

Involvement of Indigenous People in Environmental Impact Assessment

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Submission date: 06-Oct-2022 01:43PM (UTC+0700)

Submission ID: 1918059155

File name: ment_of_indigenous_people_in_environmental_impact_assessment.pdf (795.69K)

Word count: 3637

Character count: 20413

- 47 *Supra*, note 44, at 11–12.
 48 *Ibid.*, at 13–14.
 49 *Ibid.*
 50 See Figure 1 below for a map of MPAs in the Arctic.
 51 *Supra*, note 44, at 11–12.
 52 *Ibid.* [The categorization referred to here is the almost universally applied IUCN Protected Area Management Categories System, described online at <https://www.iucn.org/theme/protected-areas/about/protected-area-categories>. Ed.]
 53 *Supra*, note 37.
 54 UNGA Res. 69/292 (“Development of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, United Nations General Assembly”). 19 June 2015. UN Doc. A/RES/69/292.
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 66 *Supra*, note 14.
 67 *Ibid.*
 68 *Supra*, note 65, at 1–2.
 69 Fairbanks Declaration 2017: On the Occasion of the Tenth Ministerial Meeting of the Arctic Council. Online at https://oarchive.arctic-council.org/bitstream/handle/11374/1910/EDOCS-4072-v5-ACMMUS10_FAIRBANKS_2017_Fairbanks_Declaration-2017.pdf?sequence=9&isAllowed=y.
 70 *Ibid.*
 71 *Supra*, note 65, at 3–4.
 72 *Supra*, note 62, at 684.
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 74 Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic (signed 15 May 2013, Arctic Council EDOCS 2068(1) 2013). Online at https://oarchive.arctic-council.org/bitstream/handle/11374/529/EDOCS-2068-v1-ACMMSE08_KIRUNA_2013_agreement_on_oil_pollution_preparedness_and_response_signedAppendices_Original_130510.PDF?sequence=6&isAllowed=y; Arctic Search and Rescue Agreement (formerly Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, signed 12 May 2011, entered into force 19 January 2013, Arctic Council EDOCS 3661(1) 2011). Online at <https://oarchive.arctic-council.org/handle/11374/531?show=full>. 

NATIONAL LAW AND POLICY DEVELOPMENTS

Indonesia

DOI 10.3233/EPL-180093

Involvement of Indigenous People in Environmental Impact Assessment

by Ferdinand S. Dhiksawan,ⁱ Sudharto P. Hadi,ⁱⁱ Adji Samektoⁱⁱⁱ and D.P. Sasongko^{iv}

Environmental regulations that addressed the involvement of indigenous people in the environmental impact assessment (EIA) process were enacted in 1969 in the US (Canter, 1996). In Indonesia, such regulations were adopted in 1982, and intensively implemented in 2000.

Indonesian regulation of the environment includes the EIA process as a means of preventing environmental damage. The EIA document is prepared by investors, following a regulatory process in which both the government and indigenous peoples are to be involved. In adopting the regulation, it was expected that engaging

indigenous peoples in the EIA process would be a key component in achieving the objective of sustainable development.

In reality, however, despite the regulation, indigenous people have not been optimally involved in these processes. They have expressed the feeling that their involvement has only been formal and technical – investors doing only what is necessary to comply with governmentally mandated procedures.

As a result, conflict has often arisen between indigenous people, the government and investors in the territories in which natural resources are being exploited. Such conflict often occurs after an environmental feasibility licence has been issued, when the exploitation has started (Hadi, 2009). This research considered primarily the procedure for involving indigenous people in the EIA process, focusing on the need to involve them in all stages of the process, through to and including decision making. It has also noted two other key points:

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- the status of government, investor and indigenous people in the EIA process; and
- the involvement of indigenous people in associated processes before and after the EIA process.

For this study, the authors undertook library research, consulting international journals, books and other published research results about indigenous participation in the EIA process for the period 1995–2013.

