

Contents

<i>List of figures</i>	xiv
<i>List of tables</i>	xv
<i>List of contributors</i>	xvi
<i>List of abbreviations</i>	xvii

Introduction	1
<i>Michael Faure and Andri Wibisana</i>	
1 Problem definition: reasons for this book	1
2 History and origins of this book	3
3 Methodology	4
3.1 Legal interdisciplinary	4
3.2 Comparative approach	6
3.3 Multidisciplinary	6
4 Framework of the project	7
5 Structure of this book	7
6 Contributors	9
7 Words of thanks	10
8 Dedication	11

PART I GLOBALIZATION

Chapter 1 Impacts of globalization to environment, health and safety in developing countries: the case of Indonesia	15
<i>I Gede Eka Sarjana</i>	
1 Introduction	15
2 What is 'globalization'?	16
3 Benefits of globalization	18
4 Position of globalization	21
5 Globalization: environmental consequences for Indonesia	22
6 Globalization: consequences for human health	28
7 Globalization threatens national safety and security	31
8 Conclusion	33

Chapter 2 Promoting food safety through legal measures in developing countries: experiences from EU food safety regulation	38
<i>Ellen Vos</i>	
1 Introduction	38
2 The right to access safe and nutritious foods and the importance of legal measures	41
3 Food law in Indonesia	42
4 The case of EU food safety regulation: shortcomings and solutions	43
4.1 The EU and food safety	43
4.2 Lessons from the BSE crisis	44
4.3 Reform	45
4.4 The EU's General Food Law	46
5 Lingering difficulties of EU food safety regulation	50
6 Concluding remarks	53
 Chapter 3 Corporate liability for human rights violations. The Exxon Mobil case in Indonesia	 56
<i>Leïla Choukroune</i>	
1 Introduction	56
1.1 Naming, shaming and beyond	56
1.2 The Ruggie Framework: a pragmatist under global scrutiny	57
1.3 Corporate accountability for human rights violations: the normative challenge	60
2 Exxon Mobil human rights violations in Aceh	60
2.1 Exxon Mobil in Indonesia: a long and complex presence	60
2.1.1 The Aceh manna	60
2.1.2 The Aceh conflict	63
2.2 The alleged human rights violations	66
3 Exxon Mobil lawsuit (re Aceh): a long quest for corporate accountability	68
3.1 The ATCA as legal background	69
3.2 The Exxon Mobil case: ten years' judicial episode	72
4 Think globally sue globally	74
4.1 The reluctant global judge	74
4.2 The remedy vacuum	76
5 Conclusion	77

PART II CLIMATE CHANGE

Chapter 4 A critical view on Indonesia's legal responses to climate change	81
<i>Andri Wibisana</i>	
Introduction	81
1 Copenhagen Accord: taming the climate talks?	82
1.1 Legal status	82
1.2 Shared visions on long-term emissions reduction	84
1.3 Commitments	85
1.4 Comments	87
2 Towards a more equitable burden-sharing	91
3 Indonesia's legal responses to climate change in general and Copenhagen Accord in particular	98
3.1 General introduction to Indonesian environmental law	98
3.2 General policies on climate change	103
3.2.1 The 2007 National Action Plan on Climate Change	103
3.2.2 National Communication	106
3.2.2.1 The First National Communication	106
3.2.2.2 The Second National Communication	108
3.2.3 The 2011 National Action Plan on GHGs Emissions Reduction	109
3.3 Sectoral regulations addressing climate change	113
3.3.1 Energy sector	113
3.3.2 LULUCF sector	116
3.4 CDM in Indonesia	119
3.5 Policies on REDD+	124
3.5.1 Proposals related to the implementation of REDD+	126
3.5.1.1 Financial mechanisms	127
3.5.1.2 Proposed baselines	128
3.5.1.3 Proposed scale of REDD Programmes	130
3.5.1.4 Benefit sharing and indigenous people's rights	131
3.5.2 Deforestation, REDD, and corruption	133
3.5.3 Laws related to REDD+ in Indonesia	137
4 Some comments on the existing laws	141
4.1 General comments	141
4.2 Sectoral implementation and enforcement	145
4.2.1 Energy sector	145
4.2.2 Enforcement of criminal provisions related to forest fires	147
4.2.3 Law enforcement against illegal logging	151

