *International Convention for the Prevention of Pollution from Ships 1973*,
- Provide detail provisions, regulation and standards on particular aspect of environment;
- **Set a special emission and affluent standards;**
- **Establish special agency to deal with specific sector and the relationship of that agency with other agencies, etc;**
- (Some time) ... provide special exemption from ‘general env law’

Note: Some time, there is a contradictory provision between ‘general’ and ‘specific’ protection laws

Sub-National Env Protection Law

- Similar to National/Federal, Sub-national Env Protection Law, can also be divided into “**general**” and “**specific/sectoral**”.
- In Unitary State, they serve as an implementing/complementing regulation of National Laws.
- They address special condition of particular State/Province/Local government.



Note: In many instances ... **sub-national law is usually inconsistent** with national/federal laws.

Waste management



- Waste Minimisation and Management Act 1995 (NSW-Australia)
- **Solid Waste Management Act 2011 (Nepal)**
- Solid Waste Management Act No 18/2001 (Indonesia)
- **Government Regulation No 101/2014 on Toxic and Hazardous Waste Management (Indonesia)**
- Hazardous Waste (Control of Export, Import and Transit) Act 1998 (Singapore)

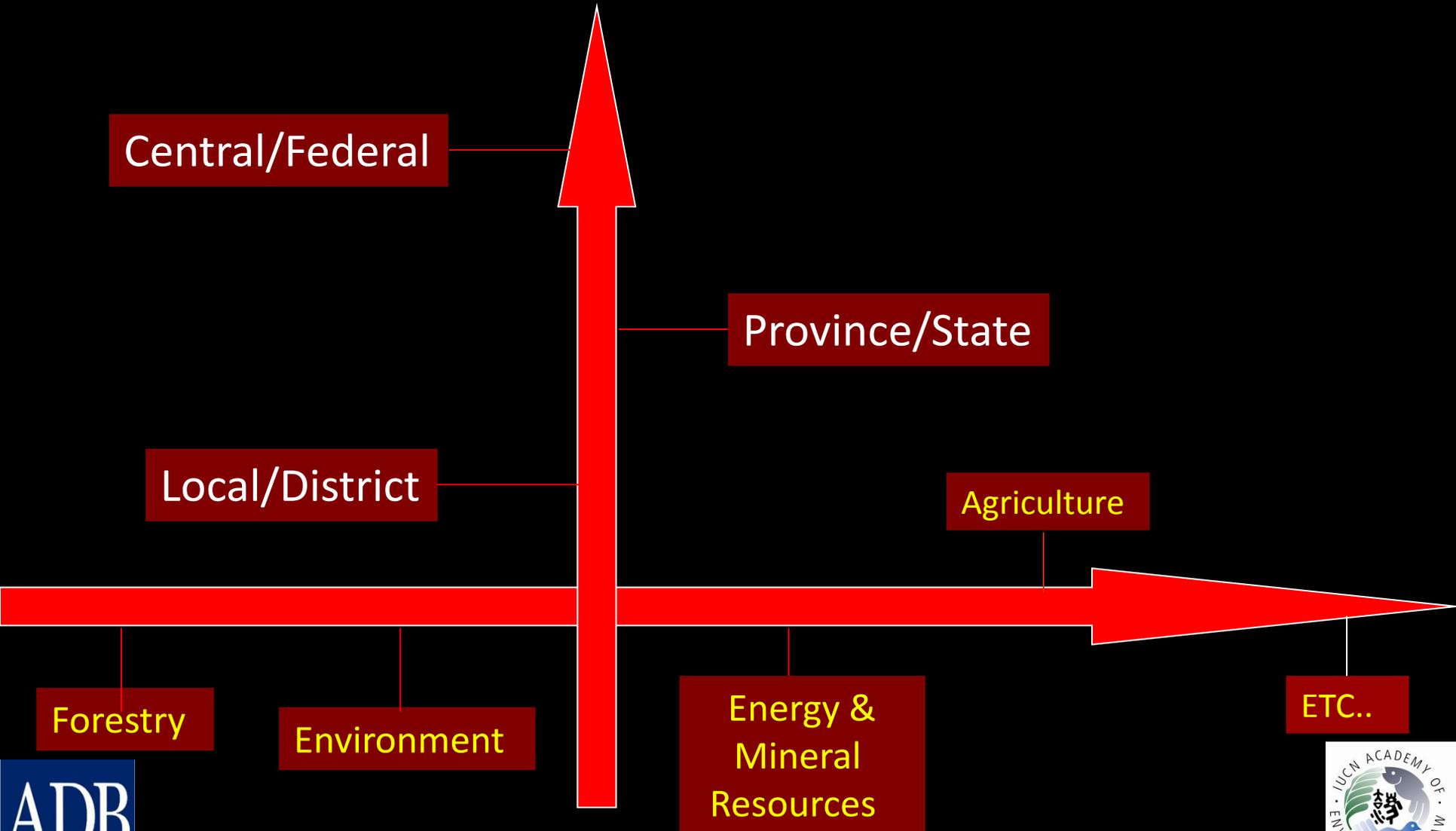
Site Contamination



- Contaminated Sites Act 2003 (Western Australia)
- Contaminated Land Management Act 1997 (NSW-Australia)
- Environmental Protection Act 1990:
- Part 2A
- Contaminated Land Statutory Guidance 2012 (Under Environmental Protection Act 1990) (United Kingdom)

