



STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-PACIFIC: DEVELOPING ENVIRONMENTAL LAW CHAMPIONS

Cebu City, 22-26 August 2016

Session 11: Case Study of Trans-boundary Haze
Pollution in ASEAN Countries

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Objective of this Case Study

(1) To examine:

- The (in)effectiveness of domestic laws and regional legal arrangement such as the *ASEAN Agreement on Transboundary Haze Pollution*
- Possible political and legal settlement to the issue of transboundary haze pollution ASEAN Countries;
- Possible appropriate remedies or non legal responses to the victim states caused by the forest fires from their neighbouring countries.

(2) To understand:

- How to use the comparative law case-studies for analysing the strengths and weaknesses of the Agreement

BACKGROUND

- The use of fires for **land clearing** by **'traditional farmers'** is a common practice in Asia, but they never cause trans-boundary haze pollution in the past.
- The use of fires for land clearing has become **a big regional problem** in Southeast Asia when the **big/industrial palm-oil plantation** started operating in early 1980's.
- Every dry season **'April to August'**, **Indonesia emits toxic haze** in its own **domestic boundary and its neighbours**, namely: Malaysia, Singapore & Brunei Darussalam.



BACKGROUND

❖ *Regional Responses to the trans-boundary haze pollution:* **ASEAN AGREEMENT ON TRANSBOUNDARY HAZE POLLUTION**

Status of signature and ratification

- Signed on 10 June 2002 in Kuala Lumpur; Entered into force on 25 November 2003
- All 10 ASEAN are parties to the Agreement (8 members except Philippines and Indonesia ratified the Agreement around 2003-2006)
 - Philippines: ratified on 1 Feb 2010, deposit with approval by ASEAN Secretary on 4 March 2010
 - **Indonesia ratified on 14 Oct 2014, deposit with approval by ASEAN Secretary on 20 Jan 2015**

Source: <http://haze.asean.org/status-of-ratification/>

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BACKGROUND

➤ Major obligations of Parties are:

- to cooperate in developing and implementing measures to prevent, monitor, and mitigate transboundary haze pollution by controlling sources of land and/or forest fires, development of monitoring, assessment and early warning systems, exchange of information and technology, and the provision of mutual assistance;
- (ii) to respond promptly to a request for relevant information sought by a State or States that are or may be affected by such transboundary haze pollution, with a view to minimising the consequence of the transboundary haze pollution;
- (iii) to take legal, administrative and/ or other measures to implement their obligations under the Agreement