Indigenous People and the Utilisation of Natural Resources

For these purposes, there are three stakeholders in the utilisation of natural resources, each of which are supposed to have a significant impact on the environment:

- *Indigenous people*: they traditionally own the area in which they reside and as such are also the owner of its natural resources. Their cultural values, customary law and environmental wisdom, which have been preserved up to the present day, are key in maintaining a balance between people and the environment;
- *The Government*: it is recognised as the legal authority over natural resources (Subsection 33 in the 1945 Constitution); and
- *Investors*: they could be seen as the natural resource administrators.

Indigenous people are the first to be affected, economically and environmentally, by projects that impact natural resources. These impacts can be estimated through in-depth study – an EIA – which can prevent environmental damage. Therefore, the involvement of indigenous people should start very early, both before the assessed activities are considered, and during all parts of the EIA process, including announcement, submission of suggestion, opinion and response along with public consultation, EIA preparation and submission, decision making and announcement of environmental feasibility.

As originally set out by the government, in its role as a natural resources authority, the procedure for involving indigenous people in the EIA process is not considered to have lived up to its potential to represent all their concerns, as the owners of the natural resources. At present, some in government propose a reconstruction of the country's EIA processes to address some recognised concerns, described herein.

Indigenous Involvement in the EIA Process Before the Reconstruction

As currently provided, the procedure for the involvement of indigenous people in the EIA process starts from the announcement of the business and/or activity plan, continuing through the public consultation, making and evaluation of the EIA, and includes the making of a final decision on the proposal's environmental feasibility (Leknes, 2001). Once the initiator has made the preliminary announcement, the time interval between the announcement and the submission of suggestions, opinions and responses is determined by an agreement

between indigenous people and the government. Furthermore, indigenous people may use a mediator to help them during the period of public consultation and evaluation of the EIA.

Based on the research results, the involvement of indigenous people in the EIA process, whether "active" (direct presentation of views) or "inactive" (submission of written suggestions), is primarily focused on two elements of EIA activity, namely: (i) the process of announcement, socialisation and public consultation over the business and/or activity plan; and (ii) the formal preparation and evaluation of the EIA instrument, including making the decision regarding the environmental feasibility of the proposal. Figure 1 shows the procedure for the involvement of indigenous people in the process of EIA, as it existed, before any reconstruction.

Reconstructing the Indigenous Participation in EIA Processes

The following is a description of a reconstruction of the manner in which indigenous people should be included in the EIA processes.

Roles of the Stakeholders in the Announcement, Socialisation and Consultation Phases

The involvement of indigenous people in the EIA process does stand by itself independently, but it can involve other stakeholders such as a mediator, initiator or government institution. Each such stakeholder has a unique role.

Role of the Indigenous Participants

The announcement, socialisation and public consultation phases of the EIA process give indigenous peoples the opportunity for both active and inactive involvement. While active involvement gives them the chance to directly convey information about their customary symbols based on values and norms existing in their life, inactive participation (written suggestions, opinions, and responses during socialisation and public consultation) is also intended to convey key information. The responses and suggestions presented are the product of a collective decision made by indigenous people in the customary meeting before the socialisation and public consultation take place. The deadline for submission of these suggestions, opinions and responses is determined by the indigenous people in agreement with the initiator.

Procedurally, indigenous people may express their suggestions, opinions or responses to the business and/or activity plan which is announced during a specified period of working days. The precise period is agreed, in each case by the three stakeholders, following the announcement of the plan, and that agreement is reported to the following regional authorities: the Governor/Regent/Mayor *i.e.*, the Head of the Provincial, Regency or Municipal Environment Agency. That report is copied to the institutions in charge of the proposed business/activity (the institution whose announcement of the plan starts the EIA process) and the initiator.

