

PRESIDENT REPUBLIC OF INDONESIA

**ACT OF THE REPUBLIC OF INDONESIA**  
**NO. 23 OF 1997**  
**REGARDING**  
**ENVIRONMENTAL MANAGEMENT**

PRESIDENT  
REPUBLIC OF INDONESIA  
**ACT OF THE REPUBLIC OF INDONESIA NUMBER 23 OF 1997 REGARDING**  
**ENVIRONMENTAL MANAGEMENT**  
**WITH THE BLESSING OF ALMIGHTY GOD**  
**PRESIDENT OF THE REPUBLIC OF INDONESIA**

Considering: a. that the Indonesian environment as a gift and blessing of the Almighty God given to the Indonesian people and nation constitutes a space for life in all its aspects and dimensions in accordance with the Archipelagic Concept;

b. that in utilising natural resources to enhance public welfare as stipulated in the 1945 Constitution and to achieve happiness of life based on the Pancasila, it is necessary to implement environmentally sustainable development guided by an integrated and comprehensive national policy which takes into account the needs of present as well as future generations;

c. that there is a need to implement environmental management to preserve and develop environmental capacity in a harmonious, coordinated and balanced manner to support the implementation of environmentally sustainable development;

d. that the implementation of environmental management in the scheme of environmentally sustainable development should be based on legal norms taking into account the level of community awareness and global environmental developments as well as instruments of international law related to the environment;

e. that the awareness and life of the community in relation to environmental management has developed to such an extent that the substance of Act Number 4 of 1982 regarding Principles of Environmental Management (State Gazette 1982 Number 3215) needs to be perfected to achieve environmentally sustainable development;

f. that in relation to the above points a, b, c, d, and e, it is necessary to enact an Act regarding Environmental Management.

Recalling: Article 5(1), Article 20(1), and Article 33(3) of the 1945 Constitution;

**With Agreement**  
**THE HOUSE OF REPRESENTATIVES OF THE**  
**REPUBLIC OF INDONESIA**  
**D E C I D E S:**

To Enact : **AN ACT REGARDING ENVIRONMENTAL**  
**MANAGEMENT**

**CHAPTER I**  
**GENERAL PROVISIONS**

Article 1

In this Act what is meant by:

1. The environment is a spatial unity of all materials, forces, situations, and living creatures, including humans and their behaviour, which influences the continuance of life and welfare of humans and other living creatures;
2. Environmental management is an integrated effort to preserve environmental functions, covering planning policy, exploitation, development, maintenance, restoration, supervision and control of the environment;
3. Environmentally sustainable development is a conscious and planned effort which integrates the environment, including resources, into the development process, to ensure capability, welfare, and quality of life of present and future generations;
4. An ecosystem is an ordering of an element of the environment which constitutes a whole and complete unit which interacts to produce environmental balance, stability and productivity;

5. Preservation of environmental functions is a set of efforts to maintain the supportive and carrying capacities of the environment;
6. Environmental supportive capacity is the capacity of the environment to support humans and other living creatures;
7. Preservation of environmental supportive capacity is a set of efforts to protect environmental viability against pressures for change and/or negative impacts that arise because of an activity, so that it can continue to support the life of humans and other living creatures;
8. Environmental carrying capacity is the capability of the environment to absorb substances, energy, and/or other components that enter or are discharged into it;
9. Preservation of environmental carrying capacity is a set of efforts to protect the capability of the environment to absorb substances, energy, and/or other components which are discharged into it;
10. Resources are environmental elements that consist of human resources, natural resources, biological as well as non-biological, and artificial resources;
11. Environmental quality standards are threshold limits or levels of living creatures, substances, energy, or components that exists or must exist and/or polluting elements the existence of which in a certain resource as an element of the environment is set at a certain level;
12. Environmental pollution is the entry or the entering into of living creatures, substances, energy, and/or other components into the environment by human activities with the result that its quality decreases to a certain level which causes the environment not to be able to function in accordance with its allocation;
13. Standard environmental damage criteria are threshold limits of physical and/or biological changes in the environment which can be measured;
14. Environmental damage is action which gives rise to direct or indirect changes in the physical and/or biological characteristics of the environment which causes the environment to no longer be able to function to support sustainable development;
15. Conservation of natural resources is the management of non-renewable natural resources to ensure their prudent utilisation, and renewable resources to ensure their continued availability through maintaining and improving quality levels and diversity;
16. Waste is the residue of a business and/or activity;
17. Hazardous and toxic material is every material which due to its nature or concentration, both directly and indirectly, can pollute and/or damage the environment, health, the continuation of human life and of other living creatures;
18. Hazardous and toxic waste is the residue of a business and/or activity that contains hazardous and/or toxic material which due to its nature and/or concentration and/or amount, directly as well as indirectly, can pollute and/or damage the environment, and/or endanger the environment, health, the continuation of human life and of other living creatures;
19. An environmental dispute is a disagreement between two or more parties which arises as a result of the existence or suspected existence of environmental pollution and/or damage;
20. Environmental impact is the influence for change on the environment which is caused by a business and/or activity;
21. Environmental impact analysis is a study of large and significant impacts of a planned business and/or activity which is needed in the decision making process regarding business and/or activity implementation;
22. An environmental organisation is a group of persons formed of their own volition and desire in the midst of the community, with its objectives and activities in the environmental field;
23. An environmental audit is an evaluation process performed by those responsible for a business and/or activity to assess the level of compliance with applicable legal conditions and/or policy and standards set by the party responsible for the business and/or activity concerned;
24. A person is an individual person, and/or a group of people, and/or a legal body;
25. Minister is the Minister who has been given the task of managing the environment.

## Article 2

The scope of the Indonesian environment covers space, the location of the United Indonesian State with an Archipelagic Outlook in performing its sovereignty, sovereign rights, and jurisdiction.

## **CHAPTER II PRINCIPLES, OBJECTIVE, AND TARGET**

### Article 3

Environmental management which is performed according to principles of national responsibility, sustainability and exploitation, aims to create environmentally sustainable development in the framework of the holistic

development of the Indonesian person, and the development of an Indonesian community in its entirety which is faithful and devoted to God.

#### Article 4

The targets of environmental management are:

- a. achievement of harmony and balance between humans and the environment;
- b. formation of the Indonesian person as an environmental being favourably disposed toward and acting to protect and nurture the environment;
- c. guaranteeing of the interests of present generations and future generations;
- d. achievement of preservation of environmental functions;
- e. prudent control of the exploitation of resources;
- f. protection of the Unitary Indonesian Republic against impacts of business and/or activity outside the national region which causes environmental pollution and/or damage.

### **CHAPTER III COMMUNITY RIGHTS, OBLIGATIONS AND ROLE**

#### Article 5

- (1) Every person has the same right to an environment which is good and healthy.
- (2) Every person has the right to environmental information which is related to roles of environmental management.
- (3) Every person has the right to play a role in the scheme of environmental management in accordance with applicable laws and regulations.