4.3	Improvement and opportunities: need for a different approach?	154
5	Concluding remarks	158
Chapter 5 REDD+ in Indonesia. Law and governance perspectives		164
<i>Mas Achmad Santosa and Josi Khatarina</i>		
1	Introduction	164
2	Government policy on climate change	165
3	National legal system and practice	167
3.1	Issues concerning the law enforcement and the judiciary	167
4	Legal framework for climate change-related issues	170
4.1	General environmental law	170
4.2	Sectoral environmental law	171
5	Policy framework concerning REDD+	173
6	Governance safeguards in REDD+	178
7	Conclusion: trends and development	182
Chapter 6 Local elections and deforestation in local areas: another challenge for Indonesia in the fight against climate change		186
<i>Deni Bram</i>		
1	Introduction	186
2	Decentralization regime in Indonesia	192
3	The legal and policy framework for forest decentralization in Indonesia	194
4	The dark side of forest decentralization	197
5	Conclusion	200
Chapter 7 'Clean development mechanism' or 'community doesn't matter'? The role of public consultation to achieve sustainable development through CDM in Indonesia		207
<i>Tiza Mafira</i>		
1	Introduction	207
2	Do communities' opinions matter?	210
3	From a regulatory governance perspective, public consultation is <i>avant-garde</i>	217
4	Lessons from experiences and best practices in CDM public consultation	223
Chapter 8 The need for breaking new ground in the realm of climate change		227
<i>Jaap Spier</i>		
1	Introduction	227

2	A legal basis for action	228
3	How to make use of the human rights issue?	228
4	International law	229
5	A broader angle	230
6	Wrongfulness	231
7	Causation	231
8	Emissions must be reduced, but how much?	232
9	Compensation: the wrong track	233
10	Emphasis on reduction	234
11	Legal obstacles	235
12	Looking beyond the sway of the day	236
13	Adaptation	236
14	Action is required	237

PART III COMPENSATION FOR DISASTERS

Chapter 9	Towards effective compensation for victims of natural catastrophes in developing countries	243
	<i>Michael Faure</i>	
1	Introduction	243
2	Principles of compensation	247
3	Liability rules	249
	3.1 Pro	249
	3.2 Contra	250
	3.3 Practice	252
4	Charity by government	254
	4.1 Pro	254
	4.2 Contra	255
	4.3 Practice	258
5	Insurance	261
	5.1 Pro	261
	5.2 Contra	262
	5.2.1 Problems	262
	5.2.2 Solutions	263
	5.3 Practice	266
	5.3.1 Comprehensive insurance	266
	5.3.2 Reinsurance by government	268
	5.3.3 Micro insurance	269
6	Concluding remarks	270

Chapter 10 The myths of environmental compensation in Indonesia: lessons from the Sidoarjo mudflow	277
<i>Andri Wibisana</i>	
1 Introduction	277
2 Compensation mechanisms for the victims of pollution in Indonesia	278
2.1 Compensation under General Environmental Management Acts	279
2.2 Compensation and liability in other statutes	284
2.2.1 The 1997 Nuclear Energy Act	284
2.2.2 The 2007 Disaster Management Act	285
2.2.3 The 2008 Solid Waste Management Act	288
3 Preliminary comments on compensation mechanisms	289
3.1 Conflicting provisions concerning liability rules	290
3.2 Insurance is not well developed	292
3.3 Too much reliance on government regulation	293
4 Responses to Sidoarjo's mudflow disaster: arrogance, ignorance, and disastrous responses	294
4.1 Introduction	294
4.2 Government's responses	297
4.3 Compensation by Lapindo	300
4.4 NGOs and victims: uncoordinated responses	304
5 God's hand in the court: a critical analysis of court ruling on the mudflow disaster	306
5.1 Introduction	306
5.2 Lapindo's negligence or a natural disaster trigger? Court's ruling	308
5.3 The 'act of God': lessons from the US practices	310
5.3.1 Introduction	310
5.3.2 Natural disaster should be grave	312
5.3.3 Natural disaster should be unforeseeable and unpreventable	314
5.3.4 Commingling between negligence and a natural cause	320
5.3.4.1 Negligence rules out the 'act of God' defence	320
5.3.4.2 Causation, the burden of proof and apportionment	323
5.3.5 'Act of God', the negligence rule, and strict liability	327
5.4 Revisiting <i>Walhi v. Lapindo, et al.</i> : some critical comments	329
5.4.1 Brief introduction on scientific debates of the trigger	331