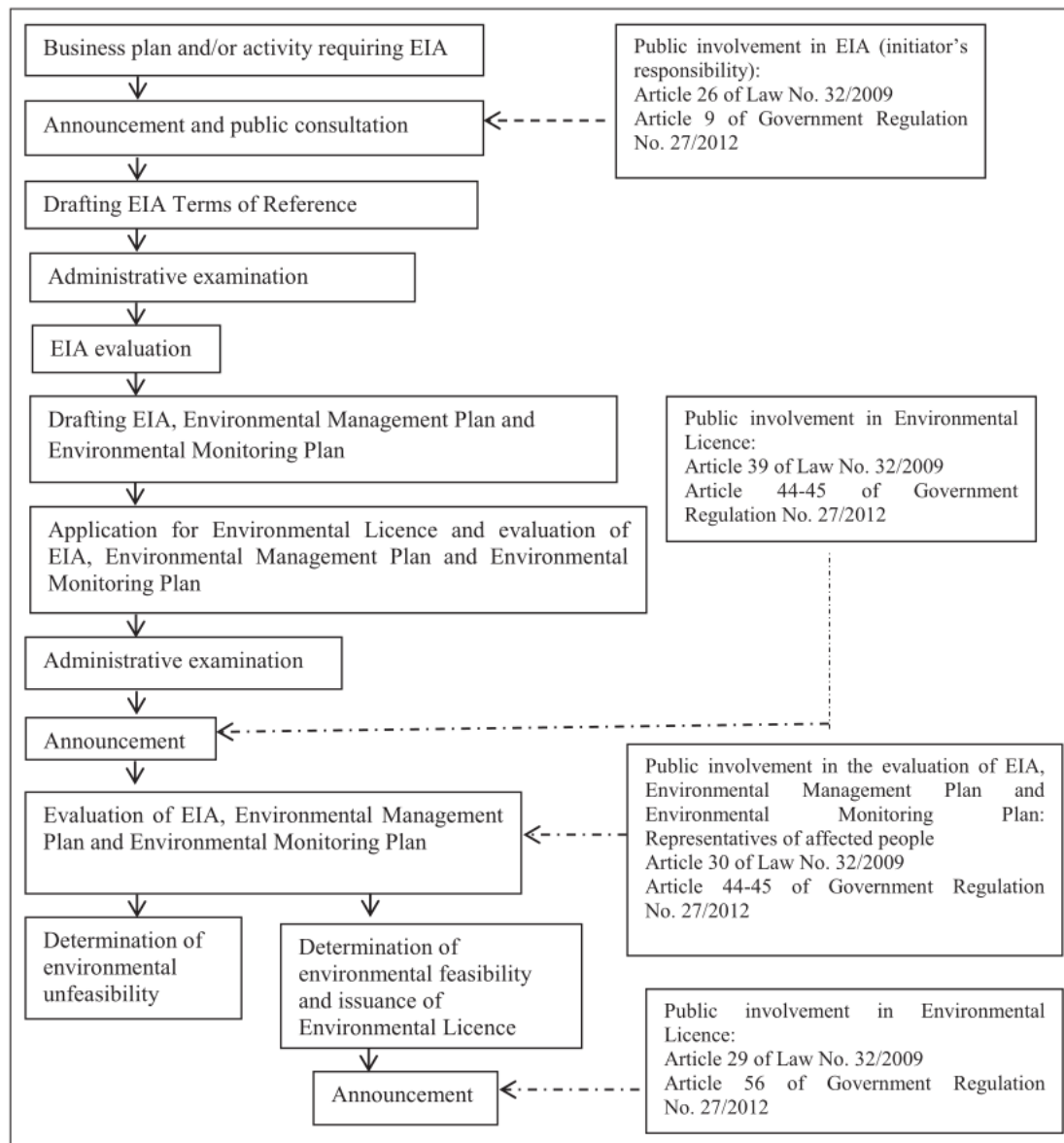
Role of the Initiator

The “initiator” is the individual or a legal entity that is responsible for the business and/or activity plan that is the subject of the EIA. The initiator is required to announce the business and/or activity plan before starting to make the EIA document based on the provisions according to the culture of indigenous people. The announcement must be delivered in a local language. It should be presented in a customary house according to specifications given by the indigenous people involved.

