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## THE NATURAL RESOURCES MANAGEMENT PROJECT

STUDY TITLE  
DEVELOPING REGULATION AND GUIDELINES FOR  
PROTECTED AREAS IN INDONESIA

## FINAL REPORT

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# I N T R O D U C T I O N

## 1. BACKGROUND INFORMATION

In 1990 the Law of Natural Resources Conservation and Ecosystem introduced to the public with its main objectives are to improve people's welfare and to improve the quality of human life. The goverment and community's responsibility on the conservation and ecosystem law are the following activities conducted :

- a. protection against people's life support system
- b. preservation of plants and animals and their ecosystem
- c. sustainable utylization of natural resources and ecosystem

Prior to the introdustion of the Law of Natural Resources Conser vation and Ecosystem , there are laws already issued of which it may go along or against the consrevation and ecosystem law .

To enable to find solution for any conflicts which may arise ,iden tification of possible conflicts should be conducted in earlier stage if lw instruments should be developed.

## 2. P U R P O S E

A study titled Development of Law and Guidelines for Protected Areas in Indonesia was conducted to enable the authority to deve- lope the Law of Natural Resources Conservation and Ecosystem . Contract for consulting services No.: 03/KON/P3K/93 dated 28 May 1993 was signe between the Project Manager of Forestry Planning Development of the Ministry of Forestry and PT. Indra Development Consultants under the contract title : Developing Regulation and Guidelines for Protected Areas in Indonesia .

## 3. O B J E C T I V E S

As stipulated in the Term of Reference , the objectives of the study are the followings :

- a. To identify and to analyse laws and regulations potentially influencing activities around and whithin the Natural Re- serves, Wildlife Reserves, National Parks, Grand Forest Park . . and Tourist Recreation Parks which are protected by the Law. covering any laws and regulations that govern people's acti vities surround and whithin the protected areas, with its main objective is to clarify the related laws and regulati- ons.
- b. Following the identification and analysis above , to identi fy and clarify the objectives of the above mentioned Protee ted areas. Among the other laws and regulation needed to be identified and clarified is the Law No. 5 of 1990.

- c. And following the points a and b mentioned above , to develop draft regulations and guidelines for activities around and within those Protected Areas .Those drafts and guidelines should contain review and workable techniques to achieve the objectives of Protected Areas and the most possible problems which may arise during implementation .

#### 4. SCOPE OF WORK

##### a. Study coverage

To meet the objectives stipulated in the contract , the study conducted covers :

1. identification of laws and regulation that govern activities around and within the Protected Areas .The analysis was conducted on laws and regulations influencing the conduct of activities around and within the five areas under the termed Protected Areas .
2. identification of conflicts and contradictions between law- and regulations and efforts to solve conflicts and controversies
3. identification of similarities between laws and regulations and to formulate the main focus and principle for each of those Protected Areas
4. to identify and clarify objectives of each classified areas under Protected Areas dependent on those three above mentioned activities
5. to identify the general technical criteria for protected areas including forest reserves and wildlife reserves
6. to identify criteria for further use to prepare drafts of laws and regulations
7. to develop drafts of "regulations and guidelines" for those areas under the termed Protected Areas and its objectives as identified in point 4 and point 5 above
8. to analyse drafts laws and regulation and guidelines as well to arrive to the objectives of Protected Areas
9. to list priority for laws and guidelines in relation to aforesaid mentioned in point 7 above .

##### b. Detailed Activities

Referring to the aforesaid mentioned in the study coverage above , detailed activities could be described below :

1. to inventory laws and regulations bearing conflict potentials to the idea of conservation & ecosystem

2. to review the inventorised laws and regulations
3. to analyse contents of laws and regulations in identifying conflict potentials and solution fo conflicts to clearly define the protected areas and the general criteria to be applied
4. based on the analysis in points 3 above to define contents of .conservation regulations and laws and guidelines .for each category under the Protected Areas and its priority of implementation

c. A p p r o a c h

Since it is stipulated that the study concerns the study of law the approach and mothology used is the normative interpretation and review .

This normative interpretation approach is considered the most possible approach to meet the objectives of the study .

d. Schedule of Activities

Activities conduceted during the study period is as íollows:

- a.To conduct inventory to laws and regulations and supporting documents
- b.To review the existing laws and regulations and to identify types and conflict potentials
- c.To prepare an Inception Report
- d.To prepare an Interim Report
- e.To prepare a Draft Final Report and
- f.To prepare and submit Final Study Report

## CHAPTER 1

### REVIEW OF LAWS

To review of the existing laws is considered as the first step toward analysis of conflict potentials between natural resources conservation and ecosystem against other laws and regulations previously enforced .

This chapter contains description of contents of natural resources conservation and ecosystem law and the main contents of regulations pertaining and influencing the implementation of conserving natural resources and its ecosystem .

The laws and regulations reviewed comprises of : a) National laws and regulations and b) International laws and regulations as well as conventions .

Review is focused on national laws and any by-laws beyond the level of laws will be reviewed whenever considered relevant for analysis . .

#### A. NATIONAL LAWS AND REGULATIONS

1. Law No. 5 Year 1990 on Natural Resources Conservation and Its Ecosystem ( Nature Conservation Law ) .

The Nature Conservation Law aims at sustaining preservation of natural resources and to balance its ecosystem towards improvement of community welfare and better quality of human life . Whereas conservation efforts is directed toward management of the existing natural resources and wisely utilised to meet a sustaining availability and to maintain and improve the value and the quality of the existing varieties .

Nature conservation is implemented through the followings:

- a. protection of life supporting system to maintain ecological processes to achieve improvement of people's welfare and the quality of human life. Those protection practices cover efforts and actions related to protection of water resources, steep slopes, river banks, lakes, valleys, maintenance of forest hydrology, coastal protection, watershed management, protection of uniqueness and beauty of nature , etc. To achieve protection of life support system , the government has defined certain areas as life support system protected areas, its fundamental development and management of those areas utilisation are also laid out .
- b. preservation of various genetic resources and types of ecosystem to support the overall development, science and technology to make possibility to fulfill people's needs in using natural resources for the welfare of the communities. The following are practices to preserve the variety of fauna and flora :

- i. preservation of faunas and floras variety and its ecosystem
- ii. preservation of faunas and floras variety in and on the outside of protected areas

It is understood that natural resources comprises of living and non-alife interrelatad and interdependent upon each other components .Extinction of one component may not be replaced by others. Conservation efforts and practices are destined to keep sorts of variety exist through maintaining components from extingsion so that it could keep its function in nature and made them ready to be utylised for peopole's welfare. Therefore preservation of sorts of variety of floras and faunas and its ecosystem could only be achieved through maintaining protected areas against damages and destruction .

Protected areas should be clearly defined to fulfill the main purpose of preserving variety of floras and faunas in its ecosystem. Protected areas is defined as an area with its unique and distinction on the ground or in the sea having its role in preserving variety of floras and faunas and its ecosystem as well as life supporting system . Those so defined hrotected areas are :

1. the natural reserves , indicates of having unique floras and faunas in its unique ecosystem which need to be protected and develops by nature::
  2. the wild-life reserves ,indicates its unique faunas and to keep them frōm extinction needs to be protected and kept in their life environment .
- c. to utylise natural resources and the ecosystem sustainably with the sole purpose to wisely manage its utylisation and at the same time control the preservation practices . Controled and wisely manged the utylization of natural resources in fact it meansto consider sustainable utylisation and preservation for the future.

Ways to have a sustainable utylization of natural resources and its ecosystem are the followings :

- 1) utylization of the existing habitat of the natural reserves by keeping the objectives of the natural reserves sustainably
- 2) utylization of the existing faunas and floras in a well controlled manner by condidering its sustainable potentials , supporting capacity and its varieties .

It is necessary to define areas where needs of a sustainable utylization of natural resources could be wisely managed and well controlled to keep its ecosystem and supportive capacity in function , life supporting system intact and the variety of floras and faunas well cared from time to time regardless whe- the areas are located.

The so called Natural Reserves may comprises of :

- i. National Parks , a reserved areas with its natural ecosystem , zonally managed for utylization towards science , research , education , tourism , recreation and to support economic development
- ii. Grand Forest Parks , defined as reserved areas for the collection of natural and man-made floras and faunas , hybride or non-hybride to be utylised for research , science, education, tourism, recreation and to support development
- iii. Recreation Parks , where a reserved areas designated for recreation and tourism purposes .

The natural reserves and nature conservations should cover both as reserves on the ground and in the water as well .

The Indonesian water territory, as defined in the Natural Conservation Law are the followings :

- a. inland water territory , covers rivers , lakes, dams, swamps, and water loggings Bear a resemblance to the water as stipulated in the Irrigation Law No. 11 Year 1974, and those are :
- b. Indonesian Sea Territory , as clearly described in the Indonesian Sea Territory Law No. 4 Government Decree Year 1960 with the boundary as agreed upon by the Government of the Republic of Indonesia and her neighbouring countries
- c. Indonesian Exclusive Economic Zone , as stipulated in the Indonesian Exclusive Economic Zone Law No. 5 Year 1983 for its definition and boundary following the Agreement between the neighbouring countries .