Dealing with Contamination from former: factories, mines, steelworks, refineries, landfills, ETC

Are U Aware of this Complexity ?



Management Tools of Environmental Law

- Standard (ambient air quality, emission standards, water quality standards, etc)
- Licenses (certain activities require formal permit/licenses)
- Orders (Government can impose orders for compliance)

Enforcement of Env Protection Law?

- The enforcement of environmental law is **more complex** than other traditional branch of law, because it has Civil, Administrative, Criminal, international aspects.
- It usually involves several (national/federal & sub-national) governments agencies;
- It requires **good coordination among law enforcement agencies and relevant government agencies**;
- Scientific evidence and **expert opinion** are important in the enforcement of the law;
- **CSOs can play a big role** in the enforcement of environmental law.





Examples of the Enforcement of Environmental Protection Law



WALHI vs PT Freeport Decision No.459/Pdt.G/2000/PN.Jak.Sel.



**Tailing
DAM**



Wanagon River

Banti Village & Amungme people

12 Km

WALHI vs PT Freeport

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

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

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

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

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

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

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

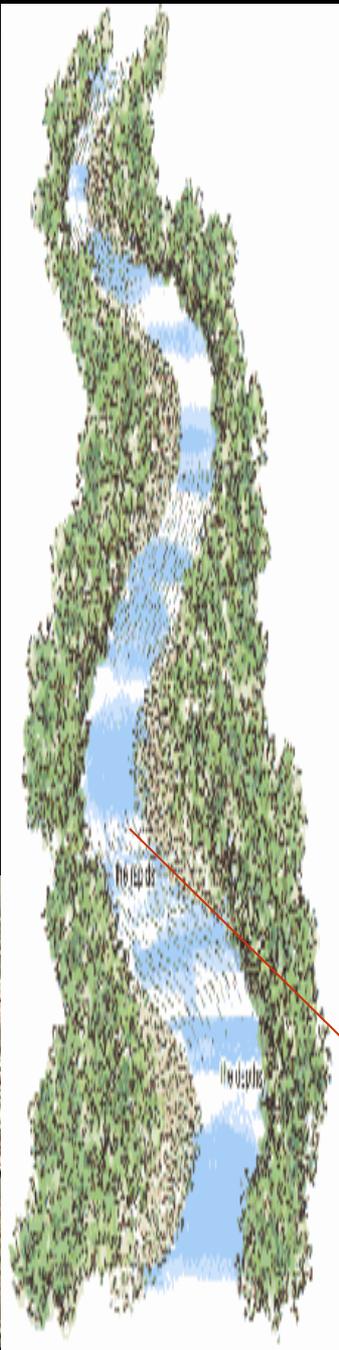
Muhaimin & Friends vs PT. Condro Purnomo Cipto & Anors



