

FINAL REPORT

**Strengthening the Right to Information for People and
Environment**



Case Study from Indonesia

**Prepared by
Indonesian Center for Environmental Law
The Access Initiative
2013**

This report was made based on documentation of
access to information requests made to Public Bodies in Serang and Jepara from 2011 to 2012

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Chapter I

Strengthening the Right to Information for People and Environment : An Introduction

I. Background

In Indonesia, more than 100 million people do not get sufficient access to safe water and more than 70 percent of the country's 220 million population depend on water obtained from sources which are potentially contaminated. Unsafe drinking water leads to diarrhea, a second leading cause of death of children under five and accounts for approximately 20 percent of child deaths each year. According to the Ministry of Health, every year at least 300 out of 1,000 Indonesians suffer from water-borne diseases, including cholera, dysentery, and typhoid fever¹.

Besides water, bad air quality also has a negative impact on human health. Outdoor and indoor pollution is estimated to have led to health problems costing about \$5.5 billion per annum or about 1.3 percent of GDP in 2007².

Indonesia has enacted the Public Information Disclosure Act (PIDA) No. 14 of 2008 which obliges the Indonesian Government and/or Public Bodies to develop a system and to provide information to the citizens. In addition to the PIDA, the Environmental Protection and Management Act (EPMA) No. 32 of 2009 mandated the establishment of an environmental information system that is integrated and shall be published to the public³. The act also guarantees that everybody shall be entitled to environmental education, access to information, access to participation, and access to justice in the fulfillment of the right to a proper and healthy environment⁴. Further, Indonesia also has a public information disclosure program regarding a company's performance related to environmental management that is known as the Program for Pollution Control, Evaluation and Rating (PROPER) under the Ministry of Environment, launched in 1995.

It is expected that PIDA and EPMA will encourage the transparency and accountability of the Government and/or Public Bodies in managing the environment and natural resources. In addition, PROPER is expected to promote companies' transparency regarding their environmental performance. Nevertheless, those instruments are not yet optimally utilize and implemented. This is reflected in the PIDA Implementation Annual Report 2010⁵, as it stated that of the 347 information requests, there are

¹ Country Water Action: Indonesia Simple Solution for Drinking Water Makes Big Difference, Asian Development Bank, March 2006, <http://www.scribd.com/doc/110969046/Indonesia-Water-Action-Simple-Solution-for-Drinking-Water-Makes-Big-Difference>, accessed on 13 April 2011

²New Environmental Analysis for a Sustainable Indonesia, World Bank, <http://www.worldbank.org/en/news/press-release/2009/11/18/new-environmental-analysis-sustainable-indonesia>, accessed on 13 April 2011

³ Article 62 Environmental Protection and Management Act No. 32 of 2009

⁴ Article 65 Environmental Protection and Management Act No. 32 of 2009

⁵*Laporan Tahunan Implementasi UU No. 14 tahun 2008 tentang Keterbukaan Informasi, Yayasan Tifa dan Indonesian Parliamentary Center, 2010*

only 20 information requests which relate to the environment and natural resources. Further, the PROPER mechanism is often criticized for lacking public access to information and genuine public participation.

Public access to environmental information is one of important elements toward environmental democracy in which the government is transparent, accountable, and involving people in decisions that affect their environment⁶. Further, educated and informed citizens are the heart of a proper functioning environmental democracy.

I.1. STRIPE Objectives and Scope of Area

STRIPE was initiated by The Access Initiative and was implemented in two countries; Indonesia and Thailand from 2011 to 2012. The objectives of the STRIPE are to⁷:

- Empower communities in Indonesia, especially in the two selected areas to improve their environmental health through improved access to information;
- Improve the implementation of the Freedom of Information (FOI) law in Indonesia by strengthening the constituencies demanding environmental information;
- Strengthen or accelerate the official collection, analysis, dissemination and use of regular pollution control data on environmental conditions (water and air), and on point-source pollution releases (e.g inspection, regular monitoring data, incident, compliance report, public complaint report);
- Shift popular governmental definitions of access to information from a “reactive” to “proactive” release of information, emphasizing availability, publicity, and usability.

In Indonesia, the Indonesian Center for Environmental Law (ICEL) in cooperation with WALHI, *Forum Kebangkitan Petani dan Nelayan (FKPN)*, *LBH Semarang* (Semarang Legal Aid Foundation) and *Forum Nelayan (FORNEL)* Jepara conducted activities in Serang, Banten and Jepara, Central Java regarding the case studies as follow:

- a. In Serang, Banten Province: case study of the Ciujung River pollution from waste water discharge of the pulp and paper industry. STRIPE is conducted in this area based on the following considerations: a) there are concerns and complaints from the local community regarding the pollution, b) the Commission of Information is in Banten, c) one of the companies discharging the waste water to the river participated in PROPER, d) the local community and local community organization are willing to work with The Access Initiative – the Indonesia coalition mentioned above.
- b. Tubanan, Jepara, Central Java Province: case study of air pollution from the activities of Tanjung Jati B Coal Fired Power Plant. STRIPE is conducted in this area based on the following considerations: a) there are concerns and complaints from the local community and local community organization regarding the power plant’s activities, b) the existence of the Central Java Commission of Information, c) the coal power plant is

⁶World Resources Institute, What Does Environmental Democracy Look Like?, accessed from: <http://www.wri.org/stories/2008/04/what-does-environmental-democracy-look>

⁷ STRIPE Scope of Work, 2011

participating in PROPER, d) the community is willing to work with The Access Initiative – the Indonesia coalition mentioned above.

Figure 1. Map of the Areas – Java Island, Indonesia



A : Location of ICEL, South Jakarta, B: Location of Serang, Banten Province, C: Location of Jepara, Central Java Province

I. 2. STRIPE- Activities

In 2011 to 2012, activities conducted under the STRIPE project in Indonesia, among others were:

a. Preliminary research and material preparations:

- Selecting the water, air and common indicators as a guidance in requesting information. The indicators are provided by WRI
- Selecting the case study and preliminary research regarding the case (IKPP activities and TJB's operation)
- Conducting an inventory of the relevant laws and regulations related to the case study and access to information
- Conducting an Inventory of the Government's and company's obligation related to environmental management and protection
- Formulating training materials for the community members regarding air, water quality and the implementation of PIDA
- Formulating the PIDA guide book and information request record book for the community

b. Trainings which cover:

- Training for community members regarding PIDA and its mechanism ;
- Introduction to relevant laws and regulations related to environment and natural resources management which are relevant to the study case (e.g. EPMA, EIA regulation);
- Introduction to the air and water pollution and its impact to people's health and environment

c. Information requests:

- Formulating information requests based on the indicators and formulating the community's requests regarding matters that concerned them;
- Identifying the Public Bodies
- Submitting information requests and monitoring the process
- Submitting internal appeal and dispute settlements to the Commission of Information

d. Analysis regarding information requests (PIDA Mechanism) and information obtained:

- Process of information requests (PIDA Mechanism) is documented
- Information that is obtained is analyzed with the assistance of experts and literature

e. Study Tour to Washington DC, USA, conducted on October 22-25, 2012, with the objectives to⁸:

- Improve understanding of civil society campaigns based on pollution data
- Share experience in setting up regulatory control and official responses to pollution
- Develop a system for regular proactive disclosures of pollution information taking into consideration the contexts of developing country
- Enhance civil societies' ability to strategically make and enforce freedom of information requests

f. The report covers:

- Overview on Indonesian legal framework on right to information and right to environmental information;
- Overview on air pollution control framework and access to Information;
- Overview on water pollution control framework and access to Information
- Overview on PROPER
- STRIPE lessons learned and recommendations

⁸ STRIPE Study Tour Agenda, WRI, October 2012

Chapter II

The Right to Information and the Right to Environmental Information: Overview on Indonesian Legal Framework

II.1. Freedom of Information: Legal Framework

Information disclosure for public bodies has been mandated in the 4th Amendment of Indonesia's Constitution ("*Undang-undang Dasar 1945*"), as provided in Article 28F that "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels". Nevertheless, such guarantee is not adequate as it only provides general protection. Freedom of information legislation is necessary as it provides a practical mechanism to achieve transparency and accountability. Furthermore, the Act may strengthen the democratic processes within a country⁹ which may lead to an improvement in making decisions and policy¹⁰.

In 2008, Public Information Disclosure Act No. 14 of 2008 was enacted to improve the deficiencies to give better legal certainty on public information openness in all sectors. The current Legal basis of Public Information Disclosure in Indonesia are:

1. Act No. 14 of 2008 regarding Public Information Disclosure ("Act No. 14/2008");
2. Government Regulation no. 61 of 2010 regarding the Implementation of Public Information Disclosure Act ("GR no. 61/2010");
3. Information Commission Regulation no. 1 of 2010 regarding Public Information Service Standards ("PERKI 1/2010");
4. Information Commission Regulation no. 2 of 2010 regarding Procedure on Public Information Dispute Settlement ("PERKI 2/2010");
5. Supreme Court Regulation no. 2 of 2011 regarding Procedure on Information Dispute Settlement at Court

II. 1.1. General Principles and Key Concepts

Article 2 of PIDA No. 14/2008 provides the general principles in which some universally accepted principles on Freedom of Information legislations are adopted in the PIDA, as follows:

1. Public information is open and accessible for every user of Public Information;
2. Exception to the Public Information is restricted and limited in nature;
3. Every requester of public information shall be able to obtain public information in a quick and timely manner, with low cost and simple procedure;

⁹Emmanuel, Safa A., *Freedom of Information: Promoting Good Governance and Stability in Sierra Leone*, (March 2009) http://www.slcmp.org/drwebsite/commentaries/Freedom_of_Information_Promoting_Good_Governance_and_Stability_in_Sierra_Leone.shtml

¹⁰Stiglitz, Joseph, cited in Snell, Rick, *Freedom of Information Practices*, <http://epress.anu.edu.au/wp-content/uploads/2011/06/13-4-A-1.pdf>

4. Public Information that is classified as confidential information pursuant to the Law, ethics, and the public interest shall be based on an examination in terms of the consequences that occur if the information is provided to the public and after careful consideration that covering up Public Information can protect a greater interest rather than opening it or vice versa.

For a deeper understanding of the freedom of information framework in Indonesia, below are the basic elements of PIDA:

1. Information

Information means the information, statement, ideas and signs having a value, meaning and message, both the data, fact and clarification that can be seen, heard and read, and are presented in various packages and formats, in accordance with the development of the information and communication technology, both electronically and non-electronically.

2. Public Information

Public Information means information that is produced, stored, managed, sent and/or received by a Public Agency relating to the organizer and the organizing of the state and/or the organizer and the organizing of other Public Bodies pursuant to this law and other information pertaining to the interest of the public.

3. Public Body

Public Body means any executive, legislative, judicative and other bodies whose function and main duties are related to the organization of the state, where part or all of its funds originates from the state budget and/or the regional budget, or any non-governmental organizations where part or all of its funds originate from the state budget and/or the regional budget, the contribution from the people and/or from overseas sources.

Information Commission

Information Commission means independent institution that functions to implement this Law and its implementing regulation(s), to provide the technical standards directives for Public Information service and to settle Public Information Disputes through mediation and/or non-litigation adjudication.

4. PPID/Information and Documentation Officer

Officer that is responsible for the documenting, providing and/or servicing information at the Public Bodies

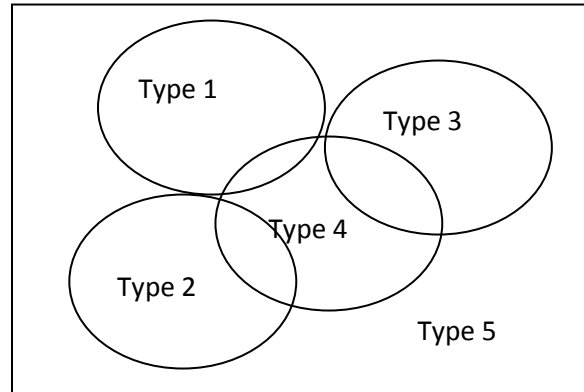
II. 1. 2. Categorization of Public Information

Based on PIDA, there are 5 types of Public Information – each type affecting the disclosure mechanism as well as the obtaining procedure. Indonesian Public Information Law states explicitly the categories of Public Information:

1. Public information which shall be provided and published regularly (Type 1)
2. Public information which shall be published immediately (Type 2)
3. Public information which shall be provided at all times (Type 3)
4. Public information which are classified (under the exception) (Type 4)

The 5th category is not stated explicitly, but mentioned in Article 52 of Law 14/2008, namely "public information to be supplied on the basis of a request pursuant to this Law". The relationship of the five categories can be described as follows:

Figure 2. Category of Public Information



II.1.2.1. Public Information which shall be provided and published regularly (Type 1)

Public Bodies shall provide and publish proactively, and update regularly (every 6 months) information that falls under this category. Provision of this category of information shall be conducted through publication, whether through any media in the office of such public body or through its website. The dissemination of this type of information shall be in a means that is easily accessed by the community, and with the simple language according to the needs of the community. PERKI 1/2010 lists information that falls under this category in detail:

- a. Information regarding the profile of the Public Body;
- b. Summary of current program and/or activities in the scope of work of the Public Body;
- c. Summary of information regarding Public Body's performance, in the form of narration on realization of the activities that have been or are currently being implemented, and its achievement to the present date;
- d. Summary of financial report;
- e. Summary of report regarding access to Public Information;
- f. Information regarding regulation, decree and/or policy which are binding **and/or have impact to public which are issued by such Public Body;**
- g. Information of the rights and procedure on obtaining Public Information and procedures on internal appeal, as well as the process of Public Information dispute settlement and the responsible person who can be contacted;
- h. Information on the procedure of complaints on abuse of authority or violations conducted, whether by officials of Public Body or any party who obtain a permit or contract of work from such Public Body;
- i. Information regarding announcement of goods and service procurement pursuant to relevant laws;

- j. Information on early warning procedure and evacuation procedure in an emergency, in every Public Body office.