5.4.2	<i>Walhi v. Lapindo, et al.</i> seen from the US courts' perspective	333
6	Lessons from the Sidoarjo mudflow: towards an ideal compensation system?	339
7	Concluding remarks	348

PART IV DECISION-MAKING

Chapter 11	The precautionary principle in wildlife law – theoretical disputes and practical solutions	357
	<i>Chris Backes</i>	
1	Introduction	357
2	Codifications in international and European wildlife law	358
2.1	No reference to the principle in most treaties on wildlife protection	358
2.2	Core of the principle	359
2.3	Is it customary law?	360
2.4	Precaution and proportionality	361
2.5	Variations	363
2.5.1	The limitation to serious and/or irreversible damage	363
2.5.2	Cost-effective measures	363
2.5.3	Is partial scientific certainty needed?	364
2.5.4	Is it necessary to always apply the worst-case scenario?	364
3	Disputes and problems	366
3.1	Vagueness of the principle	366
3.2	Is the precautionary principle 'unscientific'?	367
3.3	Adverse effects	368
4	Application in practice	368
4.1	Habitats Directive, structure of Article 6 III	369
4.2	The Cockle Fishery case	370
4.3	Some national judgments	370
4.3.1	Extraction of gas in the Wadden Sea	370
4.3.2	Zeppelin flights	371
4.3.3	Seeding of mussels from other (parts of) oceans	371
4.4	Is the application of the precautionary principle a luxury only developed countries can afford?	372
5	Disputes solved?	373

Chapter 12 Law and politics of nuclear power plant development in Indonesia: technocracy, democracy, and internationalization of decision-making	376
<i>M. Ajisatria Suleiman</i>	
1 Introduction	376
2 Theoretical foundation: technocratic vs democratic decision-making in nuclear risk regulation	378
3 The political origin of Indonesia's nuclear idea and the relevant global context	382
3.1 The history of the nuclear idea: Old Order, New Order, and <i>Reformasi</i>	383
3.2 A new state of the world of nuclear revival	388
4 Basic regulatory and institutional framework for NPP development in Indonesia	390
5 Internationalization of nuclear decision-making: measuring the conjectures of the IAEA influence in Indonesia	398
5.1 The IAEA involvement in NPP decision-making	398
5.2 Indonesia and the IAEA review	401
5.3 Internationalization of public engagement and democratic decision-making	403
5.4 Domestic measure to minimize external influence	405
6 Conclusion	407

PART V LOCAL WISDOM

Chapter 13 The responsibility of the customary village concerning the sustainable city forest	413
<i>I Wayan Wiasta, I Wayan Gde Wiryawan, I Nyoman Edi Irawan and Dewi Bunga</i>	
1 Introduction	413
2 City forest's function in maintaining the environment	415
3 The customary village and sustainability of city forests	419
3.1 The philosophical basis	420
3.2 The legal basis	422
3.3 The sociological basis	425
4 The implementation of the customary law community's responsibility for the sustainability of the city forest in Denpasar	429
5 Conclusions	434

Chapter 14 Revitalization of the <i>kewang</i> institute in the sustainable management of marine and coastal natural resources in Maluku Province	438
<i>Reveny Vania Rugebregt</i>	
1 Background	438
2 Government policies in marine and coastal area management	442
3 The role of the <i>kewang</i> in the sustainability of marine and coastal natural resources	447
4 Implementation of customary rights in central Maluku	449
4.1 Region	449
4.2 The <i>sasi</i> and law enforcement	452
4.2.1 The <i>sasi</i>	452
4.2.2 Organization	453
4.2.3 The implementation of the <i>sasi</i>	454
4.2.4 The supervision of the <i>sasi</i> and sanctions for the violations of the <i>sasi</i>	454
4.3 Unit of rights holders	456
5 Concluding remarks	457

PART VI CONCLUSION

Concluding remarks	463
<i>Michael Faure and Andri Wibisana</i>	
1 Many challenges	463
2 Globalization	464
3 Climate change	466
4 Compensating victims of disasters	469
5 Decision-making processes	470
6 The value of local wisdom	472
7 The way forward	474
<i>Index</i>	479