

[IAIA23 Presentation]



Recent lawsuit case analysis related to EIA of Korea

Lee, Youngsoo, Kang, Eugene, Ji, Mingu,
Choi, Hyunjin, Choi, Jungyu, Lee Subeen

I Introduction

- There are lawsuits related big development projects in Korea.
- Although EIAs were carried out for those projects, environmental conflicts were occurred.
- Main issues of EIA related lawsuit are disobedience of EIA negotiation procedures, properness of plaintiff, inappropriate and incomplete EIA report and overuse•abuse of discretion of approval agencies.

I | Introduction

- Recently, whether negotiation (of EIA between Minister of Environment and head of approval agency) is administrative action itself or not is one of main issue in EIA related suitcase.
- In the past, negotiation is not administrative action. So, negotiation can't be the object of lawsuit.

II | Objectives

1. To find out measures to reduce environment conflicts in korean EIA regime.

II | Research Method

Analysis of lawsuit cases



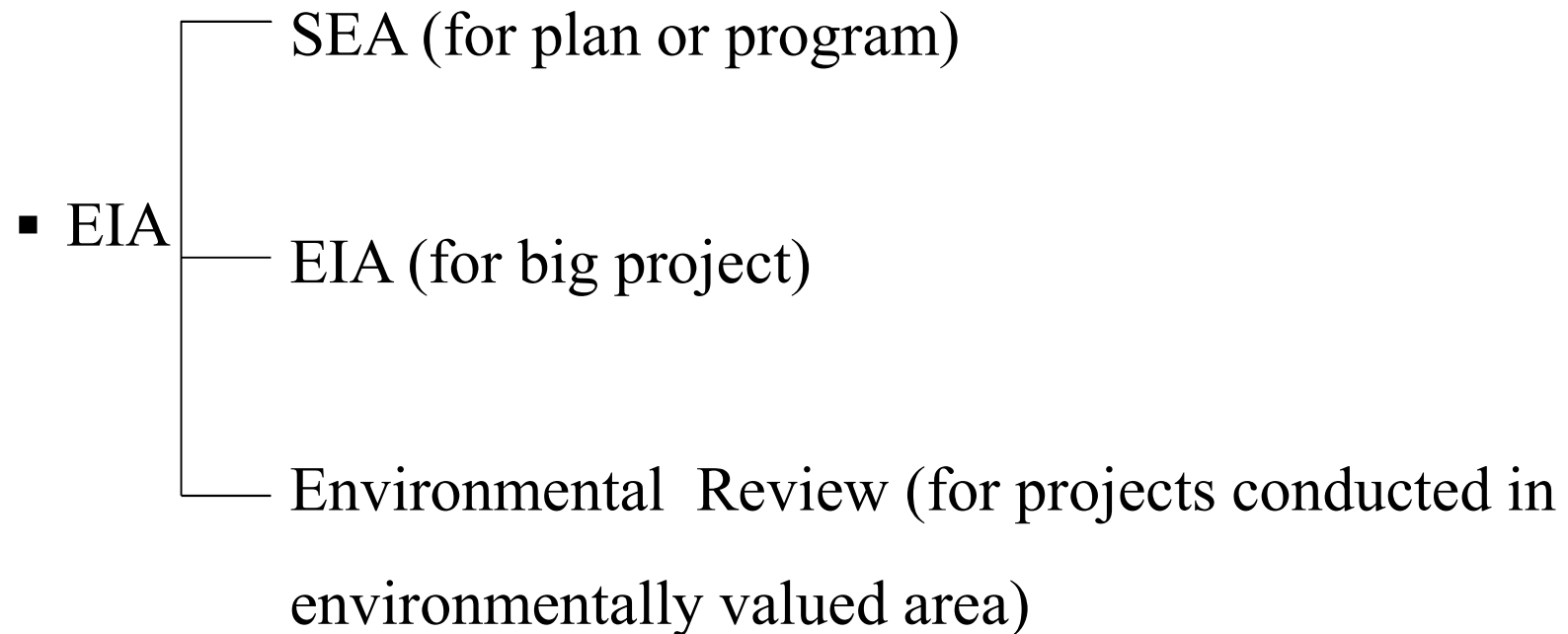
Find out important issues



Prepare measures in EIA legislative system to
minimize occurrence of lawsuit case