Big' fires in ASEAN

1982-83

1987

1991-1992

1994-1995,

1997-1999

March 2000

2002

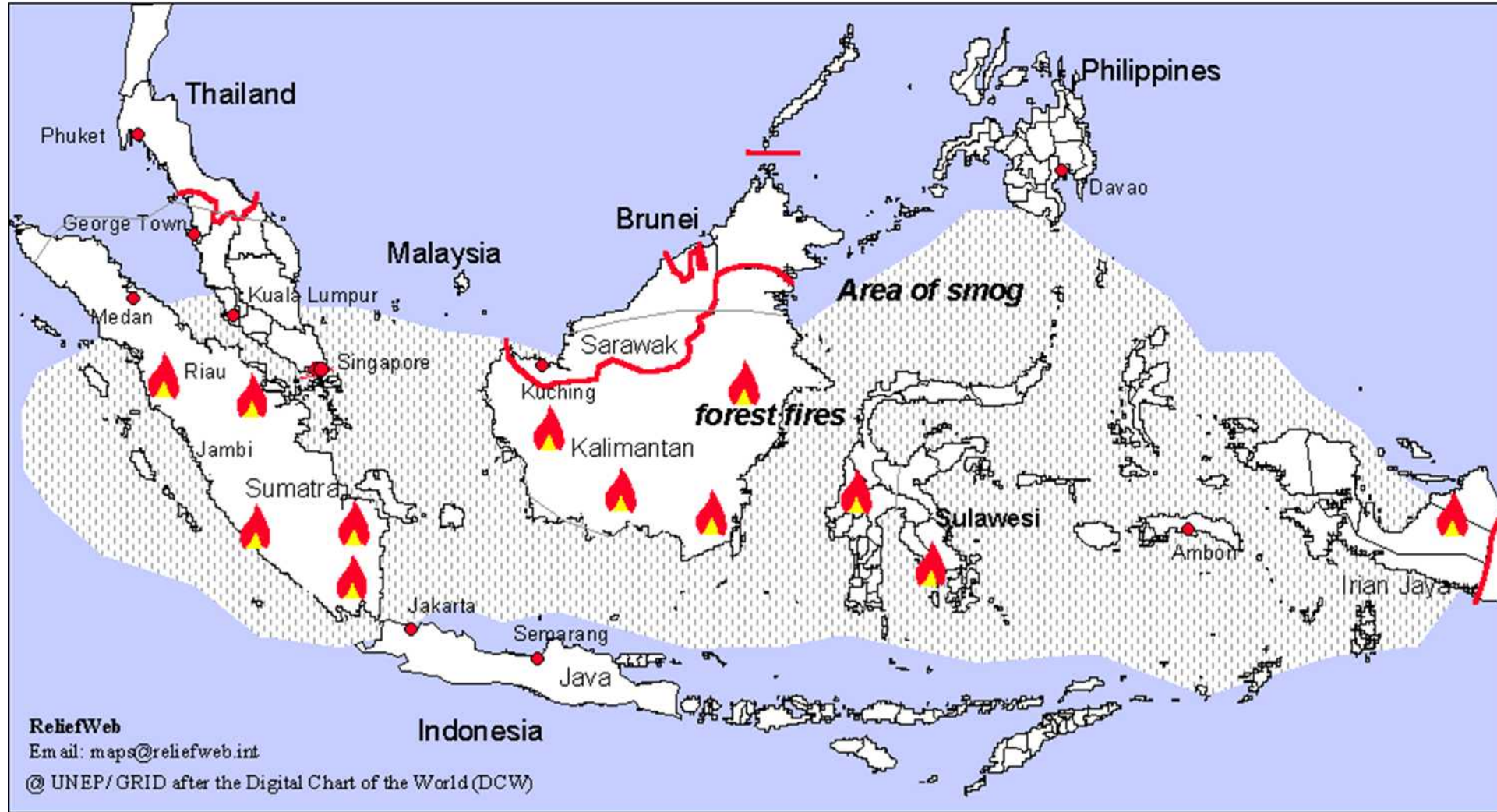
Riau and West Kalimantan in June 2004

September-October of 2006.