II.1.2.2. Information which shall be published immediately (Type 2)

This type of information relates to any matters which can endanger the public livelihood or public interest. It shall be proactively disclosed without delay when such condition occurs. The information that falls under this category is regulated in Article 10 of Law 14/2008 jo. Article 12 of Perki 1/2010, including:

- a. Information on natural disaster;
- b. Information on non-natural disaster;
- c. Social disaster;
- d. Type, distribution and areas which is known as the source of potentially infectious disease;
- e. Information regarding poison on groceries consumed by public;
- f. Information regarding plan on disruption towards public utilities.

II.1. 2.3. Information which shall be provided at all times (Type 3)

This type of information is passively disclosed in nature. The Public Body shall provide this information upon request, and manage its data so that the information falling under this category can be accessed at any time and can be given at the time of the request or maximum 17 days (noting obligatory response in 10 days) after the request is made. The information that falls under this category is regulated in Article 11 of Law 14/2008 jo. Article 13 of Perki 1/2010, including:

- a. List of public information;
- b. Information regarding regulation, decree and/or policy of Public Body;
- c. All complete information that shall be published regularly;
- d. Information regarding organization, administration, employment, and finance;
- e. Letters of agreement with third party, including its supporting documents;
- f. Correspondence between the head or official of Public Body in performing its main duty and function;
- g. Requirements of permit, issued permit and/or issued including its supporting documents, and report on permit arrangement given;
- h. Data on treasury or inventory;
- i. Strategic plan and work plan of public body;
- j. Work agenda of unit's chairman;
- k. Information regarding activities of Public Information Service performed, infrastructure of Public Information service owned and its condition, human resources conducting Public Information service and its qualification, budget on Public Information service and its utilization report;
- l. Amount, type and general description on violations found in internal control and report and the action taken;
- m. List of results of research conducted;

- n. Other Public Information which has been declared as open for the community based on internal appeal and/or dispute settlement mechanism as provided in Article 11 of Law no. 14/2008;
- o. Information regarding standards on announcement of information as provided in Article 12 for the Public Body which gives permits or **makes** work agreements with a third party whose activity potentially endangers the livelihood of the public and public interest;
- p. Information and policy delivered by a public official in a public meeting.

II.1.2.4. Classified Information (Type 4)

An exception of Public Information is also accommodated in this law, giving legal certainty on what can be categorized as an exception based on three-test steps. The category provided in Article 17 of Law 14/2008 is restricted and limited in nature, meaning that it can be done only based on the conditions provided by law (Article 17 of Law 14/2008) and as minimally as possible. This category can still be declared as open as long as the harm caused by restricting information outweighs the harm of full disclosure. Article 17 of Law 14/2008 stated that Every Public Body is obliged to open the access to obtain Public Information for every Public Information Requester, except:

- a. Public Information that if opened and provided to the Public may obstruct the legal enforcement process;
- b. Public Information of which disclosure and provision to the Public may disturb the protection of the right to intellectual property and protection from unhealthy business competition;
- c. Public Information of which disclosure and provision to the Public may be hazardous to the defense and security of the state;
- d. Public Information of which disclosure and provision to the Public could reveal the natural wealth of Indonesia;
- e. Public Information of which disclosure and provision to the Public may be harmful to the national economic security;
- f. Public Information of which disclosure and provision to the Public may be harmful to diplomatic relations;
- g. Public Information of which disclosure and provision to the Public may reveal the contents of an authentic personal deed and the last will or testament of an individual;
- h. Public Information of which disclosure and provision to the Public may reveal privacy (personal secret);
- i. **Memorandum or letters** within Public Bodies are confidential unless they are declared open by the Commission of Information or the court;
- j. Information of which disclosure to the Public is prohibited according to the law

II.1.2.5. Public Information to be Supplied on the Basis of a Request (Type 5)

The last category, which is implied in Article 52, is a clause to accommodate the information that doesn't fall under any category not labeled as classified. This category is in accordance to Article 2 which provides that "Every Public Information is open and accessible by every User of Public Information". Thus, the procedure for obtaining the public information in this category shall be upon request.

II.1.3 Procedures on Accessing Public Information by Request

These “procedures” refer to the procedures for request, which are only for information and fall under Type 3 and Type 5. Type 1 information shall be accessible in the website and/or in the office of such public body in the form of publication. Type 2 information shall be able to reach the target (impacted society) as soon as the danger to their livelihood and or public interest is known / determined. PIDA No. 14/2008 gives the right to the "Public Information Requester" for the access of information. The Requester itself is limited by the Law as follow:

- a. Natural person or individual; shall be a Republic of Indonesia national, proved by photocopy of his/her identity card (or Driving Permit / Passport) attached with the request;
- b. Legal person of Indonesia, which means incorporated under the laws of Indonesia (there are only three forms of legal persons in Indonesia – Limited Liability Company, Foundation and Cooperation, yet the practice allows partnership and/or other forms as well), proved by its Article of Association that is legalized by the government (i.e. Ministry of Internal Affairs, Ministry of Law and Human Rights).

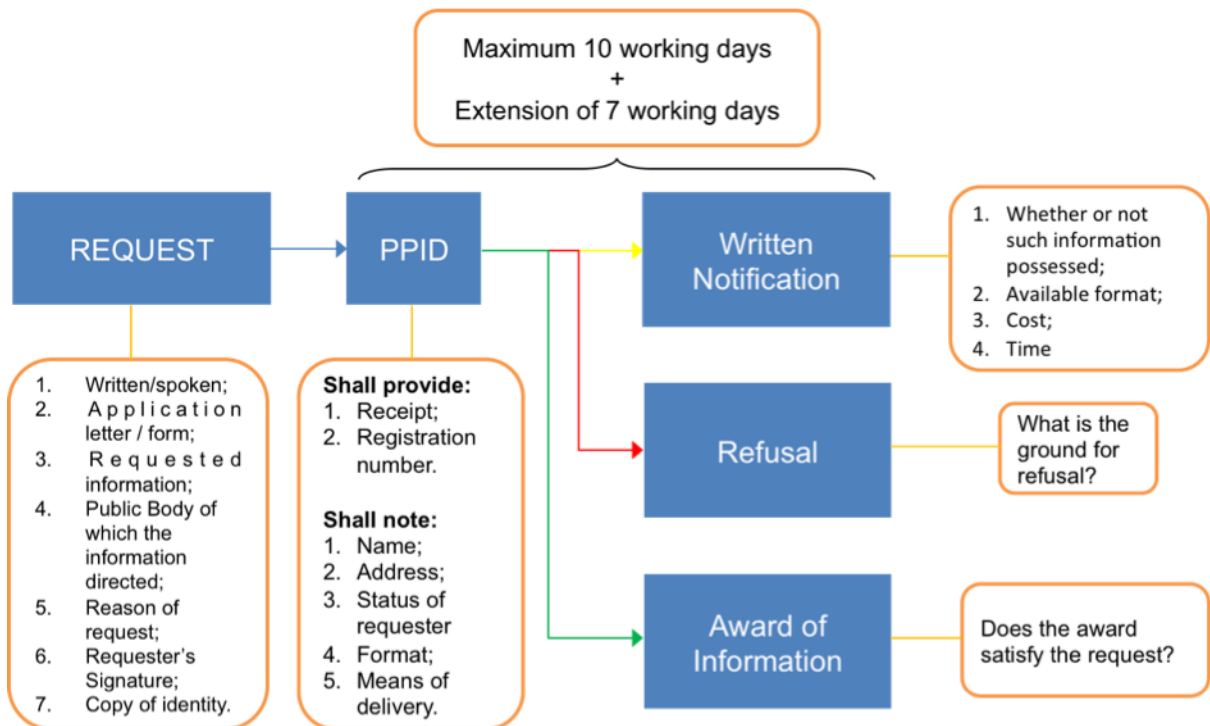
The request can be directed to any Public Body, as provided by the law and elaborated above. The scope of Public Body is not only including state agencies, but also state-owned companies, political parties, non-governmental organizations and any institution as long as it receives public funding and possesses public information. Indonesian freedoms of information legislations provide procedures for accessing public information as follows:

1. Requester delivers his/her request of information. The request can be made by the following means:
 - a. Verbally – the information official shall record the verbal request in the form of written form.
 - b. In writing
 - Byletter
 - In an official form as provided in Annex III of PERKI 1/2010
2. The Public official shall record the request of information in the Registrar and provide a receipt and registration number to the requester;
3. After the internal process in the Public Body, it must give written notification within a maximum of 10 (ten) working days after the request is accepted and recorded in the Registrar. The written notification contains (at least):
 - a. Notice whether the requested information is under its possession or not;
 - b. Shall refer to the Public Body which possesses the requested information if such information isn't held by the Public Body to whom the request has been made, and such Public Body knows the presence of such information;
 - c. Grant or refusal of the request according to Article 17;
 - d. In the event the request is granted entirely or partially, it shall include the material of information that will be given;

- e. In the event of a document containing classified material according to Article 17, the excepted material can be discolored by stating the reason of exception and the excepted material;
- f. Means of delivery and format of information that will be given;
- a. Cost and method of payment to obtain the requested information.
4. After giving written notification, the Public Body may request an additional 7 (seven) working days to provide the information. After this addition, there may not be any more request for time extensions.
5. The information shall be given to the requester in the following manner:
 - a. At the time of the request;
 - b. At the time the notification is given to the requester;
 - b. At the time determined by the PPID in the notification to the requester.
6. In case of refusal, PPID shall issue a Decree of PPID regarding the refusal of the information request. Such Decree shall be delivered with the notification mentioned earlier. The Decree of PPID on this matter shall contain the reasons for the exception and the predicted consequence which will probably arise due to the disclosure of information. The Format of such Decree is provided in Annex VI of PERKI 1/2010 (See Attachment 1).

Figure 3. Information Request Procedure

Public Information Service through Request



II.1.4. Dispute Settlement

Generally, Public Information Dispute occurs in 4 levels:

1. Internal Appeal in the level of Public Body (Level 1)
2. Dispute settlement in the Information Commission (Level 2)
3. Dispute settlement in the Civil Court or Administrative Court (Level 3)
4. Cassation in the Supreme Court (Level 4)

II.1.4.1. Internal Appeal in the Public Body Level (Level 1)

An Internal Appeal occurs in the event the requester isn't able to access Public Information according to PERKI 1/2010, due to the following reasons::

- a. Refusal of Public Information request;
- b. Negligence of Public Body in providing information which shall be provided and published on a regular basis;
- c. No response/No notification to the request;
- d. Request of Public Information is granted but does not fit the request;
- e. Non-fulfillment of the request;
- f. Immoderate charge for the information given;
- g. Delivery of Public Information exceeds the mandated time limit

The procedure on internal appeal is regulated as follows:

1. Application for appeal is valid if it is filed within a maximum of 30 (thirty) days after the ground for appeal was found;
2. The applicant of an appeal can file the appeal verbally or in writing (through letter or form);
3. The form shall contain *inter alia* the ground on objecting, case position, and registration number;
4. The officer shall record the appeal in the Registrar on Appeal, and provide receipt to the applicant;
5. Within a Maximum in 30 (thirty) days after the appeal is accepted and recorded in the Registrar, the Public Body shall give a response to the appeal in the form of a written Decree;
6. By the time such Decree is enacted, the Public Body shall execute such Decree and if it determines to give the information to the requester, the Public Body shall do so.

II.1.4.2. Dispute Settlement in Information Commission (Level 2)

A Dispute Settlement in the Information Commission only takes place after the Internal Appeal doesn't succeed and the requested information has not been given. The grounds for the Dispute Settlement in the Information Commission are as follows:

- a. The Applicant is not satisfied with the response on the appeal given by the Superior of PPID. This can be done at the latest within 14 (fourteen) working days after the **Superior of PPID Decree** has been accepted by the applicant;

- b. The Public Body does not respond to the application of appeal which has been filed to the Superior of PPID within 30 (thirty) working days after the appeal is accepted by the Public Body.