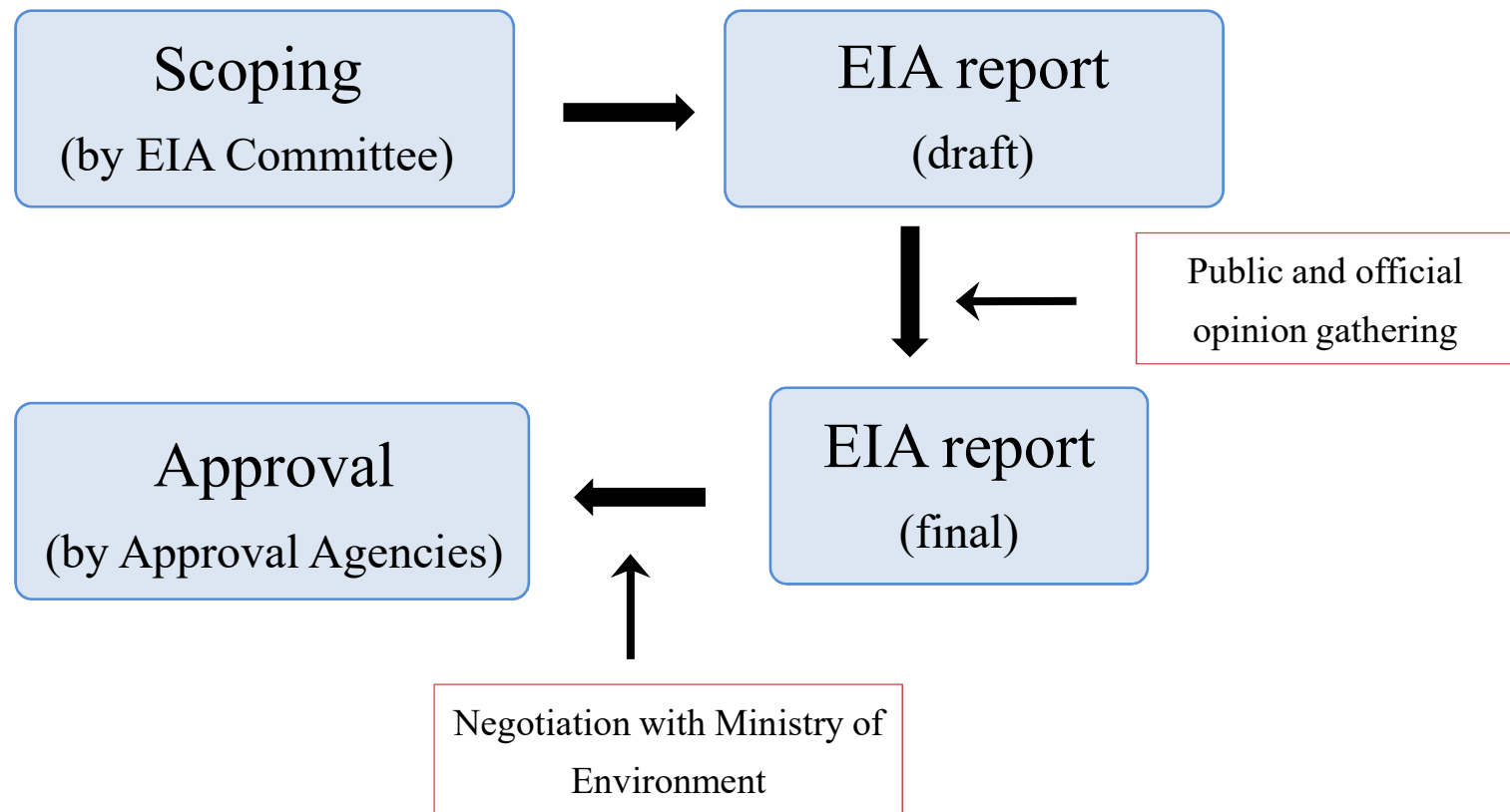
III | EIA regime of Korea

- Law : Environmental Impact Assessment Act.