There are four other laws which form the basis or related to the conservation law , and those are :

- a. The Principal Forestry Law No. 5 Year 1967
  - b. The Principal Environment Protection Law No. 4 Year 1982
  - c. The Principal Defence and Security Law No. 20 Year 1982
  - d. The Fishery Law No. 9 Year 1985 .
2. The Oil and Gas Mining Law No. 44 Government Decree Year 1960  
( Oil and Gas Law )

As stipulated in the Article No.2 of the Oil and Gas Law , all minerals , oil and gas within the Indonesian territory are wholly owned and remains as the property of the Republic of Indonesia . And as meant by the Indonesian territory and the mining territory as well is the territory falls within the boundary of the country of the Republic of Indonesia as stipulated in the Government Decree Replacing Law No. 4 Year 1960 including all islands within the Indonesian country boundary .

Oil and gas mining can only be undertaken by the State enterprises authorised by the Government and proposed by the Ministry concerned .

Excluded in the mining right as stipulated in the Oil and Gas Law are and not applicable to the following places :

- a. cemetery and graveyards, holy and sacred places, public works sites viz.: roads and highways, railways, irrigation facilities, electric power sites, gas and others ;
- b. areas around defence facilities
- c. other mining operation sites
- d. sorts of buildings , residential areas, factories and manufacturing facilities and the area surrounding without legal permit from the owners .

3. The Principal of Forestry Law No. 5 Year 1967 ( Forestry Law) Stipulated as forest in the Forestry Law are the followings:

- a. state owned forest
- b. community or privately owned forest

The state owned forest , upon its function is divided into:

- a. protected forest , meaning forest area following its natural existence is designed to control water resources, prevent soil erosion and to maintain soil fertility
- b. production forest, applies to forest areas of forest production development and trade and export purposes to support the national development programs
- c. forest reserves , is defined as forest areas due to its specific and unique natural existence is purposely designed for protecting natural resources or conservation , viz.:
  - c.1. natural reserves as preserved forest for scientific and cultural purposes
  - c.2 wild-life sanctuary as to preserve the existing wildlife from extinction
- d. tourist recreation forest or parks , as a forest area fully designed for tourism purposes , viz.:
  - d.1. tourist recreation parks with its individual beauty
  - d.2. game & recreation parks where game hunting is restrictly allowable

Based on those terminology mentioned earlier , that all reserves and protected area are classified as forest following the Forestry Law .It is therefore reserves and protected areas are governed by the Forest Protection Law No. 28 Year 1985 and the Forestry Planning Government Regulation No. 33 Year 1970.

With regards to articles in the Government Decree No. 28 Year 1985 or as termed the Forest Protection Law above, licencing of exploration and mineral exploitation should come from the authorised Ministry and this mean the Ministry of Forestry. And the article(s) concerned could lead to a serious conflict and may endanger reserves and protected areas .

#### 4. The Principal of Mining Law No. 11 Year 1967 ( Mining Law)

It is stipulated in the Article No. 1 of the Principal of Mining Law that all minerals within the mining territory as created by nature belongs and remain the property of the government and to be utilised to the welfare of the population. And meant by mining territory is as stipulated in the Indonesian Water Territory Law Government Decree No. 4 Year 1960 , whereas continental shelf included in the Mining Law refers to the Indonesian Continent Law No. 1 Year 1973.

The Article No. 18 Para (3) of the Principal of Mining Law, does exclude the following places for exploration :

- a. cemeteries and graveyards , sacred and holy places, railways , irrigation canals , electric facilities, gas facilities etc.
- b. places for other exploratory operations
- c. buildings , houses, factories and its surroundings without permit by the owners

Whereas the right to mine could be awarded to individual or enterprises to carry out exploration works by the Ministry of Mines and Energy .

Both the Oil and Gas Law and the Principal of Mining Law having a similar understanding on the followings :

- a. Indonesian legal mining territory
- b. mining exploration could only be carried out by award of mining rights .

#### 5. The Principal Irrigation Law No. 11 Year 1974 (Irrigation Law).

The Irrigation Law governs all matters related to irrigation, water management , water resources , water development including non-fauna living in the water . And water is defined as liquid originated from water wells and other resources underneath and above the ground excluding the sea water .

It is also stipulated in this Law to protect and conserve all water and water facilities for its social function , through the following practices :

- a. to conserve soil and water
- b. to control and manage water destroying power to water resources and surroundings

- c. to prevent water pollution harmful to users and environment
- d. to secure and to protect water facilities

Efforts to conserve soil and water is conducted through properly managed conserved forest and its floras and control against erosions.

6. The Principal of Transmigration Law No. 3 Year 1983 ( Transmigration Law ).

The development of the Transmigration Law was based on the unbalanced population in the provinces and the potential of the country in trying to eventually distributed population policy .

The transmigration Law stipulated that transmigration is termed as resettlement of population from densely populated areas to less densely populated area within Indonesia for reasons as stipulated in the Law.

Resettlement areas shall be freed from any rights for resettling farmer transmigrants .

7. The Principal Law of Environmental Management ( Environment Law ).

The Environment Law does stipulate environment management as an integrated efforts to organise , control, secure, renovate, maintain and properly develop living environment. And environment is defined as the wholesome living space and condition with all the existing materials and people to make a better living condition and welfare of the people and other creations . The term environment applies to natural and artificial environment , living environment and social environment .

The Article No. 5 of the General Explanatory of the Environment Law has the following characteristics :

- a. it is simply defined as to accommodate any changes and development regardless on the time , places and conditions in the future
- b. it contains the principals for further implementations in future
- c. it covers the general terms of living environment which can be utilised further adjusted to each living environment components to develop regulations

The Environment Law was so designed for any adjustment necessary of other laws and regulations pertaining environment , such as the adjustment made to the Irrigation Law, Mining & Energy Law, Principal Law of Forestry, Nature Protection and Conservation, Industrial Law, Residential Law, Land Use etc.

- 8) Mammals ( whales, dolphins, dugong etc)
- 9) Algae ( sea weeds and other sea floras )
- 10) Other biotas related to those listed above )

The defined fisheries potentials governed by the Fishery Law is all fishes and biotas within the Indonesian fishing territory which cover :

- a. the Indonesian water territory as stipulated in the Law No. 5 Year 1960
- b. all rivers, lakes, dams, swamps, temporary and permanent water loggings where people could grow and catch fishes & fish ponds
- c. the Indonesian Exclusive Economic Zone as stipulated in the Law No. 5 Year 1983 .

10. The Population and Family Welfare Development Law No. 10 Year 1992 ( Population and Welfare Law )

The important factor found during the study is the people's right, as governed by the Population and Welfare Law is related to the followings :

- a. the rights of the people to form a family , to improve individual living quality, to develop individualistic, to move and settle down to a harmonised environment balance to each individual and individual capability
- b. the rights of the people as member of community to develop cultural potential, to form groups , to utilise customary and traditional law property , and the right to develop traditional culture
- c. the right of the people as citizens for similar living status and standard and the right to prevent living environment
- d. the right of the people as quantity group to be considered in the population development policy and social and family welfare in the national development .

The Article No. 6 Para b of the Explanatory of the Population and Welfare Law stipulates the right of the inhabitants to utilise traditional potentials without disturbance of new settlers. And if development should happen on the traditional heritage , the indigenous inhabitants shall have the right to enjoy the priority of the value added benefit of the development viz. of getting job opportunity etc.

Menat by people or population in this Law are individual person, family members, community members, citizens, quantity group, living in a particular territory at a particular time in the Indonesian country boundary .

11. The Navigation Law No. 21 Year 1992

The Navigation Law stipulates navigation as water transport for people and cargo prioritising and protecting national interest to activate and support achievement of national development in the framework of solid national defense and the wawasan nusantara .

To guard safety sailing and navigation within the Indonesian territory , the Government undertakes the followings:

- a. to establish routes of sailings and navigation and to develop , manage and to maintain facilities
- b. to establish and develop route system
- c. to establish and develop traffic navigation
- d. to conduct hydrographic survey and mapping to update data & informations related to navigation

The law stipulated the term of navigation as all matters related to the transportation in the Indonesian Water Territory harbouring facilities, safety and security of transport wher as navigation routes refers to parts of water territory that naturally or purposely built in depth , width , and less problem for safety and savely navigated .

The Article No.6 of the afore mentioned Law also stipulates that dumping of wastes as specified is against the law. Penalty could be taken against :

- a. dumping wastes not as specified in the law
- b. purposely dump wastes in Indonesian water territory
- c. dumping wastes without proper polution control equipments
- d. dumping of wates using malfunctioned polution control equipments

Penalty of those crimes in a maximum of Rp.120 millions or 5 ye-ers imprisonment.