The mechanism of dispute settlement can be summarized as follow:

1. Process of Application to the Information Commission;
 - a. Application shall be made to Information Commission through the reporting officer;
 - b. Application shall be made within 14 (fourteen) working days after:
 - **there is a** written response of appeal from the Superior of PPID; or
 - the expiration of 30 (thirty) working days time limit for Public Body to give a written response upon the appeal.
 - c. Applicant shall file the application form as provided in Annex 1 of PERKI 2/2010. Application shall contain:
 - Identity of applicant;
 - Ground for dispute settlement;
 - The petition requested for the Information Commission verdict;Applicant shall include the supporting documents along with the application, as follows:
 - Evidence of identity (along with Power of Attorney if any)
 - Evidence of request which have been made to the Public Body
 - Evidence of appeal which have been filed to the Superior of PPID
 - Other evidence
2. Registration process

The Information Commission shall notify the applicant in the event that the administrative requirements are incomplete. In the event that a request for information is mishandled and the applicant can't provide evidence of the request and appeal, the application will still be registered. The Information Commission shall give the receipt of registration to the applicant.
3. Preliminary Examination

Preliminary Examination is conducted to determine whether:

 - The request falls under the authority of the Information Commission
 - Applicant has legal standing to file the dispute
 - Application of the dispute will be settled through mediation or adjudication
 - The Public Body has written the ground for exception as provided in this law

The preliminary examination shall be completed within 14 (fourteen) working days after the application is registered, and if the Information Commission refuses to settle the dispute on the above-mentioned basis in this phase, the Information Commission shall issue the Decree of Preliminary Examination Assembly.
4. Mediation Process

Mediation is the first phase in the Information Commission and shall be conducted before the parties can be adjudicated, unless otherwise agreed by the Parties. It is held for any reason except the refusal on the basis of exception.

The process of mediation can be resumed as follows:

- Assignment of Mediator and Commissioner Assembly (shall be in odd number, consisted of 3 persons in minimum) and notification to the Parties;
- Mediation process – within 14 (fourteen) days maximum after the first mediation takes place;
- Result of Mediation:
 - a. If successful, the Parties shall sign a Settlement Agreement in the form of a Mediation Verdict of Information Commission;
 - b. The mediation fails if one party/both parties::
 - declare in writing that the mediation has failed;
 - retire from the mediation
 - are unable to achieve consensus in the time limit provided in this law

5. Adjudication process

Adjudication is conducted for the following reasons:

- Refusal of the request on the basis of exception;
- Mediation process referred above has been conducted, yet has failed or one of the parties/both parties has retired from the mediation process.

The adjudication shall be completed within a maximum of 40 (forty) working days, giving the authority to the Commissioner Assembly to do a consequential harm test and a public interest test to determine whether the information should be subject to exception or not.

Basically, the hearing in Information Commission is divided into two sessions:

- a. First session for the consequential harm test;
- b. Second session for the public interest test – only conducted in the event that the information is legitimately classified under the consequential harm test.

The Result of Adjudication shall be in form of the Commissioner Assembly Verdict, delivered to the Parties and published in the official website of the Information Commission.

II.1.4.3. Dispute Settlement in the Civil Court or Administrative Court (Level 3)

If the Commissioner Assembly Verdict decides that the information cannot be disclosed and one of the parties or both parties declare in writing that the Verdict is not accepted, the Party(ies) may bring the case to the Civil Court or Administrative Court according to its jurisdiction.

There are two possible courts in filing the suit:

- In the event that the subject of the suit involves the State Public Body / State Agency, the suit shall be filed in the Administrative Court;
- In the event that the subject of suit involves a non-State Public Body, the suit shall be filed in the Civil Court.

The filing of the suit to the court shall be preceded with a written statement of one Party / both parties that the Commission Information Verdict on adjudication is not accepted, within 14 (fourteen) working days after such verdict is known by the parties. The Court will resolve in favor or against the Information Commission Verdict.

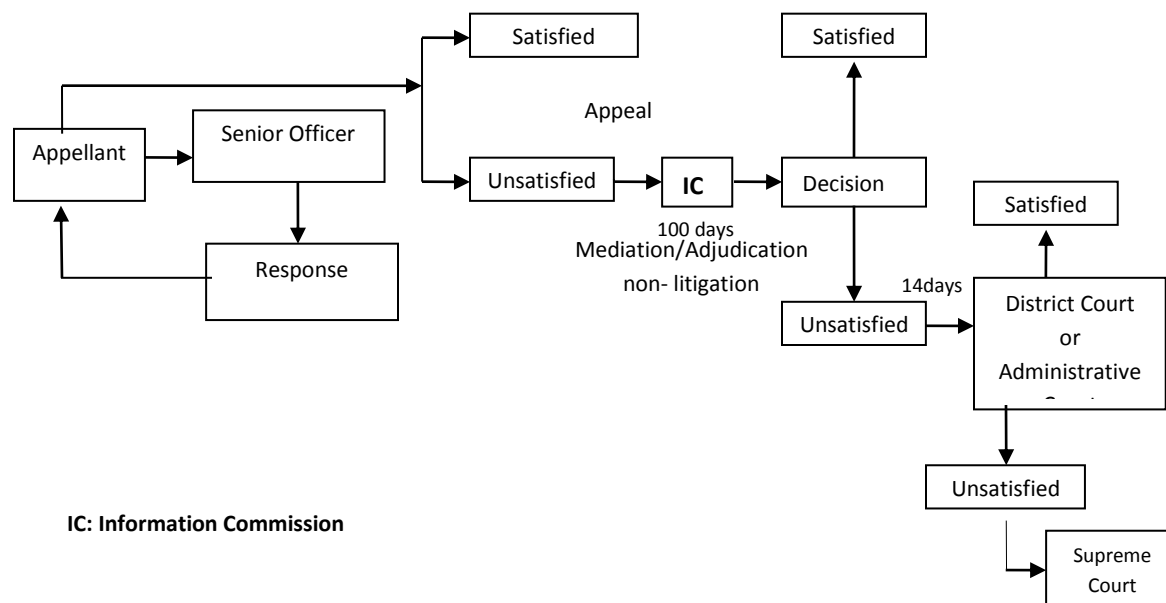
The Verdict shall contain one of these orders:

- the PPID to conduct its obligation according to this law and/or to comply with the time limit of information provision according to this law;
- refuse to grant the request of Public Information Requester;
- decide the cost of duplication of information

II.1.4. 4. Cassation in the Supreme Court (Level 4)

If any Party doesn't accept the Verdict of the Civil Court/Administrative Court, it shall have the right to file a cassation to the Supreme Court within 14 (fourteen) working days after such Verdict is delivered to the parties.

Figure 4. Dispute Settlement Mechanism



II.2. The Right to Government Information and The Right to Environmental Information

In general, freedom of information legislation provides a tool for achieving a type of due process to obtain environmental information or information held by government for public or persons that are affected or may be impacted by government action that may risk their lives and harm the environment. In addition, freedom of information legislation also provides access to justice in case that the public authority fails to provide information (procedure for review/appeal against an agency's decision to withhold information)¹¹.

¹¹ Paramita, Dyah, Access to Environmental Information towards Good Governance in Mining: A Case Study from Indonesia. Dissertation to Pursue Master Degree at the CEPMLP, University of Dundee, 2009

Access to information is a fundamental part of sound environmental protection and sustainable development¹². The availability of such access may enable citizens to obtain information relating to laws and policies potentially affecting the environment; factors affecting or potentially affecting the environment such as pollution and proposed industry projects that could impact on the environment; threats to the environment and how to respond to them.

At the international level, there is a growing movement to increase access to government information about the environment. The Aarhus Convention was the culmination of lengthy attempts within the European Community to integrate citizenship rights with environmental protection. The Convention requires member states to take legal measures to implement its provisions on access to environmental information¹³. The Aarhus Convention defined environmental information as:

Any information in written, visual, aural, electronic or any other material form on: environmental elements covering atmosphere, water, soil, land, landscape, natural sites, biological diversity and its components, genetically modified organisms and the interaction among these elements; Factors covering substances, energy, noise, radiation, activities or measures; The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or through these elements, by the factors, activities or measures aforementioned above¹⁴.

The Convention contributes to the acknowledgement of a broader concept of an environmental information definition, as it goes beyond environmental elements, factors, human and non-human conditions and also covers government measures, assumptions being used for environmental decision making, policies and legislation which affect or may affect the environmental elements. The Aarhus Convention stands as an example of real progress toward a global understanding of what access is and how it can be manifested in national laws and practice¹⁵.

II.2.1. Right to Environmental Information in Indonesia : the Legal Framework

II.2.1.1. Environmental Protection and Management Act

Indonesia is not a party of the Aarhus Convention. However, Environmental Protection and Management Act (EPMA) No. 32 of 2009 recognized the importance of access to environmental information. Under EPMA, environmental information is referred as: the form of data, information or other information related to environmental protection and management, which according to the nature and objective thereof is indeed open for the public, such as document of environmental impact assessment, report, evaluation of environmental monitoring report, compliance monitoring, monitoring of the changes on environmental quality, and spatial planning¹⁶.

¹²Bruch, C.E., *Regional Opportunities for Improving Environmental Governance through Access to Information, Public Participation and Access to Justice*, African Ministerial Conference on Environment, Abuja, Nigeria (3 April 2000)

¹³Mendel, Toby, *Comparative FOI Legislation*, <http://www.fas.org/sgp/foia/comparative.pdf>

¹⁴Article 2 (3), The United Nations Economic Commission for Europe (UNECE) [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#)

¹⁵WRI, *The Aarhus Convention: State-of-the-Art-Access*, available from <http://www.wri.org/publication/content/8530>

¹⁶ Elucidation of the Article 65(2) of EPMA

Article 65(2) stated that “Everybody shall be entitled to environmental education, access to information, access to participation, access to justice in the fulfillment of the right to a proper and healthy environment”. Elucidation of the Article 65 (2) describes that the right to information constitutes a logical consequence of the right to participate in environmental management on the basis of the principle of transparency. The right to environmental information would enhance the value and effectiveness of participation in environmental management, besides opening opportunity for communities to actualize their right to a proper and healthy environment. In addition, the EPMA also mandates the establishment of an information system as follows:

- The Government and regional government shall develop an environmental information system to support the implementation and development of policies on environmental protection and management¹⁷;
- The environmental information system shall be formulated in an integrated and coordinative manner and published publicly¹⁸;
- The environmental information system shall at least contain information about the status of the environment, a map of environmental vulnerabilities and other environmental information¹⁹

Further provision of environmental information systems shall be regulated by the Minister of Environment.²⁰ On 31 October 2011, the Minister of Environment stipulated Regulation No. 6 of 2011 on Public Information Service. Although the basis of the regulation is EPMA Article 62, the regulation does not clearly regulate the environmental information system, but rather reflects more on the Ministry’s policy regarding the implementation of PIDA. Table 1 describes the MoE’s policy in implementing the PIDA regarding the Category of Information, as follows:

Table 1. Category of Information

PIDA	MoE Regulation No. 6 of 2011
Public information which shall be provided and published regularly (Type 1)	<p>Public information which shall be provided and published regularly by the MoE</p> <ol style="list-style-type: none"> a. Information pertaining to the MoE’s profile which includes: <ol style="list-style-type: none"> 1. Information related location or domicile along with complete address, scope of activities, aims and objectives, functions and duties of the Ministry and units under the Ministry; 2. Organisational structure, general description of task force, structural officials’ profile; 3. Wealth report of the officials; 4. Strategic plan of the MoE; 5. Annual report of the MoE; 6. Information regarding program/activities have been conducting by MoE; 7. Specific information which relates to the public’s right; b. Information related the vacancy/recruitment of the MoE; c. Information related the performance of unit/task force in the form of written narrative description which includes information about implementation of program/activities/plan and the outputs; d. Audited financial reports; e. Summary report regarding public access to information which includes: 1) amount of information requests received, 2) Time that is

¹⁷ Article 62(1) of EPMA

¹⁸ Article 62(2) of EPMA

¹⁹ Article 62(3) EPMA

²⁰ Article 62 (4) EPMA

	<p>needed to fulfill the information requests, 3) Amount of the requests that are fully granted or half granted, and requestes that are rejected;4) Reasons to reject the requests;</p> <p>f. Information pertaining to the rights and procedures to access public information, appeal, dispute settlement and parties in charged to be contacted;</p> <p>g. Complaint mechanism, among otherpertaining to: 1) abuse of power by MoE authority, 2) violation by the environmental permit holder; 3) violation of the contract of work with MoE, 4) violation of the EPMA provisions;</p> <p>h. Information/notification on: 1) procurement of goods and services based on laws and regulations, 2) environmental license application and decision, 3) recommendation to obtain toxic and hazardous waste transprotation permit;</p> <p>i. Amount, type, general description regarding violation based on internal inspection and its prosecution report;</p> <p>j. Amount, type, general description regarding violation reported by public and its prosecution</p> <p>k. List of environmental study monitoring activities;</p> <p>l. Information regarding result of the supervision and compliance of the bussiness activities;</p> <p>m. Other public information diclosed to public based on appeal and/or information dispute procedures.</p>
Public information which shall be published immediately (Type 2)	<ul style="list-style-type: none"> Public information which shall be published immediately containing: <ul style="list-style-type: none"> a) environmental impact that threatens public life and public order, b) public information which shall be published immediately at least containing: 1) information related to natural disaster which result environmental pollution and/or damaged, 2) information related to the pollution and/or damaged due to human activities that significantly affected the environment, 3) notification regarding EIA terms of reference; Public information which shall be published immediately aforementioned above, at least containing: a) information related to type, distribution, and areas that are environmentally damaged/polluted; b) potential of hazard, and/or scale of impact that are made, c) parties that are potentially impacted, d) procedure and evacuation site for emergency situation, e) the way to prevent hazard or impact, f) the way to get aid from institutions in charge, g) parties that can be contacted related to pollution and/or damaged which threatened public life and public order, g) measures taken by the MoE or institutions in charged related to the disaster/hazard management and/or impact .
Public information which shall be provided at all times (Type 3)	<p>Public information which shall be provided at all times includes:</p> <p>a. List of public information Regulations, decree and/or policy of the MoE consists of: a) supporting documents such as academic paper, study, consideration as basis of the issuance of regulations, decree or policy; b) inputs ragarding regulations, decree, policy, c) draft of regulation, decree and/or policy d) regulation, decree and/or policy that has been issued;</p> <p>b. Organisation, administration, employment, financial which covers: a) guidance on organisational, administration, employment and financial</p>

	<p>management; b) complete report on organisational, administration and financial management; c) complete report on profile management and employees which cover name, career history/position, educational background, awards, sanctions they got; d) MoE's general budget and the financial report</p> <p>c. Agreement with third parties and its supporting documents</p> <p>d. Requirements and licensing procedures, license that has been issued along with its supporting documents, compliance report (of the license holder related to the license requirement)</p> <p>e. Public information service that has been conducted, infrastructures and facilities available and its condition, human resources handling the public information service and their qualification, budget and the spending report related to the public information service;</p> <p>f. Policy of the MoE stated in the meeting/general meeting;</p> <p>g. Information related to early warning and evacuation procedure in emergency situation at the MoE.</p>
Public information which are classified (under the exception) (Type 4)	Exempted information will be stipulated by PPID based on consequential test in careful manner. The decision regarding exempted information based on Minister approval and prevailing laws and regulation.

EPMA provides a sanction of a year detention and penalty of one billion Indonesian Rupiah to those who provide false information, wrong information, destroy and obliterate information with regard to environmental protection²¹.

II.2.1.2. Environmental License Government Regulation No. 27 of 2012

The substance of the regulation is not only about the environmental license but also the Environmental Impact Assessment.

Table 2. Government Regulation No. 27 of 2012

Environmental License	
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<ul style="list-style-type: none"> In the event of decision making regarding environmental permit for the business/activity which requires EIA, Minister of Environment, Governor, and Regent/Mayor shall announce such environmental permit request after receiving such request. The announcement shall be conducted through multimedia and the announcement board in the business/activity location at the latest in 5 (five) working days after the Environmental Impact Study and Environmental Management & Monitoring Plan (RKL-RPL) are determined to be administratively complete. In the event of decision making regarding the issuance of environmental permit for business/activity which require Environmental

²¹Article 133 of EPMA

	Management & Monitoring Effort (UKL/UPL), Minister of Environment, Governor, and Regent/Mayor shall announce such environmental permit request after receiving such request. The announcement shall be conducted through multimedia and the announcement board in the location of business/activity at the latest in 2 (two) working days after the UKL/UPL form declared to be complete administratively.
Environmental Impact Assessment	
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<p>Article 9 Public Notification regarding EIA</p> <ul style="list-style-type: none"> • Initiator, in making the EIA, shall include the community who: <ul style="list-style-type: none"> ▪ are impacted; ▪ have concern to the environment; and/or ▪ are influenced by any form of decision in the process of EIA • Such inclusion of community shall be conducted before the making of the Term of Reference document, through: <ul style="list-style-type: none"> ▪ announcement of business plan and/or activity; ▪ public consultation • At the latest in 10 (ten) working days since the above-mentioned announcement, community shall have the right to give suggestion, opinion, and responses towards the plan of business and/or activity, which shall be given in writing to the Initiator and Minister, Governor, or Regent/Mayor.

II.2. Right to Environmental Information: Beyond Access to Governmental Institutions?

Considering the importance of environmental information, it leads to a discussion whether the information should be accessed only from the public authorities, or beyond that for example: private entities, or other entities which are not considered public authorities but whose function is providing public service or are under control of public authorities. In other country such as United Kingdom which is one of the parties of the Aarhus Convention, enacted Environmental Information Regulation 2003. There is a slightly different regime between UK FOI Regime and EIR; some of them are²²:

²²Freedom of Information, A practical Guide to Implementing the Act, Kelvin Smith, Facet Publishing London, 2004

Table 3. UK FOI Regime and EIR Regime

UK FOI Regime	UK EIR Regime
Definition of information refer to FOI	Definition of environmental information refers to Aarhus Convention.
All recorded information held by public authorities are the concerns of FOI	EIRs concern all record of environmental information held by public authorities. Public authorities in this context might also include private sector organizations that provide public services or exercise public functions under the control of public body.

In Indonesia, based on PIDA, the obligation to provide information (including environmental information) belongs to Public Bodies. However, EPMA has its own definition regarding environmental information aforementioned above and mandates the obligation of anybody who is running a business and/or activity to provide information related to environmental management and protection truthfully, accurately, transparently and punctually²³. In this case, it is argued that private business entities are obliged to provide environmental information. However, it is still unclear whether such information should be provided to the government or to the public. Nevertheless, apart from EPMA, specific regulation addressing air and water pollution control obliges business activities (private entities) to provide environmental information to the public. This can be seen in Chapter 3 and Chapter 4.

Table 4. PIDA and EPMA

PIDA	EPMA
Definition of information refer to FOI	Definition of environmental information refers to EPMA
All recorded information held by Public Bodies are the concerns of FOI	EPMA concern all record of environmental information held by Public Bodies The definition of Public Bodies refers to Governmental Institutions and Institutions (e.g. private) that received state budget/public funding. EPMA provides obligation to everybody running business and/or activity to provide information related to environmental management and protection

²³ Article 68 (a) EPMA

CHAPTER III

Air Pollution Control : Regulatory Framework

In general, air pollution control is regulated under Government Regulation No. 41 of 1999 on Air Pollution issued on May 26, 1999 and enters into force on the stipulating date. Regarding this Government Regulation, air ambient quality protection is based on: air ambient quality, emission standards, exhaust gas emission standards, obstruction level standards, noise level standards, and air pollution index standards. Government stipulated the national air ambient standard by using 13 (thirteen) parameters. The Governor, as the head of the province, has the authority to stipulate regional/province ambient air standards at the same level as national standards or stricter than national standards. Table 5 shows the regulatory framework of air pollution control, especially those that are relevant to the coal fired power plant activities.

Table 5. Air Pollution Control Framework – Related to Coal Fired Power Plant

No	Regulations	Contents
1	Government Regulation No. 41 of 1999 on Air Pollution	Stipulates general rules regarding the air pollution control
2	Minister of Environment Decree No. Kep 45/MENLH/10/1997 on Air Pollution Standard Index.	The Decree aims to develop a mechanism to disclose the level of air pollution. There are 6 parameters that are used: Particulate, Carbon monoxide, Sulfur dioxide, Nitrogen dioxide, Ozone.
3	Minister of Environment Decree No. Kep-48/MENLH/11/1996 concerning Noise Level Standards.	Indicates the noise level standard, measurement method, measurement and evaluation on noise level.
4	Minister of Environment Decree No. Kep-49/MENLH/11/1996 concerning Vibration Level Standards.	Indicates the vibration level standard, measurement method, measurement on vibration level.
5	Minister of Environment Decree No. Kep-50/MENLH/11/1996 concerning Offensive Odor Level Standards.	Indicates the offensive odor level standard, measurement method.
6	Decree of The Head of Environment Impact Management Agency Number Kep-205/BAPEDAL/07/1996 on Technical Guidelines on Control of Air Pollution from Stationary Sources.	Technical guide to control air pollution from stationary sources. The Decree consist of 4 attachments indicate air quality control implementation, sample and analysis, exhaust requirements, and pollution control unit.
7	Decree of The Head of Environment Impact Management Agency Number 107 of 1997 on Air Pollution Standard Index Calculation, Reporting and Information.	Describing the institutions in charge, requirement, format of the report delivery, and parameters with examples of daily air monitoring report to the communities.

Further, Table 6 shows the obligation of Public Bodies and Business Entities to provide information to the public under the air pollution control regulatory framework.

Table 6. Access to Information

Government Regulation No 41 of 1999 on Air Pollution Control	
Guarantee	Article
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<ol style="list-style-type: none"> Article 26 stated that in the event the monitoring result shows standard index of air pollution reached 300 or more, it means that the air is in a dangerous state. Therefore, Minister and/or Governor shall establish and/or announce state of emergency. Such announcement made public through printed and/or electronic media. Article 49 stated that Government shall keep and announce to the society regarding result of inventory and monitoring of ambient air quality standard, emission standard, standard level of disturbance and ISPU conducted by supervisory authority.
Obligation of Business Actor to Provide and Announce Information	<ol style="list-style-type: none"> Article 21 letter c stated that everyone conducting business and/or activity resulting emission and/or standard level of disturbance to ambient air shall give accurate and valid information to society. Article 35 par (2) stated that the management of the business and/or activity shall announce number of pollutant parameter of emission test result on newest type motor bikes. Article 42 par (2) stated that the management of business and/or activity shall announce the number of pollutant parameter as the result of noise type-test of newest type motor bikes.
Ministry of Environment Decree no. 45 of 1997 regarding ISPU (Air Pollution Standard Index)	
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<ol style="list-style-type: none"> Article 5 par (1) stated that Head of Pollution Control Board shall deliver ISPU to the society, nationally and on daily basis. Article 5 par (6) stated that Regent/Mayor shall deliver ISPU information to the society in his area on daily basis.
Minister of Environment Decree no. 13 of 1995 regarding Emission Standard from Stationary Sources	
Doesn't have any provision on access to information	
Head of Bapedal Decree No. 107 of 1997 regarding Technical Guidelines on Measurement and Reporting and Information on ISPU (Air Pollution Standard Index)	
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<p>Article 8 in par (1) states the requirements of content in delivering ISPU to society, inter alia:</p> <ol style="list-style-type: none"> Time of report; Location reported; ISPU of each measured parameter; Maximum ISPU, etc <p>Furthermore, in par (2) it is stated that the format of delivering ISPU to society as provided in Art. 8 are conducted through:</p> <ol style="list-style-type: none"> Mass media and electronics; Demonstration Board in several public places
Minister of Environment Decree No. 49 of 1996 regarding Raw Vibration Level	

No express provision on providing information to society
Minister of Environment Decree No. 50 of 1996 regarding Quality Standard on Level of Odor
No express provision on providing information to society

Based on the analysis of the framework, it is concluded that²⁴:

1. Regarding the standard setting related to the air quality, the fulfillment of access to information is very minimally regulated, except for ISPU, whereas, the parameter used in some standards **are related to the health of the community**. Commitment is lacking regarding public participation and establishing standards of air quality.
2. Regarding air pollution prevention, people conducting business or activities have been obligated to announce its compliance with the standards, conduct prevention and countermeasures for the air pollution. But this GR does not regulate how the mechanisms and steps of such announcement are conducted. This is important to ensure the people conducting business or activities can comply with the regulation.
3. Regarding air pollution control, the government shall announce to the society if the level of air pollution has reached an ISPU of 300 or higher, which constitutes an environmental emergency. Such announcements are made through printed or electronic media. Although this regulation has been more clear regarding the means of announcements, on mechanism, the provision regarding content of the information is not clear enough. For example, announcements may not include the causal factors or what actions can be taken by the community in responding to such conditions which can have an impact on the community's health.

²⁴ Subagiyo, Henri, *Hak atas Informasi Lingkungan: Refleksi atas Pengaturan dan Penerapan Ketentuan Mengenai Pemenuhan Akses Informasi dalam Perlindungan dan Pengelolaan Lingkungan Hidup di Indonesia*, Thesis untuk Master Hukum, Fakultas Hukum Universitas Indonesia p.71, January 2013

CHAPTER IV

Water Pollution Control: Regulatory Framework

Government Regulation No. 82 of 2001 on Water Quality Management and Water Pollution Control was issued and enforced on December 14, 2001. Government Regulation No. 82 of 2001²⁵ classifies water quality into four levels:

1. Level one: water used for drinking water, and/or another utility that requires the same water quality.
2. Level two: water used for water recreation facilities, fresh water fish breeding, breeding, plant irrigation, and/or another utility that requires the same water quality.
3. Level three: water used for fresh water fish breeding, breeding, plant irrigation, and/or another utility that requires the same water quality.
4. Level four: water used for plant irrigation, and or another utility that requires the same water quality.

Necessary parameters relative to respective water use are then classified into:

1. Physical parameters,
2. Inorganic chemical substance,
3. Microbiology,
4. Radioactivity,
5. Organic chemical substance, in which the value of each parameter is indicated.

Detailed parameters regarding physical parameters, chemical, microbiology and radioactivity are available in the Attachment 2 of the report.