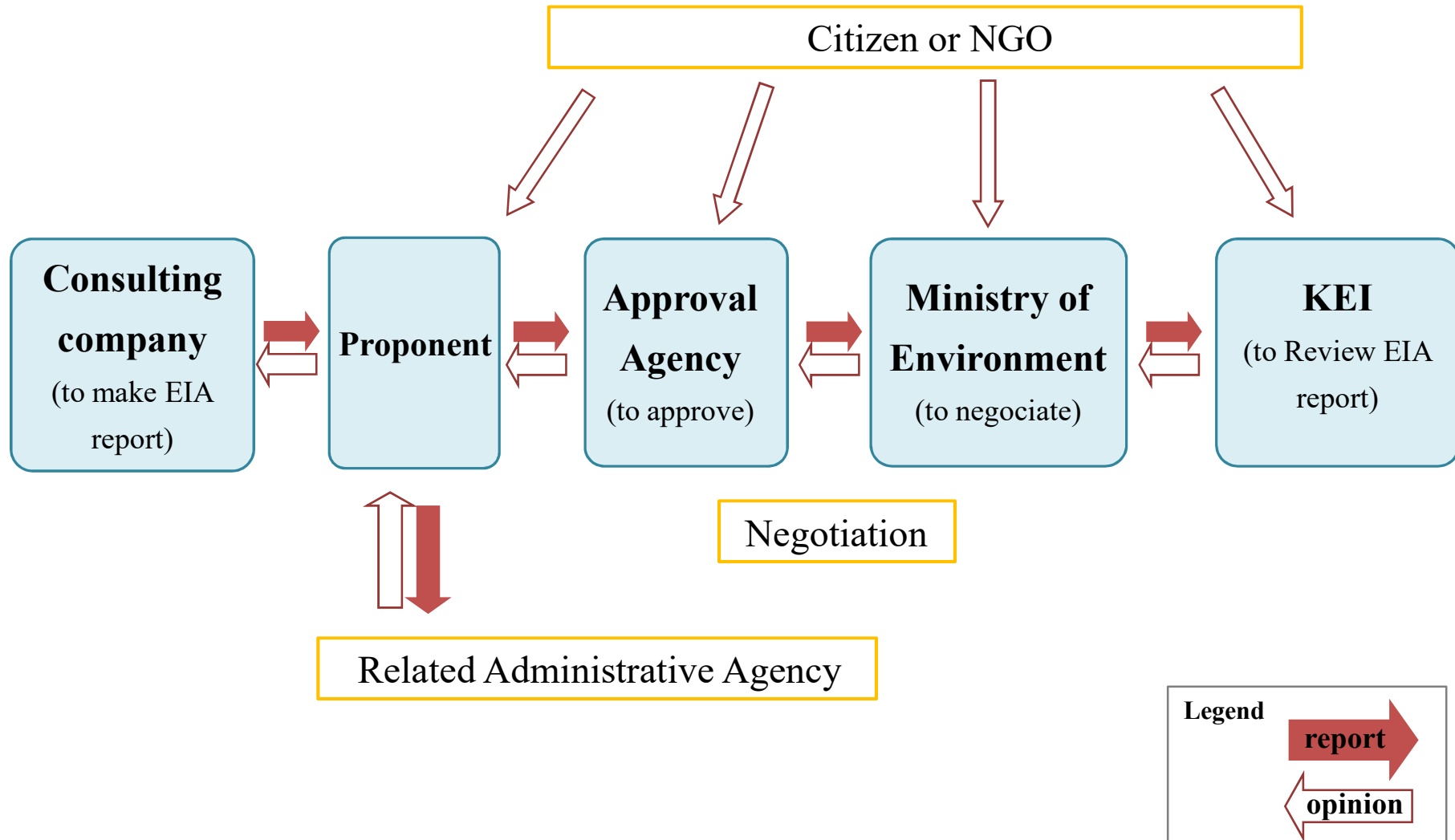
III | EIA regime of Korea

● Procedure of EIA



III | EIA regime of Korea

Participants of EIA process



III | Lawsuit cases

Project	Jurisdiction	Year
Hot spring facility in national park	The Supreme Court	1998
Atomic power plant	"	"
Hydraulic power plant	"	"
Railroad maintenance shop	"	2001
Charnel House	"	2004
Incineration in Ansong City	"	2005
Incineration in Pohang City	"	"

III | Lawsuit cases

Project	Jurisdiction	Year
Myongji Bridge	District Court(Busan)	2006
Reclamation	The Supreme Court	"
Tunnel for KTX	"	"
Housing Complex	High Court(Seoul)	"
Industrial Complex	The Supreme Court	2006, 2010
Golf Course	High Court(Kwangju)	2007
Mining	The Supreme Court	2008
Military Base	District Court	2006, 2009
Power Plant	"	2010
Navy Base	"	"

III | Result

Project	Jurisdiction	Year
Quarry	District Court	2021
Cable Car	District Court	2019, 2020
765KV Transmission Line	The Supreme Court	2021
Urban Facility(Park) Construction	District Court(Jeju)	"
Food Waste Treatment Facility	District Court	2021
Suspension of business license	The Supreme Court	2023

III | Result

● For Main Issues

1. Disobedience of EIA Negotiation procedures
2. Properness of plaintiff
3. Inappropriate EIA report
4. Overuse and abuse of discretion of approval agency

● Disobedience of EIA negotiation procedures

Decision of judge

1. absolute nullity if that project ignore negotiation procedures
2. Cancellation if there is a(or some) flaw(s) in procedures (Rarely, although there is flaw in procedures, the judge made his own decision to consider public interest)