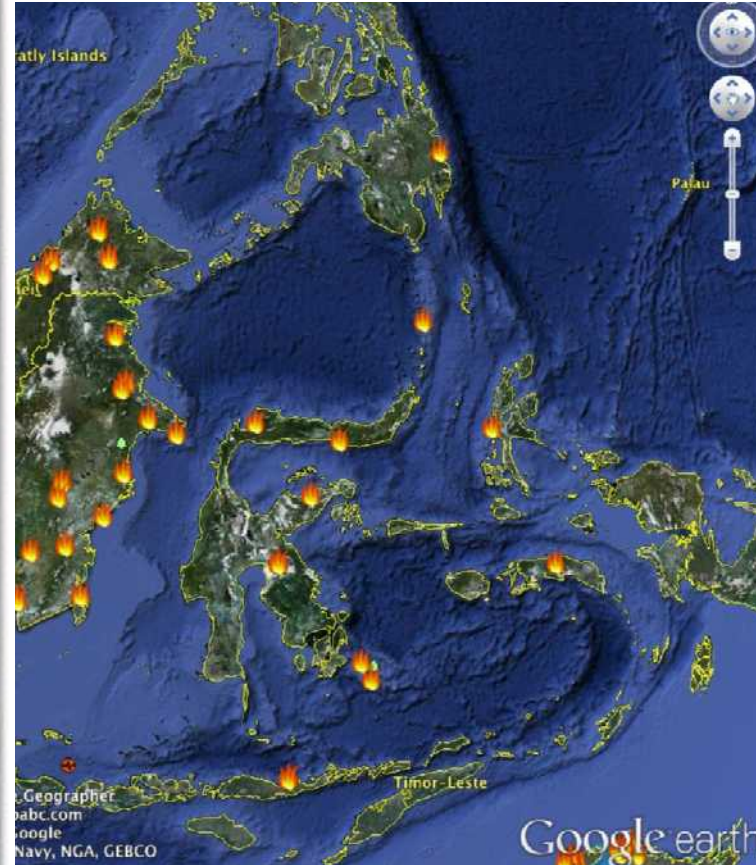
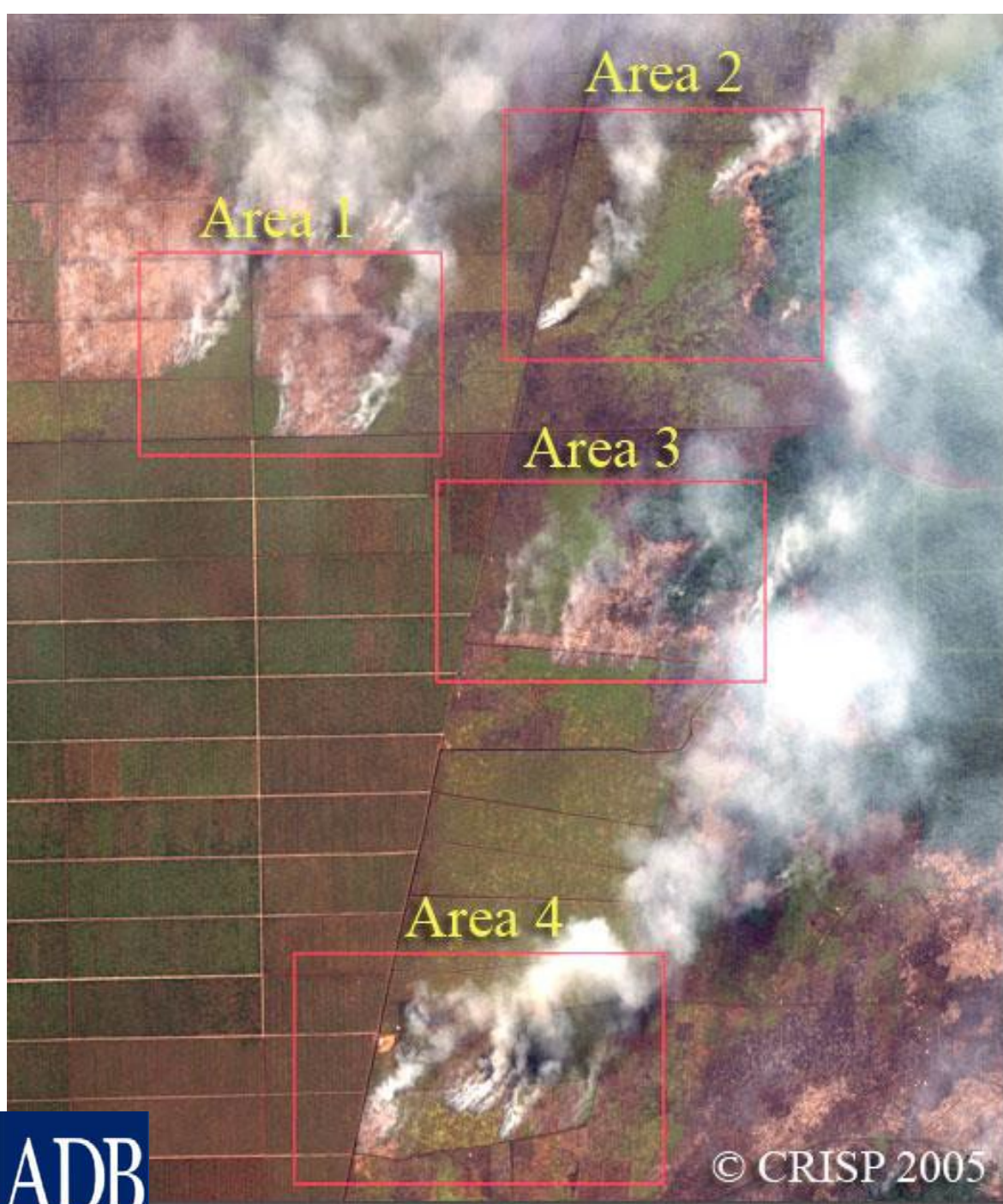