The structure of local government in general is the Province, in which under the Province there are Regencies (*Kabupaten*) and Cities (*Kotamadya*). Under Regency or Cities there are Counties (*Kecamatan*), Towns and Villages (*Kelurahan*). Among local municipalities there are Special Administrative Districts such as Jakarta, which have the same authority as provinces which are assigned the same level of autonomy. Regulations on effluent standards are stipulated by local government and may vary in different administrative districts. Referring to Article 11 and Article 12 of the Government Regulation No. 82 of 2001, Government and Provincial Government have the authority to stipulate more rigid water quality standards or give additional parameters. Table 7 shows the regulatory framework of water pollution control that is relevant to the pulp and paper activities.

Table. 7 Water Pollution Control Framework – Related to Pulp and Paper Industry

No	Regulation	Contents
1	Water Resources Act No. 7 of 2004	The law manages the management of water resources in general
2	Government Regulation (GR) no. 42/2004	Implementing regulation of the Act No. 7 of 2004, further

²⁵ Article 8 of GR No. 82 of 2001

	regarding Water Resources Management	detailing on how the water resources should be managed
3	GR no. 82/2001 regarding Water Pollution Control	The decree stipulates the standard of water and general measures for pollution control
4	Minister for Environment Decree No. KEP-51/MENLH/10/1995 regarding Liquid Waste Quality Standards for Industrial Activities.	The decree stipulates the liquid waste quality standards for industrial activities.
5	Minister of Environment Decree No. 3 of 1998 regarding Liquid Waste Quality Standard for Industrial Area.	The decree stipulates liquid waste quality standard for industrial area. The decree has 2 (two) attachments. Attachment I contains table of liquid waste quality standard. Attachment II contains elucidation on maximum pollution load to determine liquid waste quality standard.
6	Minister of Environment Decree No. 110 of 2003 regarding Guideline on Setting Out Load Capacity in Water Pollution at Water Resource.	The decree provides guideline on setting out load capacity in water pollution at water resource as the application of Article 23, subsection (4) of the Government Regulation No. 82 of 2001. Method to calculate the load capacity is provided in this guideline.
7	Minister of Environment Decree No. 112 of 2003 regarding Domestic Waste Water Quality Standard.	The decree stipulates the domestic waste water quality standard produced by real estate, office building, apartments, mall/shopping center, restaurant and dormitory.
8	Minister of Environment Decree No. 114 of 2003 regarding Guideline to Classify Water Group.	A guideline for water group classification.
9	Minister of Environment Decree no. 115 of 2003 regarding Guideline to Determine Water Quality Status.	The decree provides a guideline to determine water quality status using STORET method or Pollution Index method.
10	Minister of Environment Decree No. 122 of 2004 on Amendment of Minister of Environment Decree No. KEP-51/MENLH/10/1995 on Liquid Waste Quality Standards for Industrial Activities.	The decree amends the parameter of liquid waste for fertilizer industry as it is regulated by Minister of Environment Decree No. KEP-51/MENLH/10/1995, and stipulates the new quality standard of the liquid waste for fertilizer industry.
11	Minister of Environment Regulation No.1 of 2007 regarding Technical Assessment Guideline for Water Classification	The regulation includes methodology and stages to assess the water classification
12	Minister of Environment Regulation No.3 of 2009 regarding Competence Certification and Competency Standard for Water Pollution Control Manager	The regulation includes core definitions, requirement for certifying institution, certification process, monitoring, financing.
13	Minister of Environment Regulation No.1 of 2010 regarding Water Pollution Control Procedure	The regulation includes core definitions, scoping, pollutant source identification and inventory, determination of carrying capacity for water pollution burden, liquid waste quality standard determination, pollution control policy making, permitting (related environmental permit, procedures, requirement), monitoring, control and development, information access, financing. This regulation

14	Minister of Health Regulation No. 492/Menkes/Per/IV/2010 regarding Requirements of Drinking Water Quality Standard	repealed the Minister of Environment Regulation No.111 & 142 of 2003. The regulation stipulates the requirements for drinking water
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Further, Table 8 shows the regulatory framework of water pollution control and identification related to the obligation of Public Bodies and Business Entities to provide information to the public.

Table 8. Access to Information

Water Resources Act No. 7 of 2004	
Guarantee	Article
Access Right	<ol style="list-style-type: none"> Article 82 letter a stated that in water resources management, society shall have the right to get the information related to water resources management. Article 66 par (2) provides warranty to society to be able to acces water resources network managed by various institutions.
Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<ol style="list-style-type: none"> Article 62 par (2) stated that the competent authority, due to its field of work shall announce publicly the draft plan of water resources management to society. Article 67 par (1) stated that Government and local government and also the managing authority of the water resources, due to its authority, shall provide information on water resources to all parties who have interest in the matter of water resources. Article 67 par (3) stated that Government, local Government, water resources managing authority, legal bodies, organization, institute and natural person who conduct acitivities related with water resources shall have responsibility to warrant the accuracy, validity, and timeliness of the information given.
Obligation of Public Bodies to Develop Information System on Water Resources	<ol style="list-style-type: none"> Article 65 par (1) stated that to support water resources management, Government and local government shall conduct information system management on water resources, based on its authority. Article 66 stated that network system on water resources is network information on water resoruces which is disseminated and managed by various institution, where this network is accessible to various parties who have intereset in the matter of water resources. Article 77 par (2) letter a stated that the type of funding on water resources management shall include the funding on information system.
Obligation of Water Resources Managing authority to Provide and Announce Information	<ol style="list-style-type: none"> Article 67 par (1) stated that Government and local Government and also the managing authority of water resources, due to its authority, provide information on water resources to all interested parties in the matter of water resoruces. Article 67 par (3) stated that Government, local Government, water resources managing authority, legal bodies, organization, institute and natural person who conduct acitivities related with water resources shall have responsibility to warrant the accuracy, validity, and timeliness of the information given.
Government Regulation (GR) no. 42/2004 regarding Water Resources Management ("PP PSDA")	

Obligation of Public Bodies to Provide and Announce Public Information (proactive disclosure)	<ol style="list-style-type: none"> Article 47 par (3) stated that before the construction and/or operation and maintenance of water resources infrastructure is conducted, the initiator inform to the society group which estimated as impacted by the construction activity. Article 87 par (2) stated that disaster prevention activity is conducted through development which includes: dissemination of information and counseling. Article 91 stated that Government and/or local Government, due to its authority and responsibility, shall conduct dissemination of information and counseling.
Obligation of Public Bodies to Develop the Information System on Water Resources	<ol style="list-style-type: none"> Chapter 1 regarding Information System Art. 115 par (2) stated that funding of water management includes funding on information system. Art. 115 par (3) stated that the cost of information system is the cost needed for collection, procession, storage, and dissemination of water resources information.
GR no. 82/2001 regarding Water Pollution Control	
Access Right	<p>Article 30 par (2): Everyone has equal right to get information regarding status of air quality and management on air quality and control on air pollution.</p> <p>In its elucidation , stated: Such information regarding water quality and control on air pollution can have the form of data, explanation, or any other information related to water quality management and/or control on air pollution which are due to its nature and objective indeed open to be known by the society, i.e. analysis document on environmental impact assessment, report and evaluation on air monitoring, either monitoring on management and water quality alteration, also plan of land use.</p>
Obligation of Public Bodies and/or private sector to provide information	<p>Article 32: Everyone conducting business and/or activity shall have the obligation to give accurate and valid information regarding implementation of water quality management and control on water pollution.</p> <p>In its elucidation, stated: Such business inter alia including industry, mining and hospitality. Such activity inter alia laboratory of research activity and education, hospital's public facility, slaughterhouses and land clearing activities, projects on public road infrastructure, and landfills.</p> <p>Such valid information is aimed to evaluate the compliance of the business and/or activity management towards the regulation.</p> <p>Article 34: Par (1) Every business and/or activity management shall deliver report on management of requirements on waste water to ground application.</p> <p>Par (2): Every business and/or activity management shall deliver report regarding management of requirements on dumping of waste water to water or water sources.</p> <p>Par (3): Report as provided in par (1) and (2) shall be submitted minimum once per 3 (three) months to the Regent/Mayor with copy delivered to Minister.</p>
Obligation of Public Bodies (government) to provide information.	<p>Article 33: Government and provincial government, regency / city government shall give information to the society regarding management on water quality and water pollution control.</p> <p>In its elucidation, stated:Disclosure of information conducted through printed</p>

	<p>media, electronic media or announcement board, including inter alia:</p> <ul style="list-style-type: none"> a. status of water quality; b. danger to the society and ecosystem's health; c. source of pollution and other causes; d. impact to the society's life; and/or e. steps conducted to minimize the impact and attempt on air quality management and/or water pollution control.
Minister of Environment Decree No. KEP 51/MENLH/10/1995 on Waste Water Treatment for Industry Activities	
	Does Not Explicitly Mandated Information Disclosure
Minister of Environment Decree no. 110 of 2003 regarding Guidelines on Establishment of Pollution Carriage Capacity in Water Sources	
	Does Not Mandated Information Disclosure
Minister of Environment Decree no. 114 of 2003 regarding Guidelines on Study to Determine Water Class	
Access Right	Article 2 par (3) stated that based on study of the water quality to get information regarding need of water and in the drafting process of water management as provided in par (1), the suggestions are asked to the society through hearing.
Ministry of Environment Regulation No. 01 of 2007 regarding Technical Guidelines for Establishing Water Class	
	Does not mandated information disclosure
Ministry of Environment Regulation no. 1 of 2010 regarding Governance on Water Pollution Control	
Access Right	No express mandate on access right
Obligation of Public Bodies and/or private sector to provide information	Does not mandated information disclosure for private
Obligation of Public Bodies (government) to provide information.	<p>Article 30 stated that Regent/Mayor shall give information to the society regarding:</p> <ul style="list-style-type: none"> a. Requirements and governance of environmental permit related to waste water dumping to water sources and permit on waste water use to the ground for land application; and b. Status of permit application. <p>Furthermore, Article 35 provides that "Ministry, governor or regent/mayor, due to its authority conduct development to water pollution control from household waste inter alia through: ... (f) dissemination of information and/or campaign on household waste water management."</p> <p>Article 41 Para (1) Ministry, Governor or Regent/Mayor, due to its authority provides information in the form of publication to the society regarding management of water quality and water pollution control;</p> <p>Article 41 Para (2) Information as provided in par (1) includes:</p> <ul style="list-style-type: none"> a. Information on source of pollution based on inventory; b. Information of water sources, containing: (i) Maximum debit and minimum debit of water sources; (ii) Water class, Status of water quality and/or status of water thropic, and load capacity of water pollution in the water sources; (iii) Targeted water quality and activity and achievement of pollution control activity in water sources; c. Environmental permit related with dumping of waste water and environmental permit related with utilization of waste water on ground; d. Regulations related with the management of water quality and water

	<p>pollution control.</p> <p>Para (3) Minister, governor or regent/mayor, due to its authority shall update the information as provided in par (1) at least 1 (once) every year.</p>
<p>Minister of Health Regulation No. 492/Menkes/Per/IV/2010 regarding Requirements of Drinking Water Quality Standard</p>	
<p>Doesn't state access to information explicitly</p>	

Based on the framework it is concluded that²⁶:

1. Government Regulation No. 82/2001 has regulated the right of community to obtain information and participate in the decision making process., It also provides a sanction, but only for the violation for the people who conduct business or activities who obstruct information.
2. Regulation regarding the fulfillment of information is general. It does not provide details regarding the management of water quality at every level. For example, it doesn't stipulate how the information is given regarding planning, issuing permits, and monitoring.
3. Regulation concerning mandatory disclosure in the level of business/activity implementation is still weak because:
 - i. There is no regulation concerning what kind of information shall be given related to the implementation of water quality and pollution control management, nor the type of information which shall be given by the government.²⁷
 - ii. Information regarding the performance record of the business actors is not announced.

²⁶Subagiyo, Op.cit , p. 78

²⁷ Article 32, Article 33 of GR No. 82 of 2001 and its elucidation

CHAPTER V

STRIPE: Accessing the Rights

V. Accessing the Right to Environmental Information

Under the STRIPE project, researchers (from NGOs) and community members submitted information requests related to air and water based on agreed indicators in Attachments 3 and 4.

V.1. Findings from Accessing Environmental Information: Air- Coal Fired Power Plant Case Study

In order to overcome the power supply crisis, the Government of Indonesia enacted Presidential Regulation no. 71 of 2006 which assigned PT PLN Persero to conduct development acceleration of coal-based power plants, with the total capacity target reaching 9162 Megawatts²⁸ by building 28 steam-based power plants in Sumatera, Java, Bali, Borneo, Papua and other places in Eastern Indonesia.²⁹ The massive development of such power plants without any improvement on environmental management and good monitoring will negatively impact the environment and health. Operation of the coal-based power plants generally have bad impacts on the environment. They emit mercury and greenhouse gasses, and they release volatile organic compounds (easily evaporating organic substances), and dust particles which can irritate the respiratory system.³⁰

Under the STRIPE, studies and requests of information related to the operation of the Tanjung Jati B Power Plant and the attempts to control the air pollution in the area of Tubanan Village were conducted. Tanjung Jati B Power Plant operates at Tubanan Village, Kembang Sub-District, Jepara Regency, Central Java with the capacity of 1 x 700 Mw and 2 x 660 Mw and supplies the needs of approximately 9% of the total power supply in Java, Bali and Madura electricity system. The EIA of the TJB Power Plant stated the possibility of health risks that will occur to society, especially increased incidences and types of upper respiratory tract infections (Id: *infeksi saluran pernafasan atas* "ISPA"). It also forecasts the possibility of increased complaints by the communities regarding the operation of the power plant, such as children suffering respiratory problems and problems with agricultural productivity.³¹

Based on the methodology provided by World Resources Institute (WRI), the pollution control process involved several phases that are shown in Figure 5.