● Properness of plaintiff

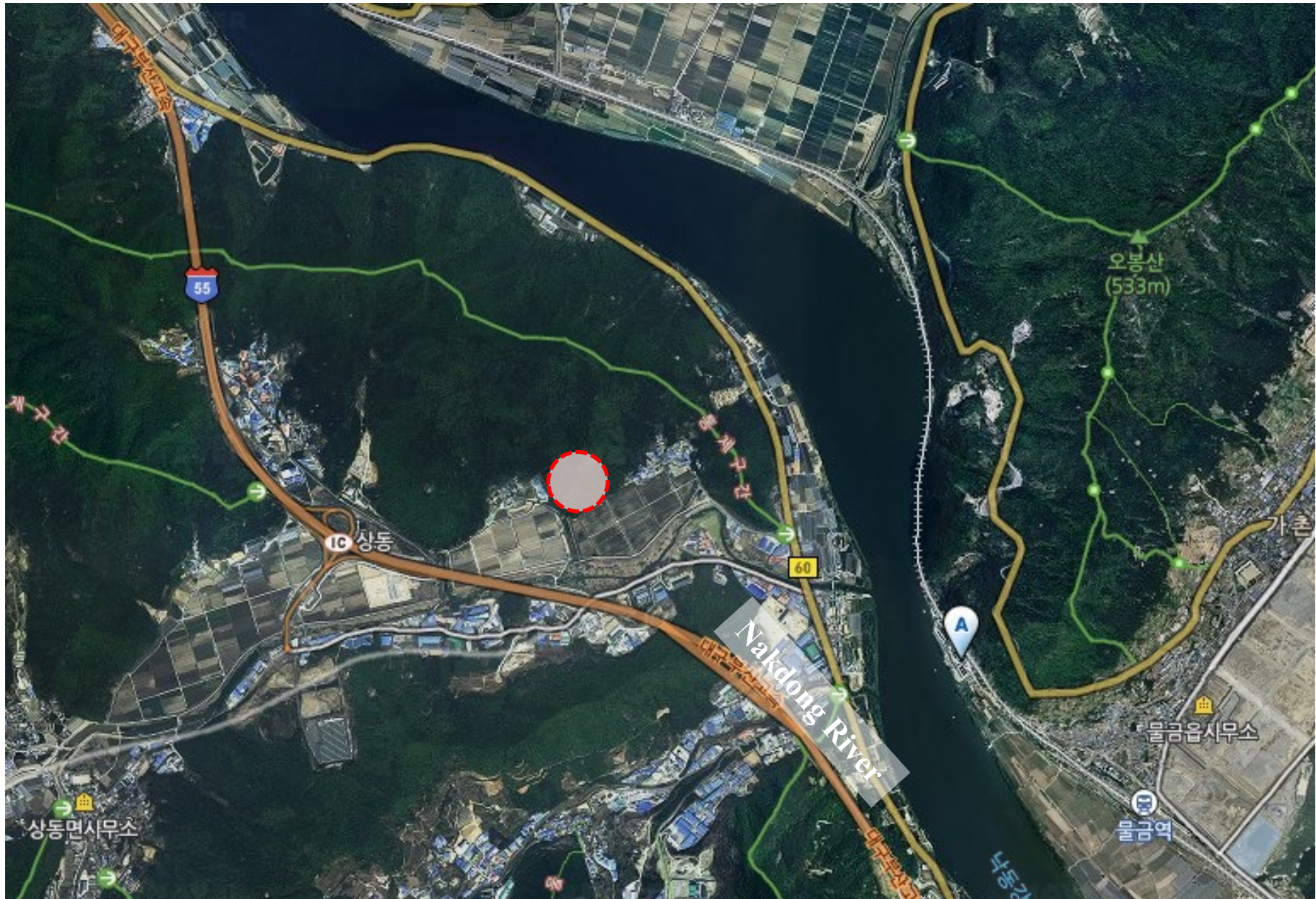
- Decision of judge
 - People living or harvesting in environmental affected area can be plaintiff
 - The others living outside have to demonstrate that they will be affected beyond tolerable extent by that project
 - Birds or organization can not be plaintiff
- Conservative
- Environmentally affected area
 - determined by EIA committee
(EIA committee was organized by approval agency(or ministry of environment)), temporary for every project

III | Result

● Very Special Decision of the Supreme Court

- When people use running water, the people can be Plaintiff, even if water resource area was very far
- Because there is possibility to be affected by running water

III | Result



● Inappropriate EIA report

- Decision of Judge : very conservative
 - Judge didn't admit plaintiff's opinion about inappropriateness of EIA report
 - Because Minister of Environment has negotiated already with approval agency for that project
 - But inappropriate EIA report will be a factor to decide overuse and abuse of discretion of approval agency.

III | Result

☾ Overuse and Abuse of Discretion of Approval Agency

- Decision of Judge : Very conservative
 - Judge didn't accept overuse and abuse of discretion
 - Birds of a feather flock together (NGO's complaint)
- * Recently, the judge makes decision that head of approval agency need not to follow the opinion of ME when negotiation is illegal or irrational .
- Some people urge to court to scrutinize and act positively
 - But in principle, jurisdictional passivism is desirable in law field.

Q & A