12. The Tourism Law No. 9 Year 1992 .

The Tourism Law stipulates the objectives of tourism are as follows :

- a. to introduce, to utylise, to preserve and to develop touris objects and attractions
- b. to build love to the country and to strengthen friendship among nations
- c. to expand and evenly distribute enterpreneurship and job opportunity

- d. to the national revenue in the frame work of improving people welfare and prosperity
- e. to support national products utylisation

The Law also stipulates on the following terminologies:

- i) tourism is defined as all efforts conducted to achieve in provision of tourism services, to provide tourism objects and attractions, tourism facilities and other related subjects
- 2) tourism is all matters related to touring including tourism objects and attractions enterprises and other related enterpreneurship
- 3) touring is described as all voluntary activities conducted temporarily to enjoy tourism objects and attraction
- 4) tourism objects and attractions are the main objectives of tourism which comprises of the followings :
  - a. God created objects and attractions in the forms of the nature sceneries, floras and afunas
  - b. man made objects and attractions viz.: museums, archeological remains, historical remains, art and culture, agro-tourism marine-tourism, game huntings, recreation parks and amusement parks .

In developing and managing tourism, one should consider the community socio-economic condition, socio-cultural condition, religious condition, local culture, environmental conditions and the objects and attraction themselves. These development may be conducted either by government or private enterprises or individually.

Tourism enterprising should develop and manage tourism objects & attractions as well as infrastructure and facilities and can be divided into the following enterprisings :

- a. natural tourism object and attractions enterprises
- b. cultural tourism object and attraction enterprises
- c. specific tourism object and attraction enterprises.

The term natural objects and attraction in tourism applies to develop and to manage nature into tourism which include the followings :

- a. utylisation and managing national parks viz.: Ujung Kulon, Bali Barat and Bromo-Tengger
- b. development and management of recreation parks viz.: Batu Raden, Borobudur and Prambanan Temples
- c. development and management of grant forest parks viz.: Curug Dago Bandung and Bogor Botanical Garden

- d. development and management fo marine parks viz.: Tatabone-  
rate , Banda and Bunaken .

13. The Space Use Law No. 24 Year 1992

The basic principles of the Law are the followings :

- a. space use should be as an integrated ,effective and efficient,  
in harmony,in balance and sustainable
- b. fairness , equality,open policy and protected by law with the  
the following objectives :
- 1) to use and utylise space in environmentally manners based  
on Wawasan Nusantara dan Ketahanan Nasional
  - 2) to achieve the use of space in environmentally and commodi-  
ty oriented
  - 3) to achieve the quality of space use in meeting the follow-  
ing objectives :
    - i. nation's high intellectual,well manners and social  
wellbeing
    - ii. integrated natural and ertificial resources in consi-  
deration to human resources
    - iii. to develop utylisation of natural and srtificial re-  
sources effectively , efficiently and properly man-  
ners to improve the quality of human resources
    - iv. to protect space use and to prevent against negative  
impacts to environment
    - v. to keep in balance between security and prosperity

The use of space based on the main roles of the area comprises  
of protected area and production area which respectively refers  
to the following definitions :

- a. protected areas is defined as a specified area with its main  
purpose to protect the life environment sustainably which co-  
ver natural and artificial resources
- b. production areas defines a specified areas designed for pro-  
ductively utylise its natural resources,human resources and  
artificial resources purposes

The Presidential Decree No. 32 Year 1990 on Protected Areas Ma-  
nagement , stipulates the protected areas qs :

- a. an area which protect it sub system
- b. locally protected areas
- c. natural and cultural protected areas ,which refers to :
  - c.1. natural reserves
  - c.2. marine and water reserves
  - c.3. margrove coastal reserves

- c.4. national parks, grand forest parks and recreation parks
- c.5. cultural and scientific reserves
- d. protected areas in danger of natural disasters.

B. INTERNATIONAL LAWS, AGREEMENTS and CONVENTIONS.

1. Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, 1971 (Ramsar Convention, 1971).

This convention enforces each member country to specify its wetland area to be included in the list of wetlands of international importance from the points of ecology, botany, zoology, limnology and hydrology at time of ratification and signing of the convention.

Reasons for having international protection of wetlands is due to its ecological value in regulating the water drainage and its natural habitat for flora and fauna particularly waterfowls. The Article No. 3 of the Convention stipulates that each member country should formulate and implement plan and to develop its wetland reserves and conservations enlisted. Any ecological changes to the listed wetland reserves should be immediately notified to the International Waterfowl Research Bureau.

The convention also stipulates that each member country should develop wetland conservation and waterfowls reserves regardless of being in the list, and to provide appropriate protection measures.

2. Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972.

This convention is directed toward establishment of a common protection system which has as prominent universal value for permanently instituted in accordance with modern scientific methods.

The important clauses of the convention are as follow :

- a. each member country adopts and responsible for identifying, protect, conserve and to transfer its natural and cultural heritage to the coming generations
- b. members of the convention will integrate its heritage protection measures into its national comprehensive program planning and to provide protection services, to develop technical and scientific studies and legal measures and to take administrative and financial measures
- c. members of convention will assist each other to protect their natural and cultural heritages
- d. to form "World Heritage Committee" where each member country

should provide their national heritage to be published as "list of World Heritage in Danger" (Arts. 8-11)

- e. to form "World Heritage Fund" funded by member countries and interested organisations (Art: 15)
- f. the "World Heritage Fund" will finance a study upon request by members of convention to form a property as part of its heritage and expertises, personnel trainings and supply of equipments as well ( Arts. 19-22)

All set forth in the convention is in line with Natural Conservation Law No. 5 Year 1990 .

### 3. Convention on the International Trade of Endangered Species, 1974 (CITES , 1974)

CITES is directed to develop conservation measures for endangered species and at the same time to introduce pressure in wild-life trades. The convention has three protection categories. Appendix I related to commercial trading of endangered species which normally banned and can only be carried out on a very special occasion. Trade transaction of endangered species can only be conducted upon the issuance of CITES import license to the country of destination or export license from the country of origin.

CITES allows commercial trade of monitored species as listed in Appendix II upon issuance of export permit from the exporting countries.

Where as Appendix III is intended to assist certain countries to establish international relationship to protect indigenous species. Each country is allowed to submit its indigenous flora and fauna into the Appendix III so that those species could be traded under a specific circumstances . Trading is permitted under export licensing from exporting country submitted its species in Appendix III and certification from country of origin that does not have its species listed .

### 4. Convention on the Conservation of Migratory Species of Wild Animals , 1979 (Bonn Convention , 1979)

The conservation meant in this convention apply to all migratory species including marine mammals and their migrating territory. This convention provides frameworks for individuals and collective activities to conserve endangered species listed in Appendix I and "unfavourable conservation status" of species as listed in Appendix II of this convention .

The convention recognises two agreements , viz.:

- a. agreement on the number of species and kept open to all member and non-member countries
- b. agreement of informal characteristic between countries on the seasonal migratory birds through country boundaries .

## 5. Convention on Biological Diversity.

The United Nations Convention on Biological Diversity aims to secure international effective efforts against natural species, habitat and ecosystem extinction. The convention was open for signature at the UN Conference on Environment and Development - known as the Earth Summit - in Rio de Janeiro of Brazil on June 5, 1992.

The followings are the importance of the convention :

- a. each country should stipulate regulation to conserve its natural resources
- b. government is responsible for negative impacts of the country corporate activities to other countries
- c. while awaiting for the formation of a new body, funds will be made available to developing countries to implement convention and administered by the Global Environment Facility
- d. transfer of technology to developing countries is based on preference and concession without ignoring of intellectual right and patent ownership.
- e. to issue regulation on biotechnology enterprise
- f. access and ownership of genetic resources
- g. to compensate developing countries for extraction of genetic resources belongs to the countries

## 6. Convention on the Climatic Change .

The convention is based on green-house effect to the concentrated gas production in the atmosphere endangering to human life. To prevent the dangerous climatic changes, the international communities urged the United Nations to formulate an international regulation to reduce cummulation of gas emission resulted from the green-house effects. The culmitaion poit was reached during the Earth Summit Meeting held in Rio de Janeiro Brazil on June 5, 1992 and signed as the Convention on Climatic Change .

The main objective of the convention is to stabilise the concentration of gas produced by the green-house effect in the atmosphere up to a certain level to prevent from endangering humans life. Concentration of gas should be at a certain limit on an appropriate time to an extent to allow ecosystem to adapt to the climatic changes in securing food production and sustainable economic development.

Principal guidance were provided to members of the convention to the implementation and achievement of the objectives of the convention as well as tsks borne to members .