The initiator is responsible for paying the costs of the announcement, of collecting suggestions, opinions and responses, and of transportation and accommodation for those affected people who are invited to join the drafting and discussion of the EIA document. He/she also pays the fees of the mediator for his participation in the announcement, EIA preparation and public consultation, as well as for his services as a researcher and resource person in the process of EIA evaluation.

Such payments are given in the consultation session with indigenous people who are in charge of drafting

Figure 1. Pre-reconstruction procedure for the involvement of indigenous people in the EIA process

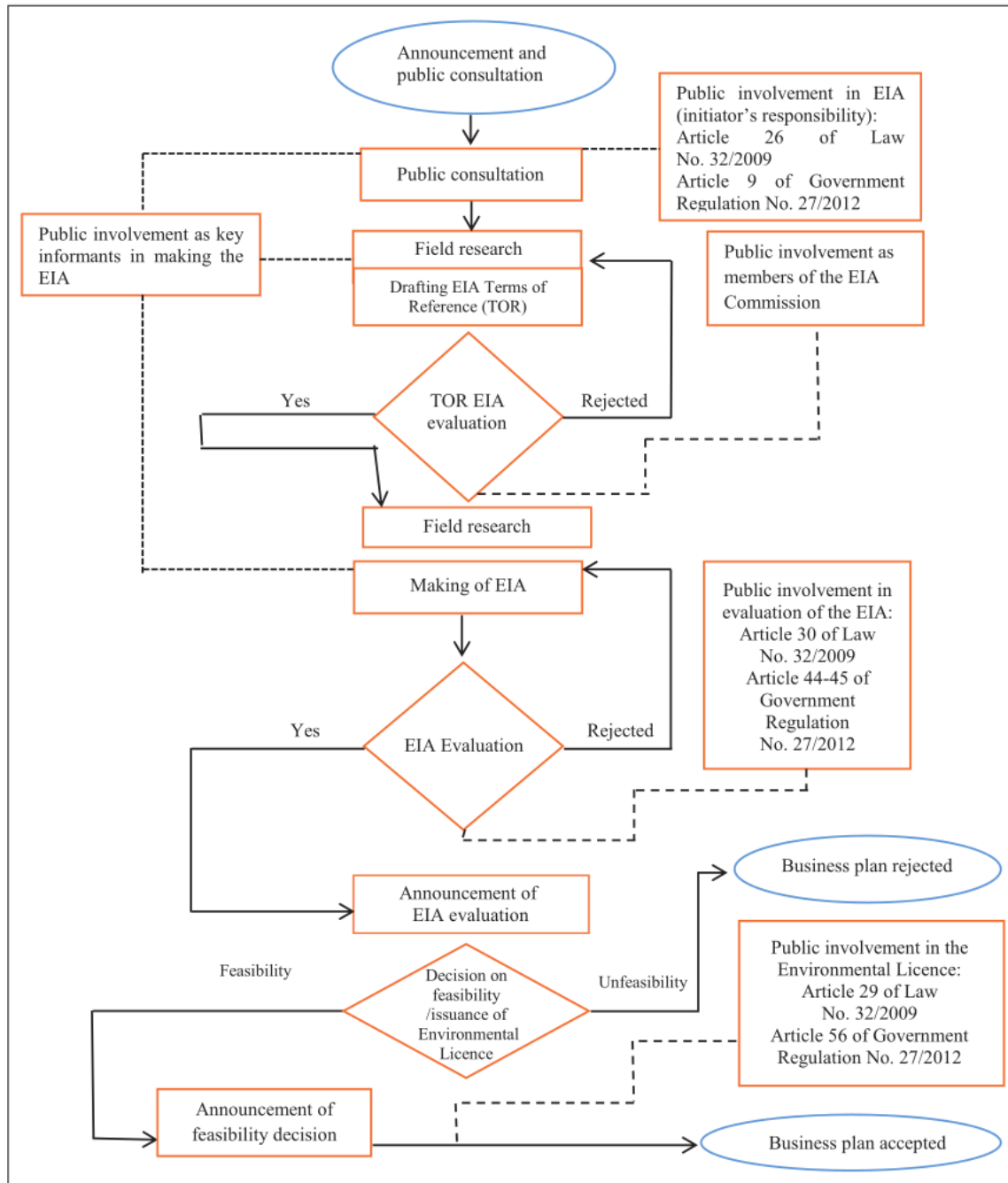


Source: Government Regulation No. 27/2012.

