



Komisi untuk Orang Hilang dan Korban Tindak Kekerasan
The Commission for The Disappeared and Victims of Violence



JARINGAN ADVOKASI TAMBANG
MINING ADVOCACY NETWORK

Indonesia
Submission to Universal Periodic Review of the United Nations Human Rights Council
(Third Cycle)
27th Session

Development Justice in Indonesia

The Commission for the Disappeared and Victims of Violence (KontraS)
Mining Advocacy Network (JATAM)

September, 2016

I. Introduction

1. Mine Advocacy Network (JATAM) and the Commission for the Disappeared and Victims of Violence (KontraS) submit this report for the Universal Periodic Review (UPR) of Indonesia that will take place in May 2017.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. Mining Advocacy Network (JATAM) is a network of non-governmental organization and community organization that have a concern related with the issues of human rights, gender, environmental living, indigenous people and social justice issues in the sector of mining and oil and gas.

II. Attacks against Economic, Social and Cultural Rights Human Rights Defenders

a. Government policies in protecting the economic, social and cultural rights human rights defenders

4. **Government of Indonesia (GoI) already has several legal foundation in the protection of human rights defenders. However, generally the legal foundations on human rights defenders are not to protect the works of human rights defenders.** By this far, there is remains no constructive policy to give a full protection on human rights defenders.
5. The legal foundation on human rights defenders stated on 1945 Constitution article 28C. Furthermore, exclusively mentioned in Law No. 39/1999 article 100 regarding human rights defenders which define human rights defenders as "*Anyone, groups, political organisation, community organisation, non-governmental organisation, or other community organisation, have a rights to participated in the protection, enforcing and mainstreaming human rights.*" However, both of the legal foundations only providing freedom of speech and protection human rights actions meanwhile, there are no guarantee of the security for the human rights defenders itself.

6. In the development, National Commission on Human Rights (Komnas HAM) will put