## 7. International Tropical Timber Agreement.

The objectives of the International Tropical Timber Agreement (ITTA) is to provide an effective framework for consultation and collaboration between tropical timber exporting countries and importing countries, to develop diversification and expansion of tropical timber international trade, to support development of national policy toward sustainable utilisation of tropical timber, forest conservation and genetic resources and ecological balance in the country concerned. The Indonesian Government ratified the ITTA on February 19, 1986.

Points of importance of the ITTA are the followings :

- a. the formation of the International Tropical Timber Organisation is to administer clauses and the implementation of the Agreement ( Art.3 Para 1) ,and to carry out its tasks through the International Tropical Timber Council (ITTC) formed under the Article No. 6 of the Agreement
- b. ITTC arranges consultation and collaboration with UNO and its successive organisations viz.: UNTACD, UNDP, UNEP and UNIDO , FAO and specific organisation under the UN and Regional Organisation ,governmental and non-governmental organisations.
- c. the Article No. 24 stipulates formation of the following committees :
  - i. Committee on Economic Information and Market Intelligence
  - ii. Committee on Reforestation and Forest Management
  - iii. Committee of Forest Industry .

Eventhough the ITTA's objective is to support development of genetic potentials , it should be recognised that some genetic resources are destroyed during timber extraction ,and hence could arise controversies to conservation of natural resources and ecosystem and genetic resources in particular . Genetic resources has a very low value to the export of timber but has an important strategic value in improving the people's welfare in the future .

## 8. ASEAN Agreement on the Conservation of Nature and Natural Resources.

The ASEAN Agreement on Conservation of Nature and Natural Resources aims to support ASEAN member countries to individually or jointly to implement nature and natural conservation in the ASEAN Region. All member countries agreed upon the carrying out the activities below on an individual joined cooperation :

- a. to preserve genetic diversity through conservation and preservation of all species in each country jurisdiction particularly to protection of endangered species and conservation of endemic species (Arts. 1,3 & 5)

- b. to secure utilised species existence through proper management to assure sustainable utilisation (Arts.1,4 & 6)
- c. to provide efforts toward conservation, land development and rehabilitation; ground water conservation ,and to take measures to manage air quality (Arts.1,10 & 11)
- d. to conserve ecological process through reduction , controlling and prevention of environment destruction and pollution (Arts. 1,10 & 11)
- e. to specify conservation are including natural parks and reserves for the conservation of natural diversity especially for the endangered species
- f. to secure that conservation and natural resources management becoming an integral development plan at the national and provincial level as well ( Art. 2 Chap. VI and VII )
- g. to harmonise closely located natural resources regardless the environment and to prevent cross boundary impacts ( Art. 19 and Art. 20 )
- h. to cooperately formulate and agree on the protocol to the procedure and standards to implement the ASEAN Agreement (Art.24)

This Agreement is coherent with our natural resources conservation and its ecosystem and in its implementation will provide a positive impacts particularly in the ASEAN cooperations.

#### 9. World Charter for Nature .

In its 48th general conference on October 28 , 1982 , the United Nations General Assembly agreed on the 7th Resolution (XXXVII) on the World Charter for Nature referring to the following two previous resolutions:

- a. Resolution No. 35/7 dated October 30,1980 on the believe that benefits from the nature is dependent on the maintaining the natural process itself and biodiversity and those benefits are endangered by the over exploitation dan encroachment of the natural habitat
- b. Resolution No. 36/6 dated October 29 , 1981 on the consciousness of international communities to the importance of promoting and developing cooperation to protect and to keep environment in balance and its quality

The followings are some of the principles of the World Charter for Nature :

- a. the nature and natural process should be maintained and undisturbed
- b. the genetic existancy on earth should not be compromised , population level of living being, wild or domesticated, should be sufficient in numbers to keep the life and therefore the

important habitat should be in consideration

- c. all places on earth , in the water or on the ground, should follow those principles of conservation ; specific protection measures for unique areas should be given to represent various types of ecosystem and protection to the habitat of rare and endangered species
- d. ecosystem and organism or natural resources on the ground , in the water and on the air utilised by human being should be managed to achieve and maintain its optimum sustainable productivity without endangering the ecosystem integrity or other species that life in the vicinity
- e. nature degradation caused by war and fights should be prevented

Those general principles should have a clear picture in development plans and implementation . Long term supporting capacity of nature should be considered upon formulating long term economic development, population increase and quality of life to assure the live and people settlement and bearing in mind that supporting capacity of nature could be developed by science and technology.

From the time perspective it seems that the World Charter for Nature inspired and initiate international developing efforts to implement natural resources conservation and its ecosystem.

#### 10. World Conservation Strategy .

World Conservation Strategy aims to initiate focused approach on the natural resources management and to provide guidance to policy related to management for implementation by the three main groups the followings :

- a. government policy makers and assistants
- b. conservation expertise and other interested parties to natural resources
- c. development executives including development agencies, industrialists and traders and labour organisations

The following are the World Conservation Strategy guidelines:

- a. the objectives of the World Conservation Strategy is to achieve three main objectives of natural resources conservation , i.e. :
  - 1) to maintain the essential ecological process and the life support system
  - 2) to preserve species diversification
  - 3) to assure species and its ecosystem sustainable utilisation.
- b. pressures to meet the achievement upon the following considerations :
  - 1) the earth supporting capacity for the population is declining in the developed and developing nations

- 2) millions of population in the rural area are forced to destroy the supporting capacity caused by hunger and poverty
  - 3) the increasing consumption of energy, capacity and money for necessary needs
  - 4) the declining the main source of energy for industry
- c. the World Conservation Strategy stipulates the following constraints to implement conservation measures :
- 1) the believe that natural resources conservation is as part of a limited sector and is not as a process which need to be noted by all other sectors
  - 2) vailure in integrating conservation into development
  - 3) stiff and destructive development process
  - 4) incapability to implement conservation due to improper interpretaion of and the existing regulation
  - 5) less assistance to conservation due to less conciousness to the importance of conservation
  - 6) vailure to implement conservation based development in rural areas needed
- d. based on the afore mentioned , the World Conservation Strategy states the followings :
- 1) to define natural resources conservation and to explain its objectives
  - 2) to establish priority requirements to achieve the objectives
  - 3) to recommend international and national strategies to meet those requirements
  - 4) to recommend anticipative conservation policy , cross sectoral conservation policy and extended system on national responsibility to integrate conservation into development at the polici maker level
  - 5) to recommend integrated method to evaluate soil and water resources supported by environmental analysis as the basis to improve environmental planning and to draw up procedure to rationally allocate the use of land and water
  - 6) to recommend review of law and regulations on natural resources ,to recommend general principles of government organisation and specifically recommend actions to agencies' capacity in land conservation and marine resources conservation
  - 7) to recommend increase of skilled personels and more

management oriented research and research oriented management to quickly obtaining the main information needed

- 8) to recommend more community participation in planning and making the decision on the utilisation of natural resources and to recommend programs and campaign for environment education to assist in implementing conservation programs
- 9) to recommend action to assist rural communities to conserve their natural resources as the basis of development they require .

#### 1. Bali Declaration.

A statement was agreed upon at the end of the World National Park Congress held by IUCN in Bali on 11 to 12 October 1982 and was named by Bali Declaration.

The followings are the fundamental matters of the declaration:

- a. to enlarge and to speed up the national parks and reserves world and regional network to provide forever protection to : unique and representative ecosystem; as fast as possible the biodiversity including the genetic resources; scientifically worth territory; areas with spritual and cultural value
- b. to support appointment and management of reserves through the national and international commitment for development
- c. to provide a permanent status to reserves in the laws to prevent compromy
- d. to plan and to manage reserves through the most available scientific information; to develop science through research and monitoring programs and to make them available for worldwide scientists , management officers and communities .
- e. to understand the economic, political and cultural context of reserves , to provide local support to reserves through activities i.e. education, profit sharing, participation in decision making, complementary development plan of area adjacent to reserves to have access to resources in accordance with the objectives of reserves
- f. to fully implement national conventions on reserves and to adopt new necessary conventions

CHAPTER II  
ANALYSIS

1. Development of Understandings

The Nature Reserves, Wildlife Sanctuary and Nature Recreation Parks are stipulated as forest in the Principal Law of Forestry. Forest in accordance with the Forestry Law bears two essential meanings, i.e.:

- a. as areas covered by vegetation and as a whole form an integrated natural life and its environment
- b. stipulated in the law as forest .

Those terms above are the legal concept within the Principal Law of Forestry that lead to the following conclusions: First, to qualify an area as forest, it has to have those two aforesaid essentials, and additional specific criterias should be met to qualify an area as nature reserves, wildlife sanctuary, national park, game park or recreation park. The key word to the understanding is the term forest. Second, the perception toward nature reserves, national parks, game parks, wild life sanctuary and recreation parks is on-land oriented and it may closed up for marine-reserves and marine recreation parks.