the Terms of Reference directly or through a mediator. The initiator is required to give answers to suggestions, opinions and responses from the indigenous peoples and to give them information about the EIA documents directly and/or through a mediator. During the preparation of the EIA, the initiator has to inform the

indigenous peoples about its business plan, based on the schedule agreed with the institution responsible for the indigenous people. This announcement includes the following information: name, location, area of land, type and product produced, waste, and environmental impact.

Figure 2. The procedure for the involvement of indigenous people in the EIA process, after the suggested reconstruction



Role of the Mediator

The mediator may be an individual expert, a group of people, a non-governmental organisation, a university or a government institution. The mediator's role is to mediate between the people affected and the initiator/institution engaging in business based on mutual agreement. The mediator is needed during the announcement of the business plan, the public consultation and the EIA evaluation session.

In each EIA process, a mediator is chosen by the indigenous people and initiator to deliver the announcement for those who are from remote areas, have limited education or have limited knowledge of the plan or the EIA process. The announcement is given in a meeting and/or face-to-face interaction and delivered in a language or languages that all the people can understand.

Role of the Responsible Institution

The institution that is ultimately responsible for making the decision regarding the environmental feasibility of the plan will normally be an institution that operates at the regional government level, namely the governor, regent or mayor that is assigned to control the environmental impacts in that region. This institution is also required to announce the proposal of a business and/or activity plan for which an EIA must be undertaken. The government's announcement must include the initiator's name and address; the name and type of business and/or activity; the location of the proposed business and/or activity; an area map; the formal date of the announcement; the deadline for indigenous people to submit suggestions, opinions and responses; and the name and address of the institution responsible for receiving such suggestions, opinions and responses.

Technically, the institution in charge of environmental management is required to announce the business and/or activity plan through printed and electronic media – local or national. The announcement should be written in Indonesian, complete with the deadline for receiving suggestions, opinions and responses. The institution in charge of the environment is required to prepare a summary of the responses from the indigenous people for the commission evaluating the EIA, and to provide all the stakeholders with information about the evaluation and decision-making process. Moreover, the institution is expected to act as a facilitator, enabling the public to obtain whatever information is needed and available to enable them to participate in the EIA process.

Indigenous Participation in Evaluation and Decision Making

The involvement of indigenous people in the EIA and environmental licence processes, whether direct (active/in-person) or indirect (through written submissions), should be through a process by which participation is possible at every stage of the EIA process including the making of the administrative decision on the environmental feasibility of the initiator's planned business or activity. Indigenous people participate in the making of the EIA by being members of the Technical Team and the

commission tasked with preparing the EIA, as well as serving as resource persons. Individual members of the indigenous community can participate in the assessment of EIA documents (prior to the final decision on environmental feasibility) by positioning themselves as members of the Evaluating Commission that is assigned to evaluate all the elements of the EIA document.

Appointments of indigenous people to the Commission are justified by recognition of the physical and socio-cultural impacts of the proposal on the indigenous community. The designated members are appointed pursuant to the customary law of the community. They are appointed in the customary house or customary court. The criteria for being allowed to represent the affected indigenous community on the EIA Evaluating Commission are as follows: being an individual who is acknowledged as having a customary communal land right or a tribal chief who has direct kinship with the affected communities. He/she may also be a spokesperson and/or a person who has a written mandate from the affected indigenous people agreed upon and appointed in the customary house or customary court. The acknowledgement can be manifested in formal evidence (such as, for example, a collective letter from the represented indigenous people), or other forms of acknowledgement determined and approved by those affected. Indigenous representatives who sit as members of the EIA Evaluating technical team or the EIA Commission Team should be capable of articulating the aspirations, suggestions, opinions and responses of the people they represent, including contradicting opinions; and have regular communications and consultations with the communities they represent.