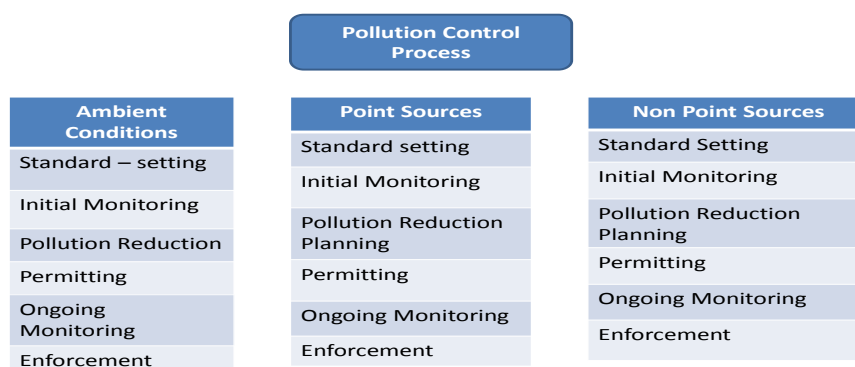
²⁸ Acceleration Program on Power Sector, Kadin 2006 http://www.esdm.go.id/regulasi/pp/doc_download/682-program-percepatan-sektor-ketenagalistrikan.html

²⁹ Presidential Regulation no. 71 of 2006 regarding Assignment to State-Owned Electricity Enterprise to Conduct Development Acceleration of Coal-Based Power Plant

³⁰ Emission of Hazardous Air Pollutants from Coal-fired Power Plants, Environmental Health and Engineering, March 7, 2011

³¹ Environmental Impact Study of TJB Power Plant Unit 3 and 4, 2007, page 5-45, 5-50

Figure 5. Pollution Control Process



Under the STRIPE project, the researchers and community members in Jepara requested information for the categories of Standard setting, Initial Assessment, Permitting, Monitoring, Enforcement and Review, Pollution Reduction. The researchers added the “Community Requests” to the list in order to accommodate community members’ concern relating to other aspects that do not directly relate to air quality and pollution control. For example, a community member requested information regarding the extension plan for the coal fired plan because he wanted to know whether the project would take his land or not. The categories are shown in Table 9 below.

Table 9. Air – Information Category

	Requested Information	Information Received
Standard Setting	2	2
Initial Assessment	4	0
Permitting	7	0
Monitoring	31	4
Enforcement and Review	17	11
Pollution Reduction	20	4
Community Requests	3	3
Total	84	24

Regarding information requests related to air quality and pollution control as well as the activity of the TJB coal fired power plant (point sources), the researchers and community members in Jepara, submitted 53 requests for information which were submitted to 15 Public Bodies at the local level and 3 Public Bodies at the national level, which are listed below:

1. Environmental Agency –Jepara Regency
2. Environmental Agency – Central Java
3. Legal Bureau of Regional Secretary of Jepara Regency
4. Coal Fired Plan Tanjung Jati B (TJB)
5. Integrated Permitting Service Board – Jepara
6. PLN UPJ Bangsri
7. PPID – Jepara
8. Tax Agency-Jepara
9. Agrarian Agency
10. Health Agency -Jepara District
11. Planning and Development Agency –Jepara
12. Cipta Karya Spatial Planning- Agency
13. Fisheries and Marine Agency-Jepara
14. Agriculture and Farming Agency-Jepara
15. Social, Labor and Transmigration Agency
16. Ministry of Environment
17. PT. PLN (Electricity State Owned Enterprises)
18. Directorate Technical and Electricity Environment, Ministry of Energy and Mines

The result of the information requests is shown in Table 10.

Table 10. Air Information Requests

	Respond from Requests	Respond from Appeals	Respond from Dispute Settlement
Granted	11	6	2
Complete answer	8	1	2
Incomplete answer	0	0	0
Not comprehensible	3	5	0
Mute refusal	33	32	0
No information held/Not under authority	0	2	7
Pending /still in process)	0	0	0
Refused	0	0	17
Get respond but the requester not satisfied	9	3	0

Note: Total Requests 53, Internal Appeal: 43, Dispute Settlement: 26

Besides the information requests related to air and coal fired plant activities, community members also submitted 21 requests for information from the Public Bodies regarding matters concerning community members but do not directly relate to the air quality and pollution control or the

environmental impact of the coal fired plant. Table 11 shows the result of information requests under the Community Requests Category.

Table 11. Community Requests

	Respond from request	Respond from Appeal	Respond from Dispute Settlement
Granted	1	1	3
Complete answer	1	1	3
Incomplete answer	0	0	0
Not comprehensible	0	0	0
Mute refusal	19	18	0
No information held/Not under authority	0	1	4
Pending /still in process)	0	0	0
Refused	0	0	9
Get respond but the requester not satisfied	1	0	0

Note: Total Requests 21, Internal Appeal: 20, Dispute Settlement: 16

V.1.1. Findings from Environmental Information : Air - Coal Fired Power Plant Case Study

Under the STRIPE project, the STRIPE Team in Indonesia did not only concern itself with the fulfillment of the right to environmental information, but also analyzed the information obtained in order to assist community members to understand more about the problem and capture the condition related to the air pollution control and coal fired plant Tanjung Jati B activities. Thus, it is found that:

1. Air Pollution Control, from PLTU TJB Activity

- The result and location of the control stationd which monitor air quality are not shared with the community;
- Data related to the result of air quality control is still difficult for the community in Tubanan Village³² and people in general³³ to understand.
- EIA reports don't cover other harmful substances released/emitted into the environment e.g mercury, volatile organic compounds released by coal fired power plant.

³² Education Profile of Tubanan Village resident in the end of 2006 are 22.46% (not/not yet entered school), 14.19% (not graduated from elementary), 35.33% (graduated from elementary), 18.08% (graduated from junior high school), 9% (graduated from senior high school), 0.44% (Diploma I/II), 0.31% (Diploma III/Sarjana Muda), 0.19 (Bachelor). Source: ANDAL PLTU TJB Unit 3 and 4, page 3-75, year 2007

³³ To interpret such data, STRIPE team need assistance from Mark Chernaik, Oregon, and expert of air quality, Dr Kania Dewi, from Bandung Institute of Technology, Indonesia.

2. AMDAL/EIA Information and Health of Community

- The community does not know about the AMDAL/EIA documents, nor how to read them;
- The community does not know the steps to be taken in overcoming the impacts from the PLTU TJB Operation;
- Cumulative impact is not analyzed in the document and report of AMDAL/EIA;
- There is no monitoring on health of the community related with PLTU TJB Operation;
- ISPA (upper respiratory tract infection) is relatively high and this matter has been foreseen in AMDAL/EIA however without explanation on what the community should do.

3. Supervision towards the business activity

- Supervision of the business activity is still based on the report and effort conducted by the business enterprises;
- Supervision is not conducted by further processing of the data (by seeing the continuing development at the international level as well as the cases occurred);
- Result of the supervision is not being used to improve policies and/or regulation;
- Supervision towards the business activity has not involved community participation;
- Capacity of regional supervisors are not sufficient quantitatively nor qualitatively.

4. Standards

- The air quality data of ambient quality in the vicinity of TJB for particulate matter in table 3 below presents information about total suspended particulates (TSP), airborne particles (with a diameter of less than 100 microns). On the other hand, almost all international and national health-based ambient air quality standards are defined in terms of respirable particulate matter, commonly described as airborne particles (with a diameter of less than 10 microns/PM-10); and very fine particulate matter, commonly defined as airborne particles with a diameter of less than 10 microns (PM-2.5)³⁴. Based on the interpretation of the data, under Indonesian regulation, the ambient quality does not violate Indonesian standard but if it is converted to international standard, it is considered a violation and might be harmful to health.

Table 12. Air Quality Data of Ambient Quality in Vicinity of TJB

Sample location	Date	TSP (measured), ug/m3	PM10 (inferred), ug/m3	PM2.5 (inferred), ug/m3
UA 2 Desa	2-4 Aug 2010	127.4	63.7	31.9
UA 3 Balong	2-4 Aug 2010	91.0	45.5	22.8
UA 4 Jinggotan	2-4 Aug 2010	85.3	42.7	21.3
UA 5 Guyangan	2-4 Aug 2010	92.3	46.2	23.1
UA 6 Jambu Timur	2-4 Aug 2010	137.9	69.0	34.5

³⁴ Mark Chernaik, E-law scientist, Oregon, STRIPE data interpretation, 2012

UA 7 Karanggondong	2-4 Aug 2010	84.0	42.0	21.0
Tubunan Village	12-13 Sep 2011	261.3	130.7	65.3
Tubunan Village	13-Sep-11	129.4	64.7	32.4
Tubunan Village	13-14 Sep 2011	148.3	74.2	37.1
Tubunan Village	14-Sep-11	254.0	127.0	63.5
Tubunan Village	14-15 Sep 2011	260.3	130.2	65.1
Tubunan Village	20-21 Sep 2011	88.5	44.3	22.1
Tubunan Village	21-22 Sep 2011	96.3	48.2	24.1
Tubunan Village	22-23 Sep 2011	127.3	63.7	31.8
Average, Tubunan Village, Sep 2011		170.7	85.3	42.7
<u>Health-based standards</u>				
Indonesian 24-hour standard		230	150	none
WHO 24-hour standard			50	25
WHO annual standard			20	10

Note:

Red: P10 and PM 2.5 exceeded 24 hours WHO quality standards

Yellow: Concentration of PM10 and PM 2.5 exceeded annual WHO quality standard

V.2. Findings from Accessing Environmental Information: Water – Pulp and Paper Industry Case - Study

Ciujung river flows from Lebak Regency, and empties into Banten Bay, Serang Regency.³⁵ Ciujung River is the longest river in Banten Province and has significant importance in fulfilling the needs of the community, i.e. for bathing, washing, and as a natural toilet especially for the people living along the river, such as the community of Pontang³⁶, Tirtayasa³⁷ and Tanara (Pontirta) Regency, Banten Province. Access of communities to clean water is quite limited. Generally, the communities of Pontang, Tirtayasa

³⁵ Monitoring Report, Condition and Toxicity of Industrial Waste at Ciujung River, Center for Research and Development on Fisheries, 1993

³⁶ Pontang Regency is consisted of 15 villages, having population of 51.811 people. Source: Serang Regency in Number 2010, Central Statistic Body, Serang Regency

³⁷ Tirtayasa Regency is consisted of 14 villages, having population of 41.382 people. Source: Serang Regency in Number 2010, Central Statistic Body, Serang Regency

and Tanara satisfy their needs for water from the river, the Local Government's Water Company, artesian wells, and rainwater.³⁸

Nevertheless, the quality of Ciujung River keeps degrading. Industrial activity along Ciujung River has allegedly worsened the water quality of the river.³⁹ The amount of liquid waste from industries discharged into the Ciujung River reached 43,044.35 m³/day.⁴⁰ The documented contribution of industrial waste dumping into the Ciujung River is as follow:

Table 13. Contribution of Industrial Waste Discharge to the Ciujung River

No	Companies	Waste Debit (m ³ /day)	Contribution (%)
1	PT Indah Kiat Pulp and Paper	40.000	92.93
2	PT Cipta Paperia (Paper)	1.555	3.61
3	PT Pichon (Leather)	4.2	0.01
4	PT Intercipta (Chemical)	10	0.02
	Total	41.569,2	

Total of industrial waste water discharged into the Ciujung river: 43.044,35 m³/day

Table 14. Contribution of Industrial Waste Discharged into the Cikambuy River (tributary of the Ciujung River)

No	Companies	Waste Debit (m ³ /day)	Contribution (%)
1	PT CPJF (Charoen Pokphand Jaya Farm)	1.461	3.39
2	PT JM Mutu (chemicals of oil drilling, mud, cementing production)	0.1	0.00023
3	PT Lapi Laboratories (pharmaceutical company)	5	0.116
4	PT Berry (fertiliser distributor)	6.7	0.0156

³⁸ Interview to society, February 2010

³⁹ Polluted condition was medium – heavy, located in the area of Kragilan and Tirtayasa. Sources: Euis Nursetiya Supartiwi, 2000, *Karakteristik Komunitas Fitoplankton dan Perifiton Sebagai Indikator Kualitas Lingkungan Sungai Ciujung, Jawa Barat* (En: Characteristic of Fitoplankton and Perifiton Community as Indicator of Ciujung River Environmental Quality, West Java <http://repository.ipb.ac.id/bitstream/handle/123456789/23928/C00ENS.pdf?sequence=2>

⁴⁰ Environmental Monitoring Board of Serang, 2011

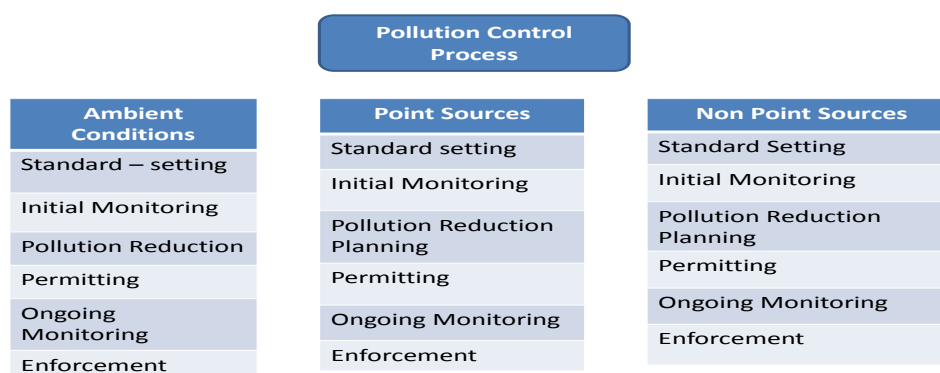
5	PT Yarindo (pharmaceutical company)	1.8	1.0042
6	PT Kuangling Ceramic (Ceramics products)	0.05	0.000116
7	PT Fajar Purnama Pratama (chemicals)	0.5	0.00116
	Total	41.569,2	

Source: BPLH Serang, 2011

The degradation of the Ciujung River water quality raises protests and restlessness from communities around the Ciujung River, especially in Pontang, Tirtayasa and Tanara. These communities conducted protests and pushed the government to address the Ciujung River pollution⁴¹. The community does not get information related to industrial activity along the Ciujung River and its consequence to the environment, specifically the liquid waste of PT IKPP which is dumped into the Ciujung River in considerable amount (based on Table 9).

Based on the methodology provided by World Resources Institute (WRI) the water pollution control process involved several phases that are shown in Figure 6.

Figure 6. Pollution Control Process



The STRIPE team consisted of Indonesian Center for Environmental Law, WALHI and *Forum Kebangkitan Petani dan Nelayan* (FKPN, En: Revival of Farmers and Fishermen Forum) and The Access Initiative working together to empower members of the community in the Pontang area. The goal is to improve the quality of life and environment through access of information, regarding the Ciujung River pollution from the pulp and paper industry. The information requests are limited to category Standard setting, Initial Assessment, Permitting, Monitoring, Enforcement and Review and one added category which is “Community Requests”. This additional category is to accommodate community members’ concern related to other aspect that are not directly related to water quality and pollution control. For example, community

⁴¹Protes Pencemaran Sungai Ciujung, 19 Oktober 2011, <http://beritadaerah.com/denyuts/getContent/43120>

members requested information related to the PT IKPP Company's revenue contribution (tax) to the region. The categories of information are shown in Table 15 below.

Table 15. Information Category -WATER

	Requested Information	Information Received
Standard Setting	15	4
Initial Assessment	32	16
Permitting	5	1
Monitoring	13	8
Enforcement and Review	18	7
Community Requests	17	11
Total	100	47

Regarding information requests related to water quality and pollution control as well as the activity of the PT IKPP, the researchers and community members in Serang, submitted 84 requests for information to 14 Public Bodies at the local level and 3 (three) Public Bodies at the national level. The Public Bodies are listed below:

1. Environmental Agency – Serang,
2. Environmental Agency – Banten Province
3. Public Works Service Office on Water - Serang Regency
4. Ciujung and Cidurian River Stream Area General Board
5. PDAM (water company) Serang Regency
6. Health Office of Serang City
7. Public Health Center, Tirtayasa
8. Legal Bureau of Regional Secretary, Banten Province
9. Local Secretariat, Serang Regency
10. Statistic Beureau, Serang Regency
11. Local Revenue Office
12. Agricultural and Farming Agency, Serang Regency
13. Marine and Fishery Agency, Serang Regency
14. Local Development Agency, Serang Regency
15. Parliament Republic of Indonesia
16. Ministry of Environment
17. Ministry of Health

The results of the information requests are shown in Table 16

Table 16. Water Information Requests

	Respond from request	Respond from Appeal	Respond from Dispute Settlement
Granted	26	4	0
Complete answer	22	3	0
Incomplete answer	3	1	0
Not comprehensible	1	0	0
Mute refusal	48	9	0
No information held/Not under authority	7	2	0
Pending /still in process)	0	3	0
Refused	0	0	0
Get respond but the requester not satisfied	3	0	0

Note: Total Requests 84, Internal Appeal: 18, Dispute Settlement: 0

Besides the information request related to water and pulp and paper industry activities, community members also submitted 17 requests for information from the Public Bodies regarding matters that concerned the community members but do not directly relate to the water quality, pollution control, or the environmental impact of the pulp and paper industry. Table 17 shows the result of information requests under the Community Requests Category.

Table 17. Community Requests

	Respond from request	Respond from Appeal	Respond from Dispute Settlement
Granted	10	0	0
Complete answer	8	0	0
Incomplete answer	0	0	0
Not comprehensible	2	0	0
Mute refusal	7	0	0
No information held/Not under authority	0	0	0
Pending /still in process)	0	0	0
Refused	0	0	0

Note: Total Requests 17, Internal Appeal: 0, Dispute Settlement: 0

V.2.1. Findings from Environmental Information : Water – Pulp and Paper Industry

Under the STRIPE project, the STRIPE Team in Indonesia did not only concern itself with the fulfillment of the right to environmental information, but also analyzed the information obtained in order to assist community members to understand more about the problem and capture the condition related to the water pollution control and pulp and paper industry activities. Thus, it is found that:

1. **The national quality standard of liquid waste in the pulp and paper industry as regulated in the Ministry of Environment Decree No. Kep-51/MENLH/10/1995 has not covered specific chemicals.** Some of the chemicals not covered are chlorinated organic compound (*Absorbable Organic Halide, AOX*), *chlorinated phenolic compounds, TCDD2 (2,3,7,8-tetrachlorodibenzo-p-dioxin), and TCDF3 (2,3,7,8-tetrachlorodibenzofuran)*. Other countries such as Brazil, Canada and USA, have already had the AOX⁴² Standard. AOX is one of the pollutants produced as the consequence of chlorine (Cl₂) utilization in the bleaching process of pulp⁴³.
2. **Management and Control of River Water Pollution**
 - a) **There is no explanation about Cijung River's Water Class.** Banten Province Regional Government has not established a Water Class for Cijung River⁴⁴. Based on Government Regulation no. 82 of 2001, in case of absence of clear stipulation, the Water Class shall be Class II; however, based on the laboratory test of the river quality, the condition exceeds Class II limits.⁴⁵
 - b) **All parameters based on GR No. 82 of 2001 have never been used completely to test the river water quality in the laboratory.** In the GR No. 82 of 2001, there are 52 parameters to measure river water quality; however, in the quality measurement of Cijung River, there are only 23 parameters taken into examination and there is no further explanation;
 - c) **The determination of waste volume allowed to be dumped into the River is not done by measuring the capacity and carrying capacity of the river;**
3. **Access to Clean Water**
 - a) Laboratory results of the community's drinking water contains parameter violations, as follows:

PDAM Water: the test were conducted on November 2, 2011 in one location and November 18, 2011 in three locations. Three of them show the content of e-coli which surpasses the standards of the Ministry of Health No. 492/MENKES/PER/IX/2010 (see Attachment 5)

Drilled Well: The test were conducted on June 7, 2011 in three locations. The first location

⁴²USA (0,623 kg/ADT), Brazil (0.2 – 1.0 kg/ADT), Canada (1.5 kg/ADT)

⁴³Yasmidi, Roosmini Dwina, *Analisis Kandungan Senyawa Organik Terklorinasi (AOX) pada Perairan di Sekitar Industri Pulp and Paper, Berita Selulosa* Vol 43 (1) hal 29-38 Juni 2008 ISSN 00059145

⁴⁴Article 14 paragraph (1) of GR No. 82 regarding Water Pollution Control

⁴⁵There is also Ministry of Environment Decree No. 115 of 2003 regarding Guidelines on Determination of Water Quality Status

showed contents of TDS, Chloride, and NO₂ surpassing the standard of Ministry of Health no. 416/MENKES/PER/IX/1990; furthermore, the second and third showed contents of TDS, Chloride, Sulfate, and NO₂ surpassing the standards. The test also were conducted on July 12, 2012, in one of the locations. The result shows contents of TDS, Chloride, and NO₂, surpassing the standards (Attachment 6)

Furthermore, there is no information regarding what the community should do in consuming such water;

b) The cumulative environmental impact is not analyzed properly in AMDAL/EIA, nor is the supervision conducted properly by the Government;

4. Permits

- a) The process of permit issuance regarding waste dumping⁴⁶ to the Ciujung River does not inform and involve the impacted community⁴⁷;
- b) The format of the waste dumping permit is very simple compared to the format required in other countries (i.e. USA);
- c) The extension of liquid waste dumping permits by the Regional Government is not based on the result of work and compliance assessment related to the environment.

5. Supervision and Legal Enforcement towards the Business Activity

- **There are certain violations conducted by PT IKPP related with effluent standards as follows (Attachment 7):**
 - Term of 11 – 20 May 2011 (COD above the standard) at the outlet waste water treatment 2;
 - Term of 11 – 20 May 2011 (TSS and COD above the standard) at the outlet waste water treatment 3;
 - Term of 10 – 20 June 2011 (TSS, COD and BOD above the standards) at the outlet waste water treatment 1;
 - Term of 10 – 20 June 2011 (TSS, COD, BOD above the standards) outlet waste water treatment 2;
 - Term of 10 – 20 June 2011 (TSS, COD above the standard) combination of outlet waste water treatment 1 and 2;
 - Term of 10 – 20 June 2011 (TSS above the standard) at the outlet waste water treatment 3;
 - Term of 10 – 20 June 2011 (BOD, COD above the standard), combination of outlet waste water treatment 1, 2, 3;
 - Term of 28 June – 8 July 2011 (BOD above the standard) at the outlet waste water treatment 1 and 2;
 - Term of 28 June – 8 July 2011 (TSS above standard) at the joint outlet waste water

⁴⁶ Decree of Serang Regent no. 658.31/1260/BPLH regarding Grant of Permit of Waste Dumping Extension to PT Indah Kiat Pulp and Paper, Tbk dated 15 July 2011, which grant extension of permit to PT IKPP to dump liquid, solid, and emission waste.

⁴⁷ Article 30 par (3) of GR no. 82 of 2001 mandated involvement of community in the process of permit grant.

- treatment 1 and 2 left;
 - Term of 3 – 15 August 2011 (BOD above the standard) at the outlet waste water treatment 1;
 - Term of 3 – 15 August 2011 (TSS and COD above the standards) at the outlet waste water treatment 2;
 - Term of 13 – 20 September 2011 (TSS above the standard) at the outlet waste water treatment 2.
- Based on the Environmental Audit draft dated 2 October 2012, it is found that: a) there are 3 (three) Waste Water Treatment plants (WWT) at PT IKPP, b) the load of organic sludge in the WWT I is 2(two) times higher than the maximum standard for active sludge in the pulp and paper industry, c) the effluent parameter discharged from Waste Water Treatment II of PT IKPP does not comply with the standard except for pH, d) the aerator does not work., f) the load of organic sludge in the WWT II is 3(three) times higher than the maximum standard for active sludge in the pulp and paper industry, g) the effluent parameter discharged from Waste Water Treatment III of PT IKPP does not comply with the standard except for pH, h) stirring motors at flocculation and coagulation process –pre treatment does not work well, i) the load of organic sludge in the WWT III is 2(two) times higher than the maximum standard for active sludge in the pulp and paper industry⁴⁸;
- Law enforcement on the violation of the quality standard and pollution are still weak, and when companies commit violations, they merely receive follow up letters.
- Environmental data and compliance data is heavily reliant on the PROPER program and EIA (self monitoring data).