Textile



Paper mill



Leather tanning

Babon River

Semarang District Court, Decision No. 42/PDT.G/1998/PN. SMG, 13 Oct 1998.

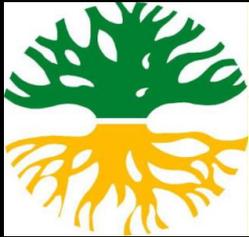


Role of Scientific Evidence



Good investigation + Proper Preparation/Analysis
=
Successful Prosecution

Are you aware of Institutional Capacity of the Government



Environment



Forestry



Trade



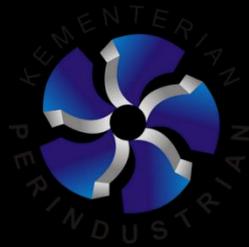
Energy



Agriculture



Fisheries



Industry



Police



Attorney
General



Court

Note:

- (1) Environmental Law Enforcement involving various Gov Institutions
- (2) They have different capacity and commitment

The Role of Independent Government Agencies



Corruption Eradication Commission



Public Information Commission



Financial Transaction Reports
and Analysis Center



Note: They may not directly relevant but **they can assist** in the Enforcement of Environmental Law. Use them if you have similar agencies in your countries

Always Remember this Basic Rule

EXHIBITS *Seizure & Management*

1. Identification

2. Seizure

3. Planning

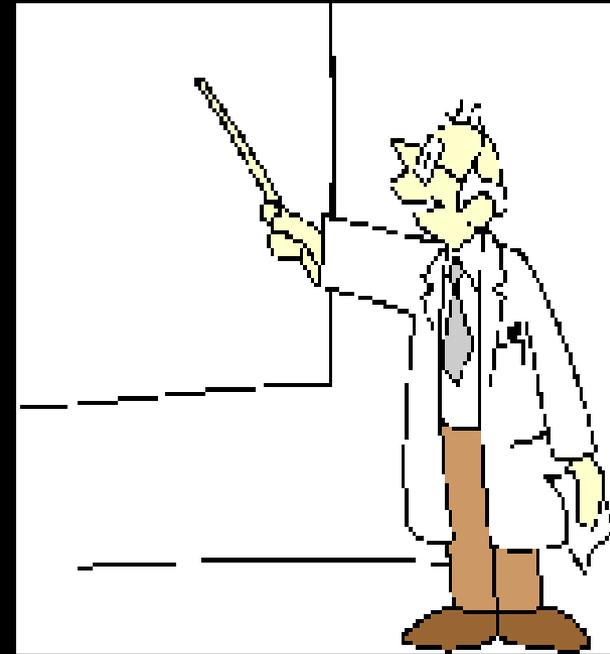
4. Controlling

5. Recording

6. Presenting

What is the content of your teaching?

- What is the emphasis of your teaching?
- Are you concentrates on 'general' environmental protection act'?
- Are you include other specific and sectoral laws and sub-national laws?
- What aspects do you want to add in your teaching?



What kind of teaching methods do you use?



- Basic class presentation
- **Field trips**
- Case studies and comparative law approaches
- **Use of films**
- What else ?

What kind of equipment do you use to improve the quality of your teaching?



- In Focus and basic computer?
- Computer with Audio Video capacity?
- Properties (demonstration tools) ?
- Pictures ??



Thank you

Email: laode.syarif@kemitraan.or.id &
syariflaw@gmail.com

Twitter: @LaodeMSyarif

Mobile: +62-8111-899-689