The release of the World Conservation Strategy in 1980 did loosen up the previously stiff to a developing concept by introducing the sustainable utilization concept at the international level. As in the national level, there is a need to adopt the conservation concept of the World Conservation Strategy to define marine-reserves. On the other hand, development of the UNCLOS formulation shows international tendency that countries should establish laws and regulations to protect "Fragile Marine Ecosystem" in each country's territory and jurisdiction.

The development aforesaid indicates that conservation concept of the Forestry Law is absurd. The Article No. 12 of the Environment Law conceive the aforesaid development and stipulated that natural resources conservation and its ecosystem must be regulated by law and it then is implemented under the Nature Conservation Law.

Based on the Environment Law and the World Conservation Strategy the Conservation Law stipulates that nature reserves, wildlife sanctuary and recreation parks are not mainly on-land oriented but also covers places in water and it does introduce the term of national parks, grand forest parks and recreation parks as protected areas and the Conservation Law could make possible to define marine reserves and marine conservation reserves. This basic changes in the perception, in principle the Conservation Law supersedes the Forestry Law and all reserves and sanctuaries are then governed by the Conservation Law which could also

be adopted as the legal basis for protection arrangement to the "fragile marine ecosystem" in accordance to the UNCLOS. But those changes of perception does not mean that Forestry Law is now not applicable to the reserves and sanctuaries as long as it is in line with the earlier mentioned Law, Regulations and laws governing sanctuaries and reserves which in contradiction to Conservation Law should be abolished or changed with new regulations and law in accordingly

## 2. Sources of Point of Conflict

From the review of available laws and regulations related to the study, there are points of conflict potentials with conservation and ecosystem efforts, that can be grouped as follows:

- a. similarity on the natural resources location
- b. difference in the space use
- c. difference in the natural resources
- d. overlapping of authorities

The above grouping is not in an absolute characteristic.

### 2.1. Similarity on the natural resources location

The point of conflict lies on the location of mine and conserved national resources and its ecosystem. There is always possibility to have both unique fauna and flora in its ecosystem and oil and gas or minerals mine located in one area and this type of natural situation could create conflicting interest between mining and conservation effort at the same time. A similar situation can happen in developing hydro-electric power within National Park.

### 2.2. Difference in space use.

It is always possible of having conflicts in using available space for different needs from its planning up to implementation stages, viz.: the use of an area for both transmigration and conservation purposes. Development of a settlement as resulted from the development of infrastructure within or through a natural reserves or protected area could not easily be controlled by authorities concerned.

### 2.3. Difference on the utilisation of natural resources.

An example to the possible conflicts in the utilisation of natural resources for two different objectives is the wild-life or rare animals trade, and opening up of navigation route through a marine natural reserve.

### 2.4. Overlapping of authorities

Two authorities could have a conflict i.e. fisheries and conservation. Fishes in the Fishery Law could also be subjected to the Conservation Law. Conflict may also arise between tourism development and conservation, such as specifying a tourism objectives after specification of conserved area.

### 3. Solving conflicts

The normal solution to conflicts arises between conservation and ecosystem and other objectives is the issuance of Joint Ministerial Decrees , viz.; Joint Decree between the Minister of Forestry and other related Ministers . As to other conflicts , particular solution needs to be searched ; but the fact of the issuance of joint decrees indicate the existance of conflicts.

#### 3.1. Natural resources conservation and ecosystem against mining and energy

In 1984 a Joint Decree between the Minister of Mines and Energy and the Minister of Forestry No. 0120.K/10/M.PE/1984 was 029/Kpts-II/1984

issued on mining and exploration within the forestry territory. and was superseded by the Joint Ministerial Decree No :

969.K/05/M.PE/1989

429/Kpts.-II/1989 between the same Ministers and known as

SKB Men. P&E - Men.Hut. 1989.

The Article No. 1 of the above SKB Men. P&E - Men. Hut. 1989 defines the mining and exploration as refers to the followings :

- a. general identification, exploration, exploitation, processing and purification of general mines
- b. exploration, exploitation, processing and purification of oil and natural gas
- c. exploration and exploitation of geothermal resources
- d. exploration of electric power development, construction and exploitation of electric power

It is stipulated that mining, as well as energy exploration and exploitation within the national parks, recreation parks and specified forest identified for research purposes, nursery and its natural objectives is prohibited by Law . And if there is mining & energy exploration in the expansion or enlargement of national park, recreation parks or specified forest , the mining and exploration should be excluded from it .

Mining and energy exploration within the national parks, recreation parks, game parks, wild-life sanctuaries, restricted production forest, forest reserves and production forest is allowed upon issuance of license by the Minister of Forestry on a lease title. And if it occurs on the island of Java, Madura, Bali and the Province of Lampung , a compensation has to be returned in the form of other areas identification to be turned into forestry area except for the area where high voltage electric current passing over it.

Since SKB Men.P&E-Men.Hut 1989 was a produced of the Forestry Law, is it relevant to keep from the Natl. Conser.Law , at least for the nature reserves and wild-life sanctuary .

The Article No. 19 of the Natl. Conser.Law strongly stipulates the forbid or prohibit anyone to conduct any activities that could disturb the entire complexity of nature reserves.

And any mining operation and exploration is within the nature reserves and wild-life sanctuary territory is against this Article No. 19 of the Nature Conservation Law, since those protected areas are not considered as forest anymore.

If SKB. Men.P&E-Men.Hut 1989 should be kept under the Nature Conservation Law and the Minister of Forestry permit mining operation and exploration within the protected areas, those permit is against the Nature Conservation Law and it is automatically invalid.

As for mining exploration and operation within the protected areas, the SKB. Men .P&E-Men. Hut 1989 should be reviewed and reconsidered for its relevancy. The Nature Conservation Law implies that natural resources conservation is a separate entity along the forestry development programs.

### 3.2. Natural Resources Conservation and Ecosystem and the Transmigration Scheme .

In 1984 the cooperation between the Ministry of Forestry and the Ministry of Transmigration produce the called SKB.Men.Trans-

Men.Hut or the Joint Ministerial Decree No. SKB.057.MEN/1984---  
044/Kpts-II/1984

It was meant to prevent against overlapping of area utylisation for forestry and transmigation development, particularly in relation to nature reserves and natural conservation areas .

The Article No. 1 of the SKB Men. Trans-Men. Hut 1984 clearly stipulates that nature reserves, national parks, recreation parks, protected forest and limited production forest is prohibited from any use for relocation and resettlement of people and it is in confirmation with the Natural Conservation Law. The terms forest reserves or "hutan suaka alam" and recreation forest or "hutan wisata" should be reconsidered in accordance to terms used in the Natural Conservation Law .

A double criteria seems to be used if one should compare between the SKB.MenTrans-Men.Hut 1984 and SKB.Men.P&E-Men.Hut 1989. Mining operation and exploration is permitted within the nature reserves and wild-life sanctuary under the Ministry License but forbidden to any use for transmigration scheme.

### 3.3. Natural Resources Conservation and Ecosystem and Fisheries.

There are water-life specified as fishes in the Fishery Law. And there is a possibility that some water-life are protected and governed by the Nature Conservation Law. In this case the Nature Conservation Law become *lex specialis* and the Fishery Law the *lex generalis*. It is suggestible to legally clarify for any possible different perception which may arise within the legal principles.

It is advisable to forbid any fishing in the marine reserves and marine natural reserves in the development of the Nature Conservation Law precise. This is meant to protect marine reserves from

any disturbance and destruction to its entire complexity from any allowable fishings , eventhough to fishes permitrable by the law

### 3.4. Nature Conservation and Ecosystem and Navigation.

The most direct line or straight line connecting two point is commonly used as the principle in drawing up navigation lines. There is always possibility that the line will pass marine and marine natural reserves. And it is considered unforbidden as far there is no wastes disposing practiced which could affect the marine life . It is therefore advisable to legally issue a specific regulation to forbid any wastes disposal in the marine and marine natural reserves territory, and it bears a serious consequence in pin-pointing its actual coordinates for further confirmed with the Directorate General of Sea Communication of the Ministry of Communication for report to the Internal Maritime Organization or the IMO .which in turn be widely and internationally informed and included in the international navigation lines.

In the development of the Nature Conservation Law practise , one should utylise the Article No. 65 jo Article No. 119 of the Navigation Law. Violations should be officially and legally formulated in correspondence to the wastes disposal within the marine and natural reserves to easily pinpointing any violation against the Law. Punishment should refer to the Article No. 119 of the Navigation Law. A flexible procedure is advisable to the investigation authorities whether the Nature Consrevation Law or Navigation Law should be referred to.

The clearly and precisely pointed coordinates of any marine and natural reserves will have an important meaning to the marine pollution emergency actions viz. in oil-spill accident in the sea . Oil-spill should be controlled to to reach coastal area or marine and natural reserves normally located by the seashore.

Compensation to oil-spillage reaching marine and natural reserved should be addressed to the International Convention on the Civil Liability of Oil Pollution , 1969 or the CLC 1969 and the International Convention on the Establishment of an International Fund for Oil Pollution Damage , 1971 or the Fund Convention 1971. In this correlation the clearly pin-pointed coordinates has its importance.

### 3.5. Natural Resources Conservation and Ecosystem and the Irrigations.

In 1984 a Joint Ministerial Decree No.: 19 Tahun 1984  
059/Kpts - II/1984  
124/Kptas/1984

was issued by the Minister of Home Affairs, Minister of Forestry and the Minister of Public Worls on the Watershed Priority Control Program and abbreviated as SKB. Mendagri-Men.Hut-Men.PU of 1984.

The SKB describes that soil conservation along the River watershed Priority Control are the followings :

- a. to intensify integrated soil conservation along the river watershed
- b. to improve farmers and or land user capability

And as for the objectives are described below :

- a. to control erosion, flood and to reduce draught
- b. to increase farmers income through improved land productivity and
- c. to establish farmers attitude as natural resources conservers .

It seems that the SKB Menagri.-Men.Hut-Men.PU of 1984 is corresponding to the forest reserves referred to the Forestry Law and as life-support system as referred to the Nature Conservation Law. The most relevant matter to the issue is the coordination reflected in the regulation needed in forestry as well as nature conservation and ecosystem sectors. In its development one should refer to the Space-Use Law jo Presidential Decree No. 32 Year 1992 where the space-use coordination forum seems to be the right alternative .

### 3.6. Natural Resources Conservation and Ecosystem and the Tourism.

The natural reserves and nature conservation reserves may become tourist destinations since tourism does not have access to declare natural and conservation reserves. Implication of natural and conservation reserves as tourist destination should be anticipated viz.: infrastructure development, tourist accommodation development and tourist guide development. The most important consideration should be focused on the development of the basic regulation to the implementation and the coordination between nature reserves and tourism programs.

### 3.7. Natural Resources Conservation and Ecosystem and Infrastructure Development.

Infrastructure development is meant to open the communication between districts and it may pass through protected areas. And the development may stimulate and increase activities along the built roads. The negative impacts of infrastructure development should be anticipated through establishment of intergovernmental authorities coordination .

## 4. Influence of International Laws and Regulations.

The conservation global history could be traced back to the acceptance of the Convention on Salmon Fishing in the Rhine , in

Berlin , Germany. Global conservation was primarily addressed to protect the existing species, and on its development it is considered of the necessity of having an international organisation to handle conventions. The International Conference for the Protection of Nature held in Berne on November 17 to 19 , 1913 successfully formed the Consultative Commission for the International Protection of Nature in Bassel.

In 1923 the International Non-Governmental Congress for the Protection of Nature was held in Paris to review the Consultative Commission for the International Protection of Nature established in 1913, and succeeded in forming the International Office for the Protection of Nature in Brussel in 1929 . In 1948 the International Office merged into the International Union for the Protection of Nature or known as IUPN in Fontainebleau. The IUPN General Assembly held in Edinburgh in 1956 turned the IUPN into the International Union for the Conservation of Nature and Natural Resources or commonly known as IUCN.

The culminating point of conservation consciousness and attentions was reached during the United Nations Conference on the Human Environment held in Stockholm in 1972 which in later stimulates the world-wide environment movement and to inspire establishment of environmental ministry in various countries.

In 1974 the Convention on the International Trade in Endangered Species of Wild Fauna and Flora or CITES was found, and followed by the formation of the World Conservation Strategy in 1980 and the World Charter for Nature adopted by the United Nations General Assembly in 1980. The Brundtland Report: Our Common Future , was published by the World-Commission on Environment and Development in 1987 which underlining joined agreement on ecological crisis faced by the world and the needs of integrating environment into development policy which reach its development peak in the summit meeting in Rio de Janeiro producing the International Convention on the Biological Diversity.

Biotechnology then is developing after the signing of the International Convention on the Biological Diversity. The global conservation does influence the natural resources conservation and ecology efforts in Indonesia.

The developing international convention, regional agreements and natural resources conservation declaration indicate the global concerns on the decreasing biodiversity used on global conscious that in the end the biodiversity becomes the human life supports.

General conclusion could be drawn from those international convention, regional agreements and those natural resources declarations that each country should develop policy and national regulations to protect its natural resources and biodiversity and to include them in its national policy and decision making in its development plans. In this context , in depth review should be conducted to the legal implication and consequence of international regulation against development of Indonesian laws particularly related to natural resources conservation and its ecosystem sector.

## 5. Declaring Protected Areas.

### 5.1. The Objectives of Declaration.

The vast variety of natural resources on the ground, in the water and sea and in the air and atmosphere are understood as the primary foundation and dominant factors in the national development. Indonesian biodiversity are partly utilised, recently recognised its potential and partly remain unknown. In principle biodiversity has the ability to recover to a certain extent. Biodiversity is required to keep human life going and necessary to keep development sustainable. Therefore it is dependent on the human treatments, and biodiversity has already shown its degradation.

Aware of the on going degrading process, efforts to slow down the process should be kept on through turning natural forest into conservation areas and to protect natural forest against excessive needs for other developments.

Conserving the natural resources and ecosystem has its main objectives as to sustain the existence of the natural resources and balance of ecosystem to provide a better support to human life and prosperity and to improve the people quality of life, which is conducted through the following activities :

- a. to protect the existing life-supporting system toward maintenance of ecological process to back up sustainable life to improve prosperity and quality of life of the people
- b. to preserve biodiversity of fauna and flora and ecosystem by:
  - b.1. conservation of flora and fauna biodiversity and its ecosystem
  - b.2. conservation of the species of flora and fauna

These conserving biodiversity aiming at keeping the genetic resources diversity and its individual ecosystem in supporting development, science and technology for possible meeting the people needs in using natural resources to achieve prosperity. It is therefore protected area were established comprises of nature reserves and wild-life sanctuaries.

- c. sustainable utilisation of natural resources through the following activities :
  - c.1. utilisation of the existing nature reserves condition
  - c.2. utilisation of the existing species of flora and fauna

Those sustainable utilisation aims to control the utilisation of natural resources in an ever-lasting way, and to achieve those objectives the following protected areas are specified :

- i national parks
- ii grand forest parks
- iii nature recreation parks

## 5.2. Criteria for Specification

Criteria is used in specifying nature reserves and nature conservation areas. In 1981 the Minister of Agriculture Decree No.: 681/Kpts/Um/1981 was released on criteria and specification system for Nature reserves and nature recreation parks and known as SK Mentan No.: 681/1981 .

The following criteria was used in the decree :

### a. strict nature reserves :

- 1) an area of having flora and fauna diversity and ecosystem types
- 2) an area representing specified biota and its composing units
- 3) an area showing undisturbed natural condition, biotas and its physical nature by mankind
- 4) an area with a specifies form and size to support effective management and sufficient supporting surrounding
- 5) an area with its own characteristics becoming the only example within the area where its existance require conservation

### b. wild-life sanctuary :

- 1) an area where a specific wild-life could live and multiply and for its existance require conservation
- 2) an area with a widely varied species of fauna
- 3) an area where migrating wild-life live
- 4) a sufficiently large area as habitat for specific wild-life.

### c. nature recreation parks:

- 1) an area specified on its natural or man-made beauty and attarctiveness
- 2) to meet the needs for recreation and sport and is located whithin distance from residential area
- 3) an area where new species are living and bred for possible regular hunting purposes for the sake of recreation , sport and species conservation

### d. genetic potential protected areas :

- 1) an area of having a specific genetic potential unfound in conservation reserves
- 2) a resettlement area as the new living area for a specific species
- 3) area of sufficient size to accomodate a specific genetic

potential to continue its living process .

e. wild-life refuge area :

- 1) an area specified as the living area for the originally living area to the species
- 2) an area with sufficient size to support the species living process and to breed naturally

Those aforementioned criterias are in accordance with thorest ry Law. Weir and Manan described the general criterias for vario- us protected areas in the following orders :-

1. National Parks :  
large relatively undisturbed areas of outstanding natural value with high conservation importance, high recreation potentials , of easy access to visitors and clearly of be- nefit to the region.
2. Nature Reserve :  
generally small undisturbed fragile habitats of high con- servation importance, unique natural sites, homes of parti- cular rare species , etc. Area requiring strict protection
3. Game Reserve :  
generally medium or large areas of relatively undisturbed stable habitats of moderate to high conservation importance
4. Recreation Parks :  
small natural or landscape area or site of attractive of interesting aspect of easy access for visitors where con - servation value is low or not threatened by visitors' ac- tivities and recreation oriented management
5. Hunting Reserves :  
medium or large sized natural or semi natural habitats with game hunting potentials , i.e. large enough population of permitted game species (pigs, deers, wild cattle, fish etc.) where demand of hunting facilities exists and of easy access to would-br hunters. Such reserves should be of low conser- vation values that are not threatened by hunting/fishing ac- tivities
6. Protection Forest :  
medium or large areas of natural or planted forestedland on steep, high, erodable, rainwashed lands where forest cover is essential to protect important catchment areas and pre- vent landslips and erosion but where conservation priori - ties are not so high as to justify reserve status.

The "Indonesian Country Study on Biological Diversity" cites :  
The Indonesian conservation area system was designed using select- ion criteria which involved scoring reserves according to the fo- llowing attributes (McKannen and Arthe , 1981-1982 in MoF/FAO , 1991) :

- a. Genetic gain/loss values - an estimate of the probability that omission of the area from the reserve system will result in species extinction. This was based on the extent of different habitat types within the area, their rarity, their rate of degradation elsewhere, their representation in other reserves, their species richness, and the distinctiveness of the area as a whole
- b. Socio-economic justification - a comparison of the social and economic benefits to be obtained by protecting the area against the expected benefits of converting it to other forms of land use
- c. Management viability - an assessment of the viability of the area as an isolated ecological unit, taking into account the practical likelihood of successful management to achieve its permanent survival.

The criteria in the SK Mentan No.: 681/1981 was then adopted into the Presidential Decree No.: 32 Year 1990 on Protection Forest Management.

Weir, J.S. and Syafii Manan, Environment and Conservation Aspects of Forestry in Indonesia : Directorate General of Forest Utylisation, Ministry of Forestry, Government fo Indonesia - Food and Agriculture Organisation of The United Nations ( Indonesia , UTF/INS/065/INS: FORESTRY STUDIES FIELD DOCUMENT No.: VIII - I ) , Jakarta , November 1989 .

Kantor Menteri Negara Kependudukan dan Lingkungan Hidup /The Office of the State Minister of Population and Environment, Indonesia Country Study on Biological Diversity , Prepared for the United Nations Environment Programme (UNEP) , a study under the Work Programme for Environment Cooperation between The Republic of Indonesia and The Kingdom of Norway , Jakarta , 1992 .

## CHAPTER III

### THE DEVELOPMENT OF NATURAL RESOURCES CONSERVATION AND ECOSYSTEM LAW AND REGULATION .

The Nature Conservation Law stipulates clauses that require further arrangements with thirteen government regulations, that could be grouped into the followings :

1. Government Regulation that regulate protection of life-supporting system
2. Government Regulation that regulate nature reserved areas
3. Government Regulation which regulate conservation of flora and fauna species
4. Government Regulation that regulate nature conservation areas
5. Government Regulation that regulate utilisation of flora and fauna species
6. Government Regulation authorising local internal affairs of the Local Government to be responsible for natural resources conservation and ecosystem matters .

Eventhough the Article No. 37 of the Nature Conservation Law stipulates community participation stated in the Government Regulation , it is unnecessary to issue a specific Government Regulation for it. The Community participation could be integrated into the points 1 to 4 mentioned above ,based on the consideration that those participation might differ depending on its relationship with nature reserve,nature conservation reserve,conservation of flora and fauna species, and utylization of flora and wild-life species .

#### 1. R a t i o n a l e

The Article No. 1 Point 2 of the Nature Conservation Law does stipulate that natural resources conservation means managing the natural resources wisely for assurance of it sustained availability and to keep maintaining and to increase the value and the quality of the existing diversity . It indicates that the role of the government in conservation is very strong and dominant. This conservation is geared to the implementation of the country administrative system .

The natural resources management reserves the authority and power to control the utylization of the natural resources and its ecosystem in a considerably wise manner towards assurance of a sustainable avilability and to keep maintaining and to

to increase the quality and value of the existing diversity. This authority to organise and to regulate has two aspects , i.e material aspects governed by the authority and the areal aspect where the authority is employed .

The material aspects covers all aspects related to the etrsm of conservation of natural resources and its ecosystem viz.: specifying protected flora and fauna species. And the areal aspect covers all the nature reserved areas and natural conservation areas governed by the Indonesian national jurisdiction. The Nature Conservation Law applies only to the nature sereves and Nature conservation Areas but not to,forinstance, industrial areas and residential areas .

One essential matter related to the areal aspect which bound to the governing authority is that of having a clear boundary of the areas. Therefore it is a must for defining clearly the boundary of nature reserves and nature conservation areas territory . Unclearness of the territorial boundry has an implication that no one could be sued against rules and regulation related to nature reserves and nature conservation areas.

The management of natural resources falls under the responsibility of the government , as a process with its strongly inter-related components. The followings are the components forming the stages of the process :

- a. drawing up of natural resources conservation and its ecosystem policy
- b. issuance of nature conservation and its ecosystem laws and regulation which include criteria used and specification of protected fauna and flora species
- c. issuance of license ,e.g. license to establish and to manage national park
- d. utylization of nature conservation and ecosystem Law
- e. law enforcement on nature conservation and ecosystem

The weakest among the above described components are the monitoring and the law enforcement components due to the unclear boundary of nature reserve and nature conservation area beside insufficient number of field supervisors .

## 2. Material contents of the Regulation concerning protected areas for life-supporting system .

The Nautre Conservation Law sipulate that the government must organise and regulate protected areas for life-supporting system. The followings are the referred material content: :

- a. protection of life-supporting system area should be clearly defined
- b. the criteria used to define an area as life-supporting system area , in a legal format .

From the Government Regulation , one can state that the Forestry Law specified the followings :

- i. criteria to specify area for life-supporting system protection
  - ii. area as life-supporting system protected areas
  - iii. basic pattern of establishing life-supporting system protected areas
- c. formulation of utilisation techniques of protected life - supporting system areas and detailed forestry upon consultation with other related ministers
  - d. formulation of the right of land holding within the protected areas for life-supporting system
  - e. formulation of the right of water territorial holding within the protected areas of life-supporting system
  - f. formulation of the obligation to the use of water from the protected area of life-supporting system for activities conducted outside the protected area
  - g. formulation of community participation to protect the life-supporting system protected area
  - h. obligation to clearly establish boundary of protected areas of life-supporting system.

In developing the aforesaid Government Regulation the following has to be noted and reviewed :

- a. the relationship to the Irrigation Law and the Government Regulation No. 22 of 1982 on Water Management
- b. the relationship to the Government Regulation on Protected Forest
- c. the relationship with the SKB Men.Trans - Men. Hut 1984 ; and if it is relevant to be adopted into the Government Regulation. Similar to those SKB Men. P&E - Men. Hut 1989 and SKB mendagri-Men.Hut-Men.PU 1984
- d. the relationship with the Space Use Law and the Presidential Decree No. 32 of 1990 .

### 3. Material content of the Nature Reserves Regulation .

In Chapter IV of the Nature Conservation Law on Nature Reserves, there are three articles requiring further clarification in the Government Regulation. To simplify the legal structure, it is suggested that those three articles be combined in a package in the Government Regulation., and it will violate the Nature Conservation Law . It is suggested to name the Government Regulation on Nature Reserves.

The main material contents of the Government Regulation are described below :

- a. a clause should be formulated on the Minister who is responsible for the natural resources conservation and ecosystem to specify the followings :
  - 1) the definition of criteria to specify an area as nature reserves, strict nature reserve and wild life sanctuary
  - 2) an area as nature reserve , strict nature reserve and wild life sanctuary

Those mentioned above are meant to revise it adjusted to future development .
- b. formulation of management practice of the nature reserves by the government , where the term nature reserve management needs to be clarified .In relation to the specification of nature reserves and wild life sanctuary, a compulsory boundary must be established which is necessary to the violation of nature reserve regulation
- c. formulation of a clause whereby the Minister responsible for natural resources conservation and ecosystem to specify the described below :
  - 1) area neighbouring the nature reserves as buffering zone
  - 2) nature reserves' buffering zone boundary
- d. division of chapter into the followings :
  - 1) chapter on strict nature reserve
  - 2) chapter on wild life sanctuary
  - 3) chapter on biosphere reserve
  - 4) chapter on licensing
  - 5) chapter on supervisory
- e. chapter on strict nature reserve :
  - 1) formulation of types of research and development activities, scientific activities and education allowed within the strict nature reserves
  - 2) formulation of a clause applicable for foreigners to conduct research and development activities , scientific activities and education within the strict nature reserve and its prerequisites  
 Implication of the Convention on the Biological Diversity needs to be reviewed and compounded into regulation
  - 3) formulation of types of activities allowed within the buffering zone of strict nature reserve and its requirements to prevent the functional alteration of the zone.

An important matter must be carefully considered to the mining and energy exploration within the strict nature reserves as governed by the SKB Me.F&E-Men.Hut Of 1989. The Article No. 19 of the Nature Conservation Law forbid any activities within the strict nature reserve that cause changes to the entire area and violation is considered as criminal acts.

It is therefore mining and energy exploration within the strict nature reserves is violating the Article No.19 of the Nature Conservation Law .And licencing by the Minister of Forestry for mining and energy exploration within the strict nature reserves will cause changes of the entire area and contradicting to the Nature Conservation Law and it is judicially annulated .

f. chapter on wild life sanctuary .

- 1) formulation of types of activities allowed within the wild life sanctuary for research and development , scientific and educational purposes.
- 2) formulation of types of activities for foreigners within the wild life sanctuary related to research and development , science and education
- 3) formulation of types of activities allowable within the wild life sanctuary and its requirement as does not cause changes to the entire sanctuary or functional changes of the buffering zone
- 4) formulation of the term restricted tourism and as to whom restricted tourism could be granted to and its requirements; its relationship with the Principal Law of Tourism must be reviewed
- 5) formulation of the term " other cultural support activities" allowable within the wild life sanctuary and terms & requirements to conduct such activities

g. chapter of biosphere reserves :

- 1) formulation of a clause for the Minister responsible for the natural resources conservation and ecosystem to specify an area as biosphere reserves
- 2) formulation of an international cooperative techniques in conservation accredited to research and development, science and education, restricted tourism and other cultural supporting activities , the need of having an inter governmental agreement or agreements between the Minister concerned to the natural resources conservation and ecosystem on behalf of the Indonesian Government and foreign research institutes, universities or international organisations or is any foreigner allowed to conduct viz.: research permitted by the Ministry responsible for the natural resources conservation and ecosystem .
- 3) formulation of the term "other specified areas" to be defined as biosphere reserves and criteria to define biosphere sanctuary, application of the existing terminology for nature reserves to biosphere reserves and application of the existing regulation for nature reserve to biosphere reserves

h. chapter on Licencing :

formulation of requirements and licencing procedure to conduct activities allowable within the nature reserves

i. chapter on supervisory

formulation of persons responsible for supervision and the reporting system.

4. Material Content of the Preservation of Flora and Fauna Species Regulation .

There are four articles on preservation of species of flora and fauna of Chapter V of the Nature Conservation Law require further clarification in the Governmenr Regulation. It is advisable that those four articles to be compounded into a package in the Government Regulation under the title of Preservation of Flora and Fauna Species.

The followings are the principal material contents of the Regulation :

- a. formulation of a clause for the Minister responsible for the natural resources conservation and ecosystem to specify the protected species of flora and fauna whether as endangered or species in rare population .
- b. formulation of utylisation procedure of protected flora and fauna for research, science and preservation purposes
- c. formulation of import procedure of flora and wild life into Indonesian territory and its licencing procedures ,in consideration to the existing quarantine regulations
- d. formulation of types of organisation permitted to raise or to grow and to breed protected flora and fauna, its right & obligation and supervision procedures .

5. Material content of the regulation on nature conservation areas .

There are two articles in Chapter VII of the Nature Conservation Law require further clarification in the Government Regulation compounded ina package titled :Nature Conservation Area.

The material content mentioned above are the followings :

- a. formulation of a clause for the Minister responsible for the natural resources conversation and ecosystem to specify the following subjects :
  - 1) criteria specifying area as national park, grand forest park and nature recreation park
  - 2) specification of area as national park, grand forest park,

and nature recreation park

3) specification of area as buffer zone of nature conservation

- b. formulation of procedure to conduct activities for the purposes of research, science, education, cultural support, culture, and nature tourism within national park, grand forest park and nature recreation parks
- c. formulation of management practices of national parks, grand forest parks and nature recreation parks; licencing procedure to operate zonal utilisation of national parks, grand forest parks and nature recreation parks; requirements to obtain the right to operate and its obligations
- d. formulation of community participation in managing national parks, grand forest parks and nature recreation parks

6. Material content for the regulation on the utilisation of flora and fauna species

Formulation of procedure in utilising flora species and wild life reserve are the main material contents of the Government Regulation on utilisation of species of flora and fauna, for the following purposes:

- a. research and development :  
requirements and obligation for parties to conduct research and development
- b. breedings :  
the right and obligations for parties conducting the breeding and multiplications
- c. game huntings :
  - game species allowed for huntings
  - hunting requirements
  - hunting equipments
  - hunting licencing
- d. trades:
  - flora and wild life trading procedure
  - import and export procedure for species of flora and wild life
  - import and export licencing for flora species and wild life
  - requirements for flora and wild life traders
- e. show and demonstration :  
requirements to conduct show and demonstration of flora and wild life
- f. exchanges :  
exchange procedure of flora species and wild life
- g. herbal culture :  
requirements to operate large scale herbal cultures

h. pet raisings :  
obligatory requirements for raising valid life and growing  
flora species for pets

7. Material contents of the Government Regulation governing the  
authorization of natural resources conservation and ecosystem  
affairs to the Local Government Authority..

A Government Regulation is required to transfer part of natu-  
ral resources conservation and ecosystem affairs to the Local Go-  
vernment Authority and becoming the internal affairs of the Lo-  
cal Government Authority concerned

8. Development Priority .

Analysis of the existing laws and regulation in practise and  
happenings in the field indicates that conflicts occur on the  
specification of area and utilisation of natural resources., ori-  
ginated from the increasing pressures to natural resources result  
ed from the increasing pressure to the demand of land area .

It is therefore ,the development of Government Regulation as  
a tool to the Nature Conservation Law should prioritise the formu-  
lation of Government Regulation concerning life-supporting sys-  
tem area ,natural reserve and nature conservation reserves.Focus-  
ing on those three material contents will simultaneously meeting  
the obligations stipulated in the international conventions, regio-  
nal agreements and declarations to the Indonesian Government .

The present existing laws and regulations on preservation and  
utilisation of flora and fauna species could be employed while  
awaiting for the formulation and development of the Government  
Regulation on conservation and utilisation of flora and fauna spe-  
cies and the transfer of authority to Local Government as of the  
next priority .

The Local Government Regulation No. 45 of 1992 on the Local  
Government Autonomy Practise with emphasis to the Sub-District Ad-  
ministration , should be noted in transferring part of nature con-  
servation and ecosystem authority to Local Government Administra-  
tion .

9. Socialisation of the Nature Conservation Law .

It is important to socialise laws and regulations for the com-  
munity to understand and implement laws and regulation in accord-  
ingly to avoid violations and to make communities to abide the  
existing laws and regulations . The similar applies to the Nature  
Conservation Law and the corresponding regulations. The inclusion  
of natural resources conservation subject in the Environment Law  
Training Program in 1990 should be extended to reach all person-  
nel dealing with law enforcement services .

## C O N C L U S I O N

### A. Conclusion.

1. There are laws and regulations prior to the issuance of the Nature Conservation Law and in its implementation , conflicts are found and identified ,
2. The followings are points of conflict:
  - a. similar location of natural resources
  - b. difference in space use
  - c. difference in natural resources utylisation
  - d. overlapping authorities .which are not in an absoulte forms.

Joint Ministerial Decrees are issued under the Forestry Law to overcome conflicts .
3. The issuance of the Nature Conservation Law , definition of strict nature reserve , wild life sanctuary and nature recreation park under the Forestry Law are annulated. Implication arise from the issuance of Joint Ministerial Decress corresponding to the Forestry Law creates confus- ion in the implementation fo the Nature Conservation Law which need to be solved by :
  - a. withdrawal od Joint Ministerial Decrees contradicting the Nture Conservation Law
  - b. developing new regulations in accordance with the Nature Conservation Law
  - c. developing coordination system
4. The judicial certainties in the international convention. regional agreements and international declarations based on the golbal concerns toward anxiety of the declining di- versity does influence the development of the Indonesian natural resources conservation and ecosystem regulations
5. Considering the latest development in natural resources conservation movements , judicial tools on conservation has to be developed . Priority should be given to regulations related to the nature reserve and nature conservation re - serve in relationship with other laws and regulations and those international laws and regulation as well .
6. Territorial bounadry of the nature reserve and nature con- servation area must be clearly defined in anticipating de- velopment of regulations on nature reserve and nature con- servation , uncertainty of territorial boundary implicate the Nature conservation Law enforcement .
7. The criteria used in the Minister of Agriculture Decree No. 681/Kpts/Um/8/1981 on defining nature reserve area and nature conservation area was then adopted by the President ial Decree No. 32 of 1990 on Protected Area Management .

B. Re-ommendation.

1. Development of laws and regulations on natural resources conservation and its ecosystem should be conducted in the framework of developing the judicial system of natural resources conservation and ecosystem based on the principals of conservation .-
2. Along the development of laws and regulations , review and analysis should be conducted on the existing laws and regulation related to natural resources conservation and ecosystem and adopt whenever necessari definition and terminology into the new regulations and to consider the consequence and implication to the international conventions
3. Review should be conducted to anticipate implementation of the Government Regulation No. 45 of 1992 regarding the Provision of Local Autonomy to the Sub-district administration where the nature reserve and nature conservation area are located .