#### Article 6

- (1) Every person is obliged to preserve the continuity of environmental functions and protect against and combat environmental pollution and damage.
- (2) Every person carrying out a business or other activity must provide true and accurate information regarding environmental management.

#### Article 7

- (1) The community has the same and the broadest possible opportunity to play a role in environmental management.
- (2) Implementation of the stipulation in (1) above, is carried out by:
  - a. increasing independence, community empowerment, and partnership
  - b. giving growth to community capability and initiative;
  - c. increasing community responsiveness in carrying out social supervision;
  - d. provision of suggestions;
  - e. conveying information and/or reports.

### **CHAPTER IV ENVIRONMENTAL MANAGEMENT AUTHORITY**

#### Article 8

- (1) Natural resources are controlled by the state and utilised for the greatest possible public prosperity; the arrangements thereof being determined by the Government.
- (2) To implement the stipulation provided for in (1) above the Government:
  - a. regulates and develops policies in the scheme of environmental management;
  - b. regulates the supply, allocation, use, and management of the environment, and the reuse of natural resources, including genetic resources;
  - c. regulates legal actions and legal relations between persons and/or other legal subjects as well as legal actions regarding natural resources and artificial resources, including genetic resources;
  - d. controls activities which have social impact;
  - e. develops a funding system for efforts to preserve environmental functions.
- (3) The stipulations provided for in (2) above are further regulated by Government Regulation.

#### Article 9

- (1) The Government determines national policies on environmental management and spatial management whilst always taking into account religious values, culture and traditions and the living norms of the community.
- (2) Environmental management is performed in an integrated manner by government institutions in accordance with their respective fields of tasks and responsibilities, the public, and other agents of development

while taking into account the integratedness of the planning and implementation of environmental management policy.

(3) Environmental management must be performed integratedly with spatial management, protection of non-biological natural resources, protection of artificial resources, conservation of biological natural resources and their ecosystems, cultural preservation, bio-diversity and climate change.

(4) The integratedness of the planning and implementation of national environmental management policy, as provided for in (2) above, is coordinated by the Minister.

#### Article 10

In the scheme of environmental management the Government must:

- a. create, develop and increase the awareness and responsibility of decision makers in environmental management;
- b. create, develop and increase the awareness of community rights and responsibilities in environmental management;
- c. create, develop and increase partnership between the community, business and the Government in the effort to preserve environmental supportive and carrying capacity;
- d. develop and apply environmental management policies which ensure the preservation of environmental supportive and carrying capacity;
- e. develop and apply pre-emptive, preventive and proactive instruments in the effort to prevent decreases in environmental supportive and carrying capacity;
- f. exploit and develop environmentally sound technology;
- g. carry out environmental research and development;
- h. provide environmental information and disseminate it to the community;
- i. give awards to meritorious people or organisations in the environmental field;

#### Article 11

(1) Environmental management at the national level is implemented integratedly by an institutional instrument which is coordinated by the Minister.

(2) Stipulations on task, function, authority and organisational arrangement as well as institutional working procedures as provided for in (1) above are regulated further by Presidential Decree.

#### Article 12

(1) To create integratedness and harmony in the implementation of national policy regarding environmental management, the Government based on legislation can:

- a. delegate certain environmental management authority to local Central Government offices;
- b. give a role to Local Government to assist the Central Government in the regional implementation of environmental management.

(2) Further stipulations as provided for in (1) above are regulated by laws and regulations.

#### Article 13

(1) In the scheme of the implementation of environmental management, the Government can delegate part of its affairs to Local Government to become part of its general affairs.

(2) Delegation of affairs pursuant to (1) above is determined by Government Regulation.

### CHAPTER V

### PRESERVATION OF ENVIRONMENTAL FUNCTIONS

#### Article 14

(1) To guarantee the preservation of environmental functions, every business and/or activity is prohibited from breaching quality standards and standard criteria of environmental damage.

(2) Stipulations on environmental quality standards, prevention of and coping with pollution and the restoration of its carrying capacity are regulated by Government Regulation.

(3) Stipulations on standard criteria of environmental damage, prevention of and coping with damage along with restoration of environmental supportive capacity, are regulated by Government Regulation.

#### Article 15

(1) Every plan of a business and/or activity which would possibly give rise to a large and important impact on the environment, must possess an environmental impact analysis.

(2) Stipulations concerning business and/or activity plans that give rise to a large and important impact on the environment, as mentioned in (1) above, and the method for arrangement and evaluation of environmental impact analysis, are determined by Government Regulation.

#### Article 16

- (1) Every party responsible for a business and/or activity must carry out management of wastes produced by their business and/or activity.
- (2) The responsible party for a business and/or activity as provided for in (1) above can delegate such waste management to another party.
- (3) Stipulations on the implementation of this article are regulated further by Government Regulation.

#### Article 17

- (1) Every party responsible for a business and/or activity must carry out management of hazardous and toxic materials.
- (2) Management of hazardous and toxic materials covers its production, transportation, distribution, storage, use and/or disposal.
- (3) Management of hazardous and toxic materials are regulated further by Government Regulation.

### **CHAPTER VI ENVIRONMENTAL COMPLIANCE REQUIREMENTS**

#### Part One

#### Licensing

#### Article 18

- (1) Every business and/or activity which gives rise to a large and important impact on the environment must possess an environmental impact analysis to obtain the license to conduct a business and/or activity.
- (2) The license to conduct a business and/or activity as provided for in (1) above is conferred by the official who has authority in accordance with laws and regulations.
- (3) The license provided for in (1) above includes conditions and obligations to carry out environmental impact control efforts.

#### Article 19

- (1) In issuing a license to carry out a business and/or activity the following must be taken into account:
  - a. spatial management plans;
  - b. community opinion;
  - c. considerations and recommendations of authorised officials who are involved with such business and/or activity.
- (2) The decision concerning a license to conduct a business and/or activity must be made public.

#### Article 20

- (1) Without a licensing decision, every person is prohibited from disposing of waste to an environmental medium.
- (2) Every person is prohibited from disposing of waste which originates from outside Indonesian territory to an Indonesian environmental medium.
- (3) Authority to issue or refuse a licensing application as provided for in (1) above lies with the Minister.
- (4) Waste disposal to an environmental medium as provided for in (1) above may only be carried out at a disposal site which is determined by the Minister.
- (5) Implementing provisions for this Article are regulated further by laws and regulations.

#### Article 21

Every person is prohibited from importing hazardous and toxic wastes.

#### Part Two

#### Supervision

#### Article 22

- (1) The Minister carries out supervision of the compliance of those responsible for a business and/or activity to stipulations which have been applied in environmental laws and regulations.
- (2) To carry out the supervision provided for in (1) above, the Minister can appoint officials with authority to carry out supervision.
- (3) Where supervisory authority is delegated to the Local Government, the Regional Head appoints officials authorised to perform supervision.

#### Article 23

Environmental impact control as a supervisory instrument is carried out by an institution formed especially for that purpose by the Government.

#### Article 24

- (1) To implement its task, the supervisor/inspector provided for in Article 22 has authority to conduct monitoring, request an explanation, make copies of documents and/or make notes which are needed, enter certain

places, take samples, inspect equipment, inspect installations and/or transportation equipment, and request an explanation from the party responsible for a business and/or activity.

(2) The party responsible for a business and/or activity which has been requested to provide an explanation as provided for in (1) above, must fulfill the request of the supervisor/inspector in accordance with stipulations of applicable laws and regulations.

(3) Each supervisor/inspector must show a letter of instruction and/or proof of identity and must be attentive to the situation and conditions prevailing at such place of supervision.

### Part Three Administrative Sanctions Article 25

(1) The Governor / Head of the Level I Region has the authority to impose administrative sanctions against the party responsible for a business and/or activity to prevent and end the occurrence of an infringement, and to deal with the consequences given rise to by an infringement, and carry out safeguarding, mitigating and/or remedial measures at the expense of the party responsible for a business and/or activity, except where otherwise stipulated by an Act.

(2) The authority provided for in (1) above can be delegated to the District Head / Mayor / Head of the Level II Region by a Level I Region Regulation.

(3) An interested third party has the right to submit an application to the authorised official to carry out an administrative sanction, as provided for in (1) and (2) above.

(4) Administrative sanctions as provided for in (1) and (2) above are preceded by an order from the authorised official.

(5) Safeguarding, mitigating and/or remedial measures as provided for in (1) above can be replaced with the payment of a certain sum of money.

### Article 26

(1) The procedure for determining expenses as provided for in Article 25 (1) and (5) above, and their retribution, is determined by laws and regulations.

(1) Where laws and regulations as provided for in (1) above are not yet formed, its implementation proceeds according to applicable laws and regulations.

### Article 27

(1) Sanctions in the form of revocation of business and/or activity licenses can be imposed upon certain infringements.

(2) The Regional Head can submit a proposal for the revocation of a business and/or activity license to the authorised official.

(3) An interested party can submit an application to the authorised official to revoke a business and/or other activity license because their interests are adversely affected.

### Part Four Environmental Audits Article 28

In the scheme of improving business and/or activity performance, the Government encourages the party responsible for a business and/or activity to conduct an environmental audit.

### Article 29

(1) The Minister has authority to order the party responsible for a business and/or activity to conduct an environmental audit if the party concerned indicates their non-compliance with stipulations in this Act.

(2) The party responsible for a business and/or activity which pursuant to (1) above is ordered to conduct an environmental audit, must execute that order.

(3) If the party responsible for a business and/or activity does not execute the order provided for in (1) above, the Minister can carry out or instruct a third party to carry out such an environmental audit, at the expense of the party responsible for the business and/or activity concerned.

(4) The total expense as provided for in (3) above is determined by the Minister.

(5) The Minister makes public the results of an environmental audit provided for in (1) above.

## **CHAPTER VII ENVIRONMENTAL DISPUTE SETTLEMENT**

### **Part One**

#### **General**

#### **Article 30**

- (1) Environmental dispute settlement can be reached through the court or out of court based on the voluntary choice of the parties in dispute.
- (2) Out of court dispute settlement as provided for in (1) above does not apply to criminal environmental actions as regulated in this Act.
- (3) If an out of court dispute settlement effort has already been chosen, legal action through the court can only be undertaken if such effort is declared to have not succeeded by one or several of the parties in dispute.

### **Part Two**

#### **Out of Court Environmental Dispute Settlement**

#### **Article 31**

Out of court environmental dispute settlement is held in order to reach agreement on the form and size of compensation and/or on certain actions to be taken to ensure that negative impacts on the environment will not occur or be repeated.

#### **Article 32**

In out of court environmental dispute settlement as provided for in Article 31 the services of a third party can be used, both which do not possess decision making authority and which possess decision making authority, to help resolve an environmental dispute.

#### **Article 33**

- (1) The Government and/or community can form an environmental dispute settlement service providing agency which has a free and impartial disposition.
- (2) Stipulations on an environmental dispute settlement service provider are regulated further by Government Regulation.

### **Part Three**

#### **Environmental Dispute Settlement through the Court**

#### **Paragraph 1**

#### **Compensation**

#### **Article 34**

- (1) Every action which infringes the law in the form of environmental pollution and/or damage which gives rise to adverse impacts on other people or the environment, obliges the party responsible for the business and/or activity concerned to pay compensation and/or to carry out certain actions.
- (2) As well as the burden of carrying out certain actions provided for in (1) above, the judge can determine a compulsory monetary payment to be made for every day of lateness in completion of such actions.

#### **Paragraph 2**

#### **Strict Liability**

#### **Article 35**

- (1) The party responsible for a business and/or activity which gives rise to a large impact on the environment, which uses hazardous and toxic materials and/or produces hazardous and toxic waste, is strictly liable for losses which are given rise to, with the obligation to pay compensation directly and immediately upon the occurrence of environmental pollution and/or damage.
- (2) The party responsible for a business and/or activity can be released from the obligation to pay compensation provided for in (1) above if those concerned can prove that environmental pollution and/or damage was caused by any of the following:
  - a. the existence of a natural disaster or war; or
  - b. the existence of a situation of coercion outside of human capabilities; or
  - c. the existence of actions of a third party which caused the occurrence of environmental pollution and/or damage.
- (3) Where losses occur which have been caused by a third party as provided for in 2(c) above, the third party is responsible for paying compensation.

Paragraph 3  
Limitation Periods for Legal Actions  
Article 36

(1) The limitation period for bringing legal actions to court follows the periods set out in the applicable Civil Procedures Act, and is calculated from the moment the victim knows of the existence of environmental pollution and/or damage.

(2) Stipulations on the limitation period for bringing legal actions as provided for in (1) above do not apply to environmental pollution and/or damage which is caused by a business and/or activity which uses hazardous and toxic materials and/or produces hazardous and toxic waste.

Paragraph 4  
Right of the Community and Environmental Organisations  
to bring Legal Actions  
Article 37

(1) The community has the right to bring a class action to court and/or report to law enforcers concerning various environmental problems which inflict losses on the life of the community.

(2) If it is known that the community suffers as a result of environmental pollution and/or damage to such an extent that it's basic life is influenced, the government agency which is responsible in the environmental field can act in the community's interest.

(3) Further stipulations as to what is intended by (2) above are regulated by Government Regulation.

Article 38

(1) In the scheme of implementing responsibility for environmental management consistent with a partnership principle, environmental organisations have the right to bring a legal action in the interest of environmental functions.

(1) The right to bring a legal action as provided for in (1) above is limited to a demand for a right to carry out particular measures without the presence of a demand for compensation, except for expenses or real outlays.

(1) Environmental organisations have the right to bring a legal action as provided in (1) above if they meet the following conditions:

- a. they have the form of a legal body or foundation;
- b. in the articles of association of the environmental organisation it is stated clearly that the goal of the founding of the organisation concerned was in the interests of preservation of environmental functions;
- c. activities consistent with its articles of association have already been carried out.

Article 39

Procedures for the submission of legal actions in environmental problems by individuals, the community, and/or environmental organisations refers to the applicable Civil Procedures Act.

**CHAPTER VIII  
INVESTIGATION**

Article 40

(1) As well as Republic of Indonesia National Police Investigators, certain Civil Government Officials associated with the government agency whose scope of functions and responsibility are in the environmental management field, are given special authority as investigators as provided for in the Civil Procedures Act.

(2) Civil Investigator Officers as provided for in (1) above have authority to:

- a. examine the correctness of a report or explanation in relation to a criminal action in the environmental area;
- b. examine people or legal bodies who are suspected of criminal actions in the environmental field;
- c. request an explanation and evidence from individuals or legal bodies in relation to a criminal incident in the environmental field;
- d. examine account-keeping, notes and other documents which are relevant to a criminal action in the environmental field;
- e. carry out examination at certain places which are suspected of containing evidence, accounts, notes, and other documents, along with confiscating materials resulting from infringements which can be used as evidence in criminal cases in the environmental field;
- f. request expert assistance in the scheme of the implementation of the function of investigation of criminal actions in the environmental field.

(3) Civil Investigator Officers provided for in (1) above inform the Republic of Indonesia National Police Investigators of the commencement and results of their investigation.

(4) Civil Investigator Officers provided for in (1) above convey the findings of investigation to the Public Prosecutor through the Republic of Indonesia National Police Investigators.



- (5) Investigation of environmental crimes in Indonesian waters and the Exclusive Economic Zone is carried out by investigators according to applicable laws and regulations.

## **CHAPTER IX CRIMINAL PROVISIONS**

### **Article 41**

- (1) Any person who in contravention of the law intentionally carries out an action which results in environmental pollution and/or damage, is criminally liable to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp.500,000,000 (five hundred million rupiah).
- (2) If a criminal action as provided for in (1) above causes the death or serious injury of a person, the person who carried out the criminal action is criminally liable to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp.750,000,000 (seven hundred and fifty million rupiah).

### **Article 42**

- (1) Any person who due to their negligence performs an action that causes environmental pollution and/or damage, is criminally liable to a maximum imprisonment of three years and a maximum fine of Rp.100,000,000 (one hundred million rupiah).
- (2) If a criminal action as provided for in (1) above causes the death or serious injury of a person, the person who carried out the criminal action is criminally liable to a maximum imprisonment of five years and a maximum fine of Rp.150,000,000 (one hundred and fifty million rupiah).

### **Article 43**

- (1) Any person who in violation of applicable legislation intentionally releases or disposes of substances, energy and/or other components which are toxic or hazardous onto or into land, into the atmosphere or the surface of water, imports, exports, trades in, transports, stores such materials, operates a dangerous installation, whereas knowing or with good reason to suppose that the action concerned can give rise to environmental pollution and/or damage or endanger public health or the life of another person, is criminally liable to a maximum of six years imprisonment and a maximum fine of Rp.300,000,000 (three hundred million rupiah).
- (2) Criminally liable in the same way as provided for in (1) above, is any person who intentionally provides false information or destroys or conceals or damages information which is needed in connection with an action described in (1) above, whereas knowing or with good reason to suppose that the action concerned can give rise to environmental pollution and/or damage or endanger public health or the life of another person.
- (3) If the criminal action as provided for in (1) and (2) above causes the death or serious injury of a person, the person who carried out the criminal action is criminally liable to imprisonment for a maximum of nine years and a maximum fine of Rp.450,000,000 (four hundred and fifty million rupiah).

### **Article 44**

- (1) Any person who in violation of applicable legislative provisions, because of their carelessness performs an action as in Article 43, is criminally liable to imprisonment for a maximum of three years and a maximum fine of Rp.100,000,000 (one hundred million rupiah).
- (2) If the criminal action provided for in (1) above causes the death or serious injury of a person, the person who carried out the criminal action is criminally liable to a maximum of five years imprisonment and a maximum fine of Rp.150,000,000 (one hundred and fifty million rupiah).

### **Article 45**

If a criminal action as provided for in this Chapter is done by or in the name of a legal body, company, association, foundation or other organisation, criminal liability to a fine is increased by one third.

### **Article 46**

- (1) If a criminal action as provided for in this Chapter is done by or in the name of a legal body, company, association, foundation or other organisation, criminal charges are made and criminal sanctions along with procedural measures as provided for in Article 47 are imposed both against the legal body, company, association foundation or other organisation concerned and against those who give the order to carry out the criminal action concerned and/or who act as leaders in the carrying out of the criminal action.
- (2) If a criminal action as provided for in this Chapter is done by or in the name of a legal body, company, association, foundation or other organisation, and is done by persons, both based on work relations and based on other relations, who act in the sphere of a legal body, company, association, foundation or other organisation, criminal charges are made and criminal sanctions imposed against those who give orders or who act as leaders regardless of whether the people concerned, both based on work relations and based on other relations, carry out the criminal action individually or with others.
- (3) If charges are made against a legal body, company, association, foundation or other organisation, the summons to face court and submission of the warrants is directed to the management at their place of residence, or at the fixed place of work of the management.

(4) If charges are made against a legal body, company, association, foundation or other organisation, which at the time of the bringing of the legal action is represented by someone who is not a manager, the judge can make an order such that the management face the court in person.

#### Article 47

Apart from criminal stipulations in the Criminal Code and this Act, against those who carry out an environmental crime can also be imposed procedural measures in the form of:

- a. seizure of profits which were received through the criminal action; and/or
- b. closure of all or part of a business; and/or
- c. reparation of the consequences of a criminal action; and/or
- d. requiring that what was without right neglected be carried out; and/or e. destroying what was without right neglected; and/or
- f. placing the business under administration for a maximum of three years.

#### Article 48

Criminal acts as provided for in this Chapter are crimes.

### CHAPTER X TRANSITIONAL PROVISIONS

#### Article 49

(1) At the latest 5 (five) years from the promulgation of this Act, every business and/or activity which already possesses a license must have complied with the conditions of this Act.

(2) From the enactment of this Act it is prohibited to issue a license for a business and/or activity which uses imported hazardous and toxic waste.

### CHAPTER XI CLOSING PROVISIONS

#### Article 50

Upon enactment of this Act, all existing laws and regulations which are involved with environmental management continue to apply to the extent that they do not conflict with and are not replaced according to this Act.

#### Article 51

With the coming into effect of this Act, Act No.4 of 1982 regarding Main Principles of Environmental Management (State Gazette of 1982 Number 12, State Supplement Number 3215) is declared no longer to be in force.

#### Article 52

This Act comes into force on the date it is promulgated. In order that every person knows of it, the promulgation of this Act is ordered with its placement in the State Gazette of the Republic of Indonesia.

Authorised in Jakarta

on 19th September 1997

PRESIDENT OF THE REPUBLIC OF  
INDONESIA

S O E H A R T O

Promulgated in Jakarta

on 19th September 1997

MINISTER OF STATE SECRETARY OF STATE  
REPUBLIC OF INDONESIA

M O E R D I O N O

STATE GAZETTE OF THE REPUBLIC OF INDONESIA 1997 NUMBER 68

REPUBLIC OF INDONESIA CABINET SECRETARIAT

Head of Bureau of Law and Legislation

Lambock V. Nahattands

*This translation has been prepared by the BAPEDAL and East Java Pollution Control Implementation (PCI) Project. Legal, commercial or other decisions should not be based on this translation, but rather on the original, Indonesian version of the legislation accompanied by professional advice.*

**ELUCIDATION  
ACT OF THE REPUBLIC OF INDONESIA  
NUMBER 23 OF 1997  
REGARDING  
ENVIRONMENTAL MANAGEMENT**

**GENERAL**

1. The Indonesian environment which was bestowed by the Almighty God upon the Indonesian community and people constitutes God's gift and blessing, the capacity of which must be preserved and developed so that it continues to be a resource and life support for the community and people along with other living creatures of Indonesia for the continuation and increase of the quality of that life itself.

*Pancasila*, as the basis and philosophy of the nation, constitutes a whole and complete unity which gives the conviction to the Indonesian community and people that contentedness will be attained if it is based on harmony and balance both in the relationship of humans with the Almighty God and humans with humans, humans with nature, and humans privately, in the

scheme of achieving external progress and spiritual happiness. There are reciprocal relations between humans, the community and the environment, which must always be fostered and developed so that a dynamic harmony, proportion and balance is maintained.

The 1945 Constitution, as the constitutional basis, mandates that natural resources are to be used for the greatest possible prosperity of the people. This prosperity must be enjoyed sustainably by present and future generations.

Development is a conscious effort to process and exploit natural resources for increasing community prosperity, both for achieving external prosperity as well as spiritual satisfaction. Therefore, the use of natural resources must be harmonious and balanced with environmental functions

2 The environment in ecological terms recognises neither national nor administrative borders. However, the environment which is involved with management must have clear regional demarcation for management authority. The environment which is referred to is the Indonesian environment. Legally, the Indonesian environment covers the sovereign jurisdiction of the Republic of Indonesia. In this respect the Indonesian environment is none other than the region, occupying a cross-position between two continents and two oceans with a tropical climate and weather and seasons, conferring natural conditions and a position with a highly valuable strategic role, in which the Indonesian community and people carry out community life, statehood and nationhood in all its aspects. In this way, the concept to be applied in carrying out Indonesian environmental management is the Archipelagic Concept.

3. The Indonesian environment as an ecosystem consists of various subsystems which have social, cultural, economic and geographic aspects with differing features which result in varying environmental supportive and carrying capacities. Such a condition requires building and developing of the environment based on the environmental supportive and carrying capacity of any particular area, which increases the harmony and balance of subsystems and which also results in an increase in the endurance of those very subsystems. In this way, the building and development of one subsystem will influence other subsystems, which finally will influence the endurance of ecosystems in their entirety. Environmental management, therefore, demands the development of a system with integratedness as its primary feature. What is needed, then, is a national environmental management policy which must be implemented in strict accordance with principles and consequences, from the centre to the regions.

4. The development process continuously exploits natural resources for increasing community prosperity and the quality of life. Meanwhile, the supply of natural resources is limited and uneven, both in quantity and quality, while requests for such resources accelerate as a result of the increase in development activities to satisfy the accelerating and increasingly diverse needs of the population. On the other hand, environmental supportive capacity can be interfered with and environmental carrying capacity can decline.

Acceleration of development activities carry risks of environmental pollution and damage, with the possibility that the structure and function of the ecosystem which acts as a support to life can be damaged. Such environmental pollution and damage will become a social burden, the cost of reparation of which will ultimately be borne by the community and the government.

The maintenance of sustainability of environmental functions is in the public interest, such that it demands responsibility, openness, and a role for members of the community which can be channelled by individual persons, environmental organisations such as non-government organisations, traditional community groups, and others, for the maintenance and increase of environmental supportive and carrying capacity which becomes a mainstay of sustainable development. Development which incorporates the environment, including natural resources, is a medium for attaining sustainable development which guarantees the prosperity and quality of life of present and future generations. Therefore, the Indonesian environment must be managed according to a principle of preserving

environmental functions which are harmonious and balanced in order to support environmentally sustainable development for the improvement of the prosperity and quality of life of present and future generations.

5. The long range direction of Indonesian development is toward economic development based on industrial development, which among other things uses various types of chemical materials and radioactive substances. As well as resulting in products which benefit the community, industrialisation also gives rise to excesses, including the production of hazardous and toxic wastes which if disposed of to an environmental medium can threaten the environment, health, and the continuation of human and other forms of life.

Globally, knowledge and technology has increased the quality of human life. In reality, lifestyles of industrial society marked by the use of products based on chemicals has increased the production of hazardous and toxic wastes. This matter demands a method of disposal which constitutes a small risk toward the environment, health, and the continuation of human and other forms of life.

Conscious of this matter, hazardous and toxic materials need to be well-managed. What needs to be given attention is that the area of the Unitary Republic of Indonesia must be free of disposal of hazardous and toxic wastes from outside the Indonesian area.

6. The acceleration of development efforts causes an accelerating impact on the environment. This situation results in an increasing need for efforts to control environmental impacts such that the risk to the environment is held down as much as possible.

Efforts to control environmental impacts are inseparable from supervisory measures to ensure compliance with stipulations of laws and regulations in the environmental field. A licence to carry out a business and/or other activity is a legal instrument of a preventive nature. Therefore, a licence must explicitly contain conditions and obligations which must be complied with and implemented by the party responsible for a business and/or other activity. What has been put forward above implies the participation of various agencies in environmental management, such that there is a need to clarify the limits of authority for every agency which participates in the environmental management field.

7. Appropriate with the essence of the Unitary Republic of Indonesia as a nation based on the rule of law, the development of a system of environmental management as a part of environmentally sustainable development must be given a legal basis which is clear, explicit and comprehensive in order to ensure legal certainty for environmental management efforts. This legal basis is underlaid by a basis of environmental law and the compliance of every person to the norms of environmental law which is in its entirety based on *Pancasila* and the 1945 Constitution.

Act Number 4 of 1982 regarding Main Principles of Environmental Management (Number 12 of the State Gazette of 1982, Supplement to State Gazette Number 3215) was an early sign of the development of legal instruments as a basis of Indonesian environmental management efforts as an integral part of the effort of environmentally sustainable development. In the more than one decade since the promulgation of this Act, environmental awareness of the community has rapidly increased, as indicated among other things by the increasingly large number of types of community organisations other than non-governmental organisations which are active in the environmental field. Also evident is the increasing community initiative in the preservation of environmental functions, such that the community does not merely participate but is also able to play a substantial role. Meanwhile, the set of problems of environmental law which have emerged and developed in the community require regulation in the form of law, in order to guarantee legal certainty. On the other hand, global environmental development and international aspirations will increasingly influence Indonesian environmental management efforts. In reflecting this situation, it is regarded as necessary to perfect Act Number 4 of 1982 regarding Main Principles of Environmental Management.

This Act contains norms of environmental law. Apart from this, this Act will be a foundation for evaluating and adapting all applicable laws and regulations which contain stipulations on the environment; that is laws and regulations regarding irrigation, mining and energy, forestry, biological and ecosystem resource conservation, industry, human settlement, spatial planning, land use, and others.

Increase in the effectiveness of various legal stipulations, including administrative law, civil law and criminal law, and efforts to give effect to alternative methods of dispute settlement, namely out of court dispute settlement to achieve agreement amongst the parties in dispute [*sic*]. Apart from this, there is also a need to provide an opportunity for the bringing of class actions. With such a method of settlement of environmental dispute settlement it is hoped that the compliance of the community to the system of values regarding the importance of preservation and development of environmental capacity in present and future human life will be increased.

As a support to administrative law, application of criminal law continues to attend to the subsidiary principle, namely that criminal law should only be used if sanctions in other fields of law, such as civil and administrative sanctions, and alternative environmental dispute settlement, are not effective and/or the level of blameworthiness of the party concerned is relatively serious and/or the results of the activity are relatively large and/or the action

gives rise to uneasiness in the community. In anticipation of the increasing possibility of criminal actions carried out by a corporation, this Act also regulates the responsibility of corporations. In this way, all such laws and regulations mentioned above can be included in one system of Indonesian environmental law.

#### PARAGRAPH BY PARAGRAPH

##### Article 1

- Point 1  
Sufficiently clear
- Point 2  
Sufficiently clear
- Point 3  
Sufficiently clear
- Point 4  
Sufficiently clear
- Point 5  
Sufficiently clear
- Point 6  
Sufficiently clear
- Point 7  
Sufficiently clear
- Point 8  
Sufficiently clear
- Point 9  
Sufficiently clear
- Point 10  
Sufficiently clear
- Point 11  
Sufficiently clear
- Point 12  
Sufficiently clear
- Point 13  
Sufficiently clear
- Point 14  
Sufficiently clear
- Point 15  
Sufficiently clear
- Point 16  
Sufficiently clear
- Point 17  
Sufficiently clear
- Point 18  
Sufficiently clear
- Point 19  
Sufficiently clear
- Point 20  
Sufficiently clear
- Point 21  
Sufficiently clear
- Point 22  
Sufficiently clear
- Point 23  
Sufficiently clear
- Point 24  
Sufficiently clear
- Point 25  
Sufficiently clear

##### Article 2

- Sufficiently clear

### Article 3

Based on a principle of state responsibility, on the one hand the state guarantees that the use of natural resources will provide the largest possible benefit for the prosperity and quality of life of the community, both present generations and future generations. On the other hand, the state prevents the carrying out of activities which exploit natural resources in its jurisdiction which gives rise to adverse impacts on the jurisdictions of other nations, and protects the state from the impacts of activities outside its area. The principle of sustainability means that every person bears an obligation and responsibility to coming generations, and to others in the same generation. For the implementation of such obligation and responsibility, environmental capacity must, then, be preserved. The preservation of environmental capacity becomes a prop for the continuity of development.

### Article 4

Sufficiently clear

### Article 5

Subsection (1)

Sufficiently clear

Subsection (2)

The right to environmental information is a logical consequence of the right to play a role in environmental management based on the principle of openness. The right to environmental information will increase the value and effectiveness of participation in environmental management, as well as providing an opportunity for the community to give effect to their right to a good and healthy environment.

Environmental information as provided for in this subsection can be in the form of data, explanation, or other information involved with environmental management which according to its nature and goal is such that it is indeed open to be known by the community, such as environmental impact analysis documents, reports and evaluations on results of environmental monitoring, both monitoring of compliance and of environmental quality changes, and spatial management plans.

Subsection (3)

The role as provided for in this Article includes a role in the decision making process, both by lodging objections and by hearings or other methods which may be stipulated in legislation. Such a role is carried out among other areas in the process of evaluation of environmental impact analyses or environmental policy formulation. Its implementation is based on a principle of openness. With openness, the possibility is allowed for that the community joins in thinking about and providing views and considerations in decision making in the environmental field.

### Article 6

Subsection (1)

The obligation of every person as provided for in this section is not free of their position as members of the community which reflects human value as individual and social beings. This obligation implies that every person joins in playing a role in efforts to maintain the environment. For example, participation in developing a culture of a clean environment, in explanation and in leadership in the environmental field.

Subsection (2)

This information which is correct and accurate is intended for evaluating compliance of those responsible for a business and/or activity to stipulations of laws and regulations.

### Article 7

Subsection (1)

Sufficiently clear

Subsection (2)

Letter a

Community independence and empowerment is a pre-condition for the growth of community capacity as an agent in environmental management together with the government and other agents of development.

Letter b

The increase in community capacity and initiative will increase the effectiveness of the community's role in environmental management.

Letter c

Improving the community's rapid-response capability will increasingly reduce the possibility of negative impacts.

Letter d

Sufficiently clear

Letter e

The improvement in rapid-responsiveness will increase the speed of information provision concerning a particular environmental problem, with the result that steps can immediately be taken to address it.

## Article 8

### Subsection (1)

Sufficiently clear

### Subsection (2)

#### Letter a

Sufficiently clear

#### Letter b

Sufficiently clear

#### Letter c

Sufficiently clear

#### Letter d

Activities which have a social impact are those which influence the public interest, both culturally and structurally.

#### Letter e

Sufficiently clear

### Subsection (3)

Sufficiently clear

## Article 9

### Subsection (1)

In the scheme of national environmental management policy and spatial management ordering, rational and proportional attention must be given to potential, aspirations, and needs along with the values which emerge and develop in the community. For example, attention is needed toward living traditional communities the life of which is supported by natural resources located in the immediate area.

### Subsection (2)

Sufficiently clear

### Subsection (3)

Sufficiently clear

### Subsection (4)

Sufficiently clear

## Article 10

### Letter a

What is meant in this stipulation by decision makers is the authorised parties, namely the Government, the community and other agents of development.

### Letter b

This activity is carried out through explanation, leadership, and education and training in the scheme of increasing the quality and quantity of human resources.

### Letter c

Community participation in this Article covers participation, both in efforts and in the decision making process concerning preservation of environmental supportive and carrying capacity. In the scheme of a community role, partnership between agents of environmental management is developed, namely between the government, the business world, and the community including among others non-government organisations and professional/academic associations.

### Letter d

Sufficiently clear

### Letter e

Pre-emptive instruments in this stipulation refers to action undertaken at the decision making and planning level, such as spatial management ordering and environmental impact analysis. Preventive action is at the level of implementation through compliance with waste standards and/or economic instruments. Proactive action is action at the level of production with application of environmental standards such as ISO 14000.

Examples of pre-emptive, preventive and proactive environmental management instruments are the development and application of environmentally sound technology, and the application of environmental insurance and environmental audits which are carried out voluntarily by those responsible for a business and/or activity, to increase effectiveness.

### Letter f

Sufficiently clear

### Letter g

Sufficiently clear

### Letter h

Sufficiently clear

Letter I

Sufficiently clear

#### Article 11

##### Subsection (1)

The scope of implementation of environmental management in principle covers various sectors which are the responsibility of various departments and government agencies. To avoid overlap of authority and clashes of interest, there is a need for coordination, integration, synchronisation and simplification through institutional devices which are coordinated by the Minister.

##### Subsection (2)

Sufficiently clear

#### Article 12

##### Subsection (1)

Letter a

The Unitary Nation of the Republic of Indonesia has a rich diversity of potential biological and non-biological natural resources, characteristic cultural diversity, and aspirations which can become the primary capital in national development. For this and in order to achieve integration and unity in patterns of thinking, and in actions taken which guarantee the formation of useful and effective environmental management which is based on the Archipelagic Concept, the Central Government can confer certain authority while paying attention to the regional situation and conditions in terms of both natural potential and regional capability, to central agencies located in the regions in the scheme of the implementation of the principle of deconcentration.

Letter b

The Central Government or the Level I Local Government can entrust the Level II Local Government with playing a role in the implementation of environmental management policy as a co-administration task. Through this co-administration, authority, funding, instruments, and responsibility remains with the government which has entrusted such tasks.

##### Subsection (2)

Sufficiently clear

#### Article 13

##### Subsection (1)

While attending to the regional capability, situation and conditions, the Central Government can delegate matters in the environmental field to the regions to become part of the authority, task, and responsibility of Local Government based on a principle of decentralisation.

##### Subsection (2)

Sufficiently clear

#### Article 14

##### Subsection (1)

Sufficiently clear

##### Subsection (2)

Sufficiently clear

##### Subsection (3)

Sufficiently clear

#### Article 15

##### Subsection (1)

Environmental impact analysis on the one hand is a part of a feasibility study for implementing a plan for a business and/or activity, and on the other hand is a condition which must be fulfilled to receive a licence to carry out a business and/or activity. With such an analysis, important and large impacts on the environment can be ascertained in more detail. This includes both positive and negative impacts which arise from a business and/or activity such that steps can be taken to cope with negative impacts and maximise positive impacts.

To measure or clarify such large and important impacts, criteria which are used include:

- a. the number of people who will be affected by the planned business and/or activity;
- a. the extent of the area affected;
- a. the intensity and duration of the impact;
- a. the amount of other environmental components which will be affected;
- a. the cumulative nature of the impact;
- a. the reversibility or non-reversibility of the impact.

##### Subsection (2)

Sufficiently clear



## Article 16

### Subsection (1)

Waste treatment is a set of activities which covers storage, collection transportation, use, and processing of waste, including the stockpiling of the results of such processing.

### Subsection (2)

Sufficiently clear

### Subsection (3)

Sufficiently clear

## Article 17

### Subsection (1)

The obligation to conduct waste management which is referred to endeavour to reduce the possibility of risk to the environment in the form of environmental pollution and/or damage, recalling that hazardous and chemical materials involve a large potential for negative effects.

### Subsection (2)

Sufficiently clear

### Subsection (3)

Sufficiently clear

## Article 18

### Subsection (1)

Examples of the licence intended include the mining licence for mining enterprises, and the industry business licence for industrial enterprises.

### Subsection (2)

Sufficiently clear

### Subsection (3)

The licence to carry out a business and/or activity must assert the obligations associated with compliance to stipulations in the environmental management field which must be implemented by the party responsible for a business and/or activity in carrying out their business and/or activity. For a business and/or activity which is obliged to make or implement an environmental impact analysis, the environmental management plan and monitoring plan which must be implemented by the party responsible for the business and/or activity must be included and clearly formulated in the licence to carry out the business and/or activity. For example the obligation to treat waste, waste quality conditions for disposal to an environmental medium, and obligations associated with waste disposal, such as the obligation to perform self-monitoring and the obligation to report the result of such self-monitoring to the responsible agency in the field of environmental impact control. If a business and/or activity plan according to applicable laws and regulations is obliged to carry out environmental impact analysis, approval of this environmental impact analysis must be submitted together with the application for a licence to carry out a business and/or activity.

## Article 19

### Subsection (1)

Sufficiently clear

### Subsection (2)

Publication of the licence to carry out a business and/or activity constitutes the realisation of the principle of administrative openness [or good governance]. This public release of the licence to carry out a business and/or activity allows community participation, in particular for those who have not used the opportunities available in the objections procedure, hearing, and others aspects of the licensing decision-making process.

## Article 20

### Subsection (1)

Sufficiently clear

### Subsection (2)

Sufficiently clear

### Subsection (3)

Sufficiently clear

### Subsection (4)

A business and/or activity will produce waste. In general this must be treated before it is disposed of to an environmental medium such that it does not give rise to environmental pollution and/or damage. In certain cases, waste which is produced by one business and/or activity can be exploited as raw materials for a product. However this process of exploitation will itself produce waste, as a residue which cannot be reused, which will be disposed of to an environmental medium. Waste disposal as intended in this Article is disposal of waste which is the residue of a business and/or activity and/or other materials which are unused or which have expired, to an environmental

medium, including land, water or air. This disposal of waste and/or materials to an environmental medium will give rise to an impact on ecosystems. With the stipulations of this Article, then, in principle disposal of waste to an environmental medium is prohibited, with the exception of certain environmental media which have been determined by the Government.

Subsection (5)

Sufficiently clear

Article 21

Sufficiently clear

Article 22

Subsection (1)

Sufficiently clear

Subsection (2)

In the case where an official who has authority from another government agency is appointed to carry out supervision, the Minister carries out coordination with the leadership of the agency concerned.

Subsection (3)

This subsection's stipulation is the implementation of Article 13(1).

Article 23

Sufficiently clear

Article 24

Subsection (1)

Sufficiently clear

Subsection (2)

Sufficiently clear

Subsection (3)

Being attentive to the situation and conditions at the place of supervision is intended to mean respecting prevailing values and norms both written and unwritten.

Article 25

Subsection (1)

Sufficiently clear

Subsection (2)

Sufficiently clear

Subsection (3)

Sufficiently clear

Subsection (4)

Sufficiently clear

Subsection (5)

Sufficiently clear

Article 26

Subsection (1)

Sufficiently clear

Subsection (2)

Sufficiently clear

Article 27

Subsection (1)

The seriousness of infringements of environmental regulations can vary, beginning with infringement of administrative conditions and ranging up to infringements which give rise to victims.

What is intended by certain infringements is an infringement by a business and/or activity which is regarded as sufficiently serious that the business' activity be stopped, for example where people from the community have had their health impaired as a result of environmental pollution and/or damage.

Subsection (2)

Sufficiently clear

Subsection (3)

Sufficiently clear

Article 28

An environmental audit is an important instrument for the party responsible for a business and/or activity for increasing their activity's efficiency and performance in complying with environmental conditions which have been stipulated by laws and regulations. In this sense, an environmental audit is conducted voluntarily to verify

compliance with applicable environmental laws and regulations, and with policies and standards which have been applied internally by the party responsible for the business and/or activity concerned.

#### Article 29

##### Subsection (1)

Sufficiently clear

##### Subsection (2)

Sufficiently clear

##### Subsection (3)

Sufficiently clear

##### Subsection (4)

Sufficiently clear

##### Subsection (5)

The results of an environmental audit as intended in this subsection constitute a document is open to the public. It must be publicly available because it is an effort to protect the community.

#### Article 30

##### Subsection (1)

The stipulation in this subsection is intended to protect the civil process rights of the parties in dispute.

##### Subsection (2)

Sufficiently clear

##### Subsection (3)

The stipulation in this subsection is intended to prevent the occurrence of varying decisions in one environmental case, to ensure legal certainty.

#### Article 31

Settlement of environmental cases through out of court discussions is carried out voluntarily by the parties which have an interest, namely the parties which have experienced losses and have caused losses, government agencies with an involvement in the subject in dispute, and also allowing for involvement of parties which have a concern for environmental management.

Certain actions here refers to efforts to restore environmental functions while being attentive to values which are alive in the local community.

#### Article 32

In order to facilitate the course of out of court discussions, the parties which have an interest can request the services of a neutral third party which can be in the form of:

a. a neutral third party which does not have decision-making authority. This neutral third party functions as a party which facilitates the parties which have an interest such that agreement can be reached.

This neutral third party must:

- (1) be agreed to by the parties in dispute;
  - (2) not have familial and/or work relations with one of the parties in dispute;
  - (3) possess skills needed to carry out discussion or mediation;
  - (4) not have an interest in the process of discussion or its outcome.
- b. a neutral third party which has decision-making authority, functioning as an arbitrator, with all such arbitration decisions being of a fixed and binding nature on the parties in dispute.

#### Article 33

##### Subsection (1)

This environmental dispute settlement service providing agency is meant as an agency which is able to facilitate the implementation of the choice of the dispute settlement mechanism based on principles of impartiality and professionalism.

The service providing agency which is formed by the Government is intended as a public service.

##### Subsection (2)

Sufficiently clear

#### Article 34

##### Subsection (1)

This subsection constitutes the realisation of the principle of the polluter pays' principle of environmental law. As well as being obligated to pay compensation, the party which inflicts environmental pollution and/or damage can be burdened by the judge with an order to take certain legal measures, for example to:

- install or repair a waste treatment facility such that the waste complies with environmental quality standards which have been applied;
- restore environmental functions;

- remove or destroy the cause of the arising of environmental pollution and/or damage.

#### Subsection (2)

The inflicting of compulsory payments for each day of lateness of executing court orders to carry out certain actions is for the preservation of environmental functions.

### Article 35

#### Subsection (1)

Strict liability means that the element of fault need not be proved by a person bringing an action as the basis of payment of compensation. The stipulation of this subsection is a *lex specialis* in legal actions regarding actions which infringe the law in general. The size of compensation which can be imposed upon a party which pollutes or damages the environment according to this Article is constrained within certain limits.

“Within certain limits” is a reference to the question of whether, if according to determinations of applicable laws and regulations, an obligation to insure has been stipulated for the business and/or activity concerned or whether an environmental fund is available.

#### Subsection (2)

##### Letter a

Sufficiently clear

##### Letter b

Sufficiently clear

##### Letter c

Sufficiently clear

#### Subsection (3)

What is meant by action of a third party in this subsection is an action of unfair competition or a Government fault.

### Article 36

#### Subsection (1)

Sufficiently clear

#### Subsection (2)

Sufficiently clear

### Article 37

#### Subsection (1)

What is meant by the right to bring a class action in this subsection is the right of a small group of the community to represent the community in a larger number which has had losses inflicted on it. Such representation is to be according to a basis of sameness of problem, legal facts, and demands which have been given rise to because of environmental pollution and/or damage.

#### Subsection (2)

Sufficiently clear

#### Subsection (3)

Sufficiently clear

### Article 38

#### Subsection (1)

Sufficiently clear

#### Subsection (2)

Legal action taken by an environmental organisation cannot be in the form of a demand for compensation but rather is limited to:

- application to the court for a person to be ordered to undertake certain legal actions which are involved with the goal of preservation of environmental functions;
- asserting that a person has carried out an action in infringement of the law because of their polluting or damaging the environment;
- ordering a person which carries out business and/or activity to install or repair a waste treatment unit.

What is meant by expenses or real outlays are expenses of an environmental organisation which can be proved to have been actually outlaid.

#### Subsection (3)

Not every environmental organisation can take legal action in the name of the environment; rather they must fulfill certain conditions. With the existence of the conditions as provided for above, environmental organisations are selectively acknowledged to possess *ius standi* to bring legal action in the name of the environment to court, both in general courts and in administrative courts, depending upon the competency of the court which is involved with investigating and trying the case in question.

### Article 39

Sufficiently clear

Article 40  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
    Subsection (3)  
        Sufficiently clear  
    Subsection (4)  
        Sufficiently clear  
    Subsection (5)  
        Sufficiently clear  
Article 41  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
Article 42  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
Article 43  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
    Subsection (3)  
        Sufficiently clear  
Article 44  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
Article 45  
    Sufficiently clear  
Article 46  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
    Subsection (3)  
        Sufficiently clear  
    Subsection (4)  
        Sufficiently clear  
Article 47  
    Sufficiently clear  
Article 48  
    Sufficiently clear  
Article 49  
    Subsection (1)  
        Sufficiently clear  
    Subsection (2)  
        Sufficiently clear  
Article 50  
    Sufficiently clear  
Article 51  
    Sufficiently clear  
Article 52

Sufficiently clear

SUPPLEMENT TO STATE GAZETTE REPUBLIC OF INDONESIA  
NUMBER 3699

*This translation has been prepared by the BAPEDAL and East Java Pollution Control Implementation (PCI) Project. Legal, commercial or other decisions should not be based on this translation, but rather on the original Indonesian version of the legislation accompanied by professional advice.*