Indonesia forest fires and smog

Last updated: 16 Oct 1997

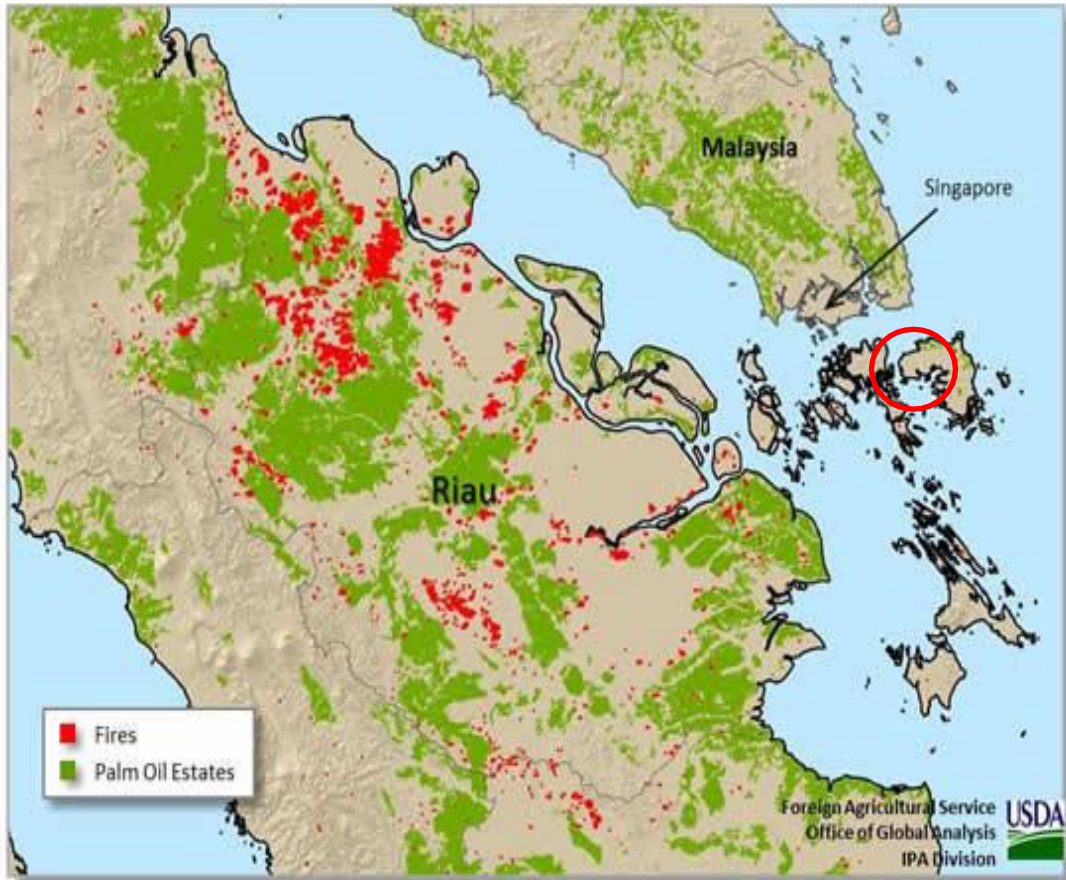


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**Most Fires came
From Concession Areas
of Large Plantations in Indonesia**

SUMATRA, INDONESIA: Fire Locations June 18-25, 2013



Sources: NASA-FIRMS Daily Fire Data , 2013; Center for Remote Imaging, Sensing & Processing (CRISP) 2010

2013 Fires

Kalimantan, Indonesia: Fire Locations September 14, 2015



Source: NOAA

2015 Fires

Indonesia Exports Haze to Malaysia



To Singapore



Suspected Haze in Cebu City (October 24, 2015)



RADISSON HOTEL
ConcRT(mg/m3)



EMB-7 Director William Cuñado said that with the new ambient air monitoring result, it is now up to each individual to whether or not to use the mask, but said **EMB-7 continues to recommend the use of N95 dust mask and goggles especially among those with heart or lung diseases and children.**

<http://www.cebudailynews.inquirer.net/72228/haze-no-more>
October 27, 2015



22 Sept 2015

Bagtasa's careful analysis of satellite images showed that the haze from Indonesia fires did indeed reach the Philippines—across Visayas and Mindanao, in fact—but was too thin to be widely noticeable in most areas except Cebu.

"Due to the location of (Kabayan) and its slow northwest movement, it created a pathway for a couple of days for the haze to reach parts of the Philippines," he said.

<http://www.gmanetwork.com/news/story/539618/scitech/weather/why-only-in-cebu-mysterious-haze-explained#sthash.M6F0Ebl0.dpuf>, October 5, 2015

What is HAZE POLLUTION?

- Haze pollution, as defined in the ASEAN Transboundary Haze Pollution Agreement (“THPA”), means:

“smoke resulting from land and/or forest fire, which causes “deleterious effects of such nature as to endanger human health, harm living resources, and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment.”

Effects of Haze



KEMENTERIAN PENDIDIKAN MALAYSIA
 KEMENTERIAN PENDIDIKAN MALAYSIA
 MAKLUMAT MENGENAI ISU JEREBU DI SEKOLAH

Berdasarkan perutusan Kementerian Pendidikan Malaysia (KPM) bahawa pada 3.00 petang hari ini bermula 22 Oktober 2015, ditutupi seluruh negara (PU) bagi kawasan-kawasan di negeri Perlis, Kedah, Pulau Pinang dan Pahang, masih menjangka tahap bahaya (PU) Tinggi Suhu. Manakala juga daerah yang telah menerima bahaya (PU) Sangat Tinggi Suhu.

Sehubungan itu KPM memaklumkan semua sekolah di negeri tersebut (kecuali negeri Kedah) kerana luar-jarak merupakan hari cuti belajar mengikut perlembutan pada 23 Oktober 2015 (Jumaat).

Perutusan ini akan melibatkan sebanyak 1,500 buah sekolah dan sekitar 728,728 orang murid di negeri tersebut. Pihak Jabatan Pendidikan Negeri dan Pejabat Pendidikan Daerah, melalui telefon telah melaporkan kepada sekolah-sekolah dan ibu bapa di kawasan masing-masing akan penutupan ini dengan kadar segera.

Manakala bagi semua sekolah di Daerah Seremban, Seremban, Mambau, Seremban, Durian Tunggal, Wangsa Maju, Seremban, Kuala Lumpur, daerah Seremban di negeri Perak, serta Seremban, Seremban, Seremban, Seremban, Seremban, Seremban dan Seremban Seremban di negeri Selangor yang ditutup pada hari ini bermula 22 Oktober 2015 perlu dibuka seperti biasa pada 23 Oktober 2015 (Jumaat). Selain itu, pihak sekolah hendaklah bertindak menggerakkan dan memulaukan murid-murid agar sentiasa menjaga keselamatan, seperti memakai topeng penutup mulut dan tidak memulaukan mereka di sekolah.

KPM juga ingin mengingatkan sekali lagi bahawa penutupan sekolah akibat jerebu ini adalah untuk memastikan tahap keselamatan murid-siswa terjamin. Manakala guru-guru dan kakitangan sekolah masih boleh hadir ke sekolah dalam tempoh penutupan ini untuk merancang dan menyiapkan tugas-tugas mereka di sekolah bagi sebarang keperluan dan pihak pengurusan sekolah.

- The government offices and schools were closed due to black and toxic haze from forest fires in Riau and Sumatera in 1997-1998, 2013, 2014 and 2015.
- Human population – health impacts
- Economy of affected Countries – lower productivity - loss
- Visibility impairment
- Reduction air quality
- Transportation/Accidents





ECONOMIC LOSS

*ADB and BAPPENAS (Indonesian National Development Agency) summarised that economic loss due to 1997-1998 fires was **US\$ 9,298 million (Indonesia)**, **US\$ 321 million (Malaysia)** and **US\$ 69.3 million for (Singapore)**;*

*There is **no comprehensive data about economic loss** experienced by the 4 countries from forest fires in 2000-2014.*

Relevant Facts

- Some Palm oil corporations operating in Indonesia are Malaysian and Singaporean or/and have headquarter in Malaysia or Singapore.
- **The use of fires is prohibited by ASEAN Haze Agreement and the National Law of Indonesian, Malaysia and Singapore.**
- The **Former Presidents** of Indonesia (Soeharto, Megawati and Susilo Bambang Yudhoyono) have **formally apologised** to the Head of State and the people of Malaysia, Singapore, and Brunei Darussalam for the harm they experience;
- **In the last 20 years, Indonesian Government failed to effectively enforced its national law to bring the companies who burn their concessions to Justice. (It is only lately, the Indonesian Government shows some kind of seriousness to prosecute companies involved in forest fires).**

Total area of Oil Palm Plantation



- 8 Million Hectares (2013)
- 13 Million Hectares (2020)
- Most of them are located in Sumatera and Kalimantan (Borneo)

(Source: Ministry of Agriculture, 2013)

Indonesia's Palm Oil Production and Exports

	2010	2011	2012	2013
Production	21.8	23.5	26.5	28.0
Export (MT)	15.6	16.5	18.1	21.0
Export (USD-Billion)	16.4	20.2	21.6	N/A

Sources: FAO, Indonesian Palm Oil Producers Association (Gapki) and Indonesian Ministry of Agriculture



Relevant Laws

- *1985 ASEAN Agreement on the Conservation of Nature and Natural Resources*
- 2002 ASEAN Agreement on Transboundary Haze Pollution
- **Law No 32/2009 Environmental Management and Protection Act (Indonesia)**
- *Government Regulation No. 28 of 1985 on Forest Protection. (Indonesia)*
- **Law No 18/2013 on Prevention and Eradication of Forest Degradation (Indonesia)**
- Environmental Quality Act, 1974 (Malaysia)
- **Transboundary Haze Pollution Act, 2014 (Singapore)**

Note: These Laws PROHIBIT the use of Fire to open up large plantation

Clean Air Act of the Philippines (RA

- Section 4 – Recognition of Rights – The State shall be recognized and guaranteed by the State:
 - a) The right to breathe clean air;
X X X
 - e) The right to be informed of the nature and extent of the potential hazard of any activity... and to be served timely notice of any significant rise in the level of pollution and the accidental or deliberate release into the atmosphere of harmful or hazardous substances;
X X X
 - h) The right to bring action in court for compensation of personal damages resulting from the adverse environmental and public health impact of a project or activity.

Some Important Features of THPA

- **Article 7. Monitoring**

1. Each Party **shall take appropriate measures to monitor**: a) all fire prone areas, (b) all land and/or forest fires, (c) the environmental conditions conducive to such land and/or forest fires, and (d) **haze pollution arising from such land and/or forest fires.**

X X X

3. The Parties, in the event that there are fires, **shall initiate immediate action to control or to put out the fires.**

- **Article 27. Settlement of Disputes**

Any dispute between Parties as to the interpretation or application of, or compliance with, this Agreement or any protocol thereto, **shall be settled amicably by consultation or negotiation.**



The ASEAN Way of Doing Things

Motto: "One Vision, One Identity, One Community"

Bangkok Declaration of 1967 – coalition of nations. The ASEAN Charter which entered into force on 15th December 2008 bestowed a legal personality upon ASEAN.

ASEAN Coordinating Council comprising the ASEAN Foreign Ministers, among others, coordinates with the three ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them.

Former ASEAN Secretary General Rodolfo Severino (1999), said *“the State members of ASEAN, unless consented, **cannot take legal actions against State-parties** which are responsible for committing transboundary pollution.”*

Reflection

- **What kind of legal actions that can be used by the victim states to hold ‘resource country’/stakeholders responsible?**
- **What kind of positive engagement/appropriate solution that can be “accepted” by Indonesia and victim States to resolve this problem ?**
- **What are the limitations/challenges for the enforcement of forest fire cases in Indonesia/Malaysia?**
- **What lessons can be learnt from this case study?**