Conclusions

Several conclusions have become apparent in the course of this research:

- Based on their status as owners of natural resources,
 - indigenous people will experience the economic and environmental impacts that result from the exploitation of natural resources by investors,
 - indigenous people have the right to obtain actual information from the government concerning the environmental impact of plans and activities proposed by investors,
 - indigenous people are required to be involved in the many phases of the EIA process.
- The Government, with its legal authority over natural resources,
 - has the right to control natural resources by implementing policies that promote the prosperity of indigenous peoples as the owner of natural resources;
 - is required to involve indigenous people as the owners of natural resources in the exploitation of the natural resource by investors.
- Investors, as the managers of natural resources,
 - are required to obey all of the regulations regarding the exploitation of natural resources stipulated by the government including EIA;

- Investors who exploit natural resources have the right to obtain benefits equal to the benefits obtained by government and indigenous peoples.
- The EIA process must include all of these three groups of stakeholders if it is to be effective.

Acknowledgement

We are deeply grateful to the indigenous people of Tabi Mamta Papua, who have provided valuable data and information used in this analysis.

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Indonesia

DOI 10.3233/EPL-180094

Forest Register 45 Mesuji Lampung: Agrarian Conflict, Social Exclusion and Human Rights Violations

by Oki Hajiansyah Wahab,ⁱ H.S. Tisnantaⁱⁱ and Rahayuⁱⁱⁱ

The continuing agrarian conflict in the area generally known as "Forest Register 45 Mesuji Lampung" (herein, "Register 45") engenders many implications regarding the former economic orientation and agrarian policy of Indonesia. The establishment of various sectoral laws such as the Plantation and Forestry Laws has implications for the increasing variety of rules on the management of agrarian resources. During the era known as the "New Order",¹ agrarian policy in the forestry sector gave rise to the exploitation of forest resources. Acquisition of land through the application of these rules was implemented according to the types of rights over land and natural resources that were involved. Among the types of rights that have been introduced since the New Order era are the following: Rights of Use, Forest Concessions, Industrial Timber Concession Rights and Mining Work Contracts (Nurjaya, 2005). This article raises two issues in the context of the conflict in Register 45 and how political exclusion and the consequent human rights violations have affected citizens in the area it encompasses.

Background

The Forests of Register 45

The economic crisis at the end of the 1990s was an important period in the history of forestry in Indonesia. The Center for International Forestry Research (CIFOR) shows that significant impact occurred with regard to the dynamics of the forestry sector from 1997–2003, which are the years immediately before and after the end of the New Order regime. It was a period during which the

authority of the security apparatus and law enforcement agencies greatly declined, as a result of the spread of the political crisis from Jakarta to the regions. Political turmoil during that time also ignited the courage of those people who desperately needed farmland to survive to cultivate on plantation and forest land, *etc.* However, the era also saw the neglect of land particularly where rights holders did not have working capital to cultivate their lands (Sodiki, 2004).

In many forest areas including Lampung, conflict arose with regard to management access. One of the longest running forest management conflicts in Lampung involved the production forest area that has come to be known as "Register 45". Located in the Regency Mesuji, Register 45 encompasses an area that was originally 33,500 hectares, but has been expanded by later decisions, as noted below. Its boundaries were definitively measured and demarcated in 1985. By formal decree,² the Minister of Forestry gave PT Sylva Inhutani Lampung (SIL)³ the right to manage an industrial forest area of 43,100 ha in the Register 45 area. Following the decree, SIL began commercially planting acacia trees in this area (Wahab, 2012).

Economic Crisis

The economic crisis at the end of the 1990s was important in the history of forestry in Indonesia. This occurred before and after the change of the New Order regime and led to a shake-up among companies in the forest sector, where much of the land in forest concession areas was neglected or abandoned. Many companies found it necessary to slow down their respective business activities. Conflict was triggered during this period due to the entry of farmers into the registered production forest areas.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6