V.3. Reflection upon Information Requests (Under PIDA Mechanism)

In general, the reflection upon the process of requesting information and disputes under the PIDA Mechanism based on the two cases aforementioned above is as follows:

- a) **Public bodies have not conducted the dissemination of environmental information proactively.** The information is given just after the community files an application, and in some cases the information is given after the process of appeal to the PPID⁴⁹ and mediation in the Information Commission has been commenced.
- b) **Discrimination in service and issuance of environmental public information by Public Bodies.** Regarding the information request process related to air pollution by PT PLN (electricity state owned enterprise), there has been a contrast of treatment between the requester of information from the community and researcher group. The requested Public Bodies are more open to the researcher compared to community members regarding the same information request;
- c) **Environmental Information, such as the Environmental Impact Assessment document, is not available even at the community's living area.;**

⁴⁸ Draft Laporan Audit Lingkungan Wajib Pengolahan Air Limbah dari Pabrik Pulp dan Kertas PT Indah Kiat Pulp and Paper TBK (PT IKPP) Serang berkaitan dengan Kualitas Air Sungai Ciujung Di Kecamatan Kragilan, Kabupaten Serang, Provinsi Banten, 2 October 2012

⁴⁹ Pejabat Pengelola Informasi dan Dokumentasi (Information Management and Documentation Officer, hereinafter referred to as "PPID")

- d) **There has not been any ‘transfer’ mechanism conducted by the Public Bodies when the information requested by the community is unavailable in such body.**
- e) **There has not been any internal mechanism in the Public Bodies nor is there an inter Public Body mechanism in giving environmental information to the public;**
- f) **The information provided by the Public Bodies is often raw uninterpreted data, which usually can only be understood by related experts.** For example, in the two case studies conducted, the information given regarding PLTU emission data and effluent data of PT IKPP is still in the raw format (laboratory result) and difficult to be understood easily by the community;
- g) **Public Bodies are often unable to determine the correct documents to answer the requested information filed by the community.** In this condition, the community members must identify by themselves the name of the document containing the information needed. However, the community might not be aware of the name and form of the documents in such Public Bodies;
- h) **There has not been understanding regarding Article 14 of PIDA⁵⁰,** in this case PT PLN presumes that providing the AMDAL Document is not an obligation of State Owned Enterprise since the obligation is only limited to Article 14 of PIDA;
- i) **Currently, there is no specific arrangement between the PIDA mechanism and the records management within the Public Bodies;**
- j) **Information requests are still filed to the relevant Division related to the request rather than directly to PPID.** For example, the information request related to PROPER is directly given to the PROPER Secretariat of the Ministry of Environment, not to PPID);
- k) **Consistency in following the PIDA procedure is challenging because:** a) information requesters sometimes do not comply to the PIDA procedure (forget to record the date, exceed the time limit), b) the community members sometimes feel more comfortable to ask for information with a personal approach rather than through the PIDA procedure;
- l) **The Community did not recognise their right to information nor the importance of the information to protect the environment and their health.** The Community in Serang did not at first understand the importance of their right to environmental information and the use of information related to the Cijung River pollution, nor the importance of river quality standards information and liquid waste of paper industry which is suspected of polluting the river;

⁵⁰ Article 14 of Law No. 14 of 2008 (Public Information Disclosure Act, hereinafter referred to as “PIDA”) states: “The Public Information to be supplied under this Law by a State Corporation, a Regional Corporation and/or other state-owned corporations are: (a) the name and domicile, purposes and objectives as well as the type of business activities, period of establishment, and the capital, as stated in the Articles of Association; (b) the full name of the shareholders, members of the board of directors, and members of the board of commissioners of the corporation; (c) the annual report, financial report, balance of profit and loss account, and the audited report on the social responsibilities of the corporation; (d) the result of the evaluation by an external auditor, a credit rating institute, and other rating institutes; (e) the system and allocation of the remuneration fund of the members of the board of commissioners/board of supervisors and board of directors; (f) the mechanism of appointment of the board of directors and the board of commissioners/the board of supervisors; (g) legal cases that under the Law are open as Public Information; (h) the implementation directives for the proper management method of a company, based on the principles of transparency, accountability, independency and fairness; (i) the announcement on the issue of stocks on credit; (j) the substitution of an accountant who is the company's auditor; (k) the change of the company's fiscal year; (l) government assignment activities and/or public service or subsidized service obligations; (m) the mechanism of the procurement of goods and services; and/or (n) other information determined by the Law pertaining to a State Corporation/a Regional Corporation.

- m) **The Community did not understand the request procedure and information dissemination which is guaranteed by the law.** The Community in Tubanan Jepara, for example, felt afraid to file an information request application to the Public Bodies and eventually some information requests were canceled;
- n) **The Community did not understand the methods in processing such information to be utilized for the interest of the environment and community lives.** The Community has not processed and utilized the received information related to Ciujung River pollution and the violation of quality standards by the Company. This information can be utilized to encourage the Government to do law enforcement, encourage the Company to comply with the relevant laws, and/or be utilized by the Community itself to do legal action.

Chapter VI

PROPER

VI. Background

PROPER is one of the environmental tools issued by the Ministry of Environment to encourage companies to obey environmental rules and to achieve the excellence through the application of 3R, energy efficiency, resources conservation and community development. PROPER started in 1995, then stopped in 1997 and went back into operation in 2002 and is still in operation until now. The development of PROPER assessment has been changed several times; first, the element that was assessed was only water pollution, and then evolved to the control of water pollution, air pollution, hazardous waste management, and the environmental impact assessment application. PROPER has initiated a plan to run from 2010-2014 in which they set up a monitoring network in coordination with provincial and district government. PROPER is a monitoring activity which gives incentive and disincentive to the companies/caretaker. An award is given by PROPER based on the assessment of the following performance :

- a. Prevention of pollution and environmental damage
- b. Countermeasures of pollution and environmental damage
- c. Recovery of pollution and environmental damage

Such performance assessment is based on the degree of compliance that is ranked in black, red and blue. Beyond compliance criteria is green and gold. The criteria are set out in the regulation of the State Minister of Environment No. 5 of 2011. In general, color ranks have the following meaning :

- a. Gold, is given to companies that have consistently (obtain a green rating three years in a row) to compliance with environmental management and environmental advantages (environmental excellence)
- b. Green is given to companies that have made the required environmental management.
- c. Blue, is given to companies that have environmental management as required in legislation
- d. Red, is given to companies whose environmental management is not appropriate as required in legislation
- e. Black, is given to companies that intentionally committed an act or negligence in the management of the environment.

VI.1. PROPER Mechanism

PROPER implementation is started with the selection of participating companies. The criteria of the selection are the following :

- a. Have a significant impact on the environment
- b. Are listed on the stock exchange
- c. Have an export oriented product or product that is used by wide community

After establishing the criteria of the companies, self monitoring is conducted by evaluating the company's report of the environment monitoring application. Primary data is collected by PPLH (the environmental monitoring officer). Such information is used as a temporary report containing the company's performance in the water, air and hazardous waste management. This temporary report

also indicates the rating of PROPER performance. The temporary report is then discussed through peer review by the technical team, and the results are shared with Echelon I for their comment and consideration and then reported to *Dewan Pertimbangan* (Advisory Council) for opinions and approval. The report from *Dewan Pertimbangan* (Advisory Council) is made into a temporary report which will be distributed to companies and local government. The companies and local government are given the opportunity to give objections. **In this phase, there is no public notification nor consultation process with the communities where the companies are operated (see Attachment 8).** After the rebuttal time is over, the report is given to *Dewan Pertimbangan* (the Advisory Council) for final opinions on the status of the companies' performance before it is reported to the minister. Subsequently, PROPER is then officially announced. The mechanism of a PROPER assessment is handled within the Regulation of State Minister of Environment No. 5/2011 on PROPER.

VI.1.2. PROPER Monitoring Follow-Up

PROPER Standard Operational Procedure stated that the follow up will be taken for:

- Any industries having 2 (two times) reds, or 1 (one time) black by: a) sending a notification letter to the company to make commitments and improve the environmental management, b) in case the industry/company does not show environmental management improvement, a warning letter will be given in the next PROPER.
- Industries having a red rating more than 2 (two) times or a black rating 2 (two) times, a) Re-verification will be conducted of the company/industry, b) If there are no significant changes, law enforcement will proceed by Deputy V, Law Enforcement, c) Companies that have made improvements will again be PROPER participants.

V.1.3. Criticisms of PROPER

- There is a lack of public information and participation in determining the ranking/rating of the companies;
- There is a lack of information regarding what kinds of chemicals, toxic and hazardous substances are released into the environment;
- PROPER only provides proactive information about the company's rating, but neither the background/ reasoning process of determining the rank nor the profile of each industry's compliance is published proactively;
- Data and information verification do not involve the communities nearby the industry, but rather the verification relies on the company data;
- PROPER assesses unit by unit within a corporation rather than by a single standard for the entire corporation. In this case, the same companies which are in different locations (but under one management/one parent company) can get different PROPER ratings. For example, PT IKPP, which is located in Serang pollute the environment and got a black rating, but PT IKPP located in Serpong may get a green rating because of its compliance. PROPER does not look at corporate compliance but unit per unit compliance. In this case, one parent company may have double standards towards its business units, polluting in one location but performing well in other locations.
- PROPER assesses a company's compliance to domestic/Indonesian environmental standards in which the standards are considerably weak without considering international standards/best

practices. For example, for water pollution from pulp and paper discharge, the standard does not include AoX;

- PROPER's follow up scheme does not integrate well with law enforcement. For example, companies with one black rating will merely get a notification letter, even though a black rating means there is environmental law violations.

Chapter VII

STRIPE Lessons Learned

The lessons learned from the STRIPE projects are:

PIDA Mechanism

- Providing assistance to community members is important in getting through the PIDA mechanism, as they need to follow formal processes within a certain period of time;
- To prevent extra work in creating a data base, it is better to limit requests to one item of information rather than allowing multiple requests within one submission.
- It is important for the community members to know the advantage of having sufficient information in order to advocate for their problems ;
- It is important to equip the community members with relevant law and regulations related to the environment;
- Assistance to community members is also important in the matter of understanding and using the information obtained, since the environmental information often requires technical skills or expertise in its utilization;
- It is important to educate and familiarize community members with the environmental-related data and documents, and the institutions possessing such documents;
- Documentation and dissemination of the information which has been obtained by the community to the other members of the community is very important, as this will help other member be aware of the problems.

STRIPE process

- The information obtained from the information requests do not necessarily reflect the quality of the information obtained by the STRIPE team, as the team obtained information from meetings and Government documents apart from the information requests;
- It is important to contextualise the indicators provided by WRI within the obligations under national law and regulations, as some of the items may not fit or may not be relevant (e.g. are too advanced or do not exist in the national context);
- STRIPE goes beyond advocating the proactive release of environmental information and PIDA implementation but also advocates problems in Serang, relating to river pollution and coal power plant issues. The community in Serang demands follow up action based on information obtained through STRIPE. In this case, ICEL not only needs to pay attention to PIDA but also to the pollution problems in the field.

Study Tour

- It is important to engage with the Government in the study tour so that NGOs and Government are able to share the visions and discuss the challenges regarding access to environmental information;
- The study tour was very beneficial in expanding knowledge regarding the NGOs work and the Government's remit in providing access to information.

Chapter VIII

Recommendations

VIII.1. Access to Information

- There is a need to disseminate PIDA implementation to Public Bodies and engage in capacity building for the officials, especially for the institutions at the local level.
- There is a need to strengthen the capacity of community members regarding the PIDA mechanism by increasing their knowledge and simplifying the language of the regulatory framework.
- **To overcome the gap between PIDA and the implementation of PIDA within Public Bodies, it is important to conduct assessments to overcome any challenges (e.g. identifying any deficiencies relating to infrastructure, human resources, budget, etc).** Proactive release is already mandated by several regulations, thus it is a priority for the Government to fulfill their obligation under the existing regulations.
- There is a need to further discuss with the Ministry of Environment regarding the Environmental Information System implementation.

VIII.2. Air Pollution Control

- There is a need to monitor the health of the communities and analyze the correlation between PLTU Operation and their health. The community should be Involved in the management and supervision of the environment;
- Accessible, understandable data and information for the community should be provided;
- Presentations regarding environmental quality (inter alia the air quality) to the community should be conducted to mitigate any negative impacts to their environment or health.
- Officials' capacity in terms of quantity as well as in quality must be improved;
- An analysis of the cumulative impact on the PLTU TJB operation should be conducted.

VIII.3. Water Pollution Control

- Improved regulation is needed concerning the quality standard of liquid waste from the pulp and paper industries;
- Stronger law enforcement is required for violations committed by the companies;
- First and second line enforcement implementation should be improved and implemented;
- Community involvement regarding the supervision and protection of their environment is essential;
- There is a need for proactive information from the Government to the community;
- A strategic plan and comprehensive remediation towards the Ciujung River Is necessary.
- Most information regarding water quality is heavily reliant on the EIA.

VIII.4. PROPER

1. There needs to be a comprehensive review of the system and PROPER implementation, with consideration towards transparency of the process, strengthening the standards, and providing public access to information and participation;
2. PROPER's assessment and performance indicators must be improved, through a participative process which involves:
 - a) A clear mechanism for public participation;
 - b) Public consultation related to the PROPER's participants' performance;
 - c) Providing access to information related to data/information related to PROPER (e.g justification, company's compliance data being assessed in PROPER);
 - d) Reviewing and improving environmental standards, such as water discharge standards for pulp and paper;
 - e) An integrated law enforcement process;
3. PROPER needs to be treated as an environmental enforcement programme comparable to US EPA, which publicizes its compliance history online.⁵¹
4. Pollution Release and Transfer Register schemes need to be introduced in Indonesia. The domestic standard and EIA documents that are used in PROPER assessments are inadequate and do not cover most information about chemicals used by companies and released into the environment.

⁵¹Environmental History Compliance, US EPA, <http://www.epa-echo.gov/echo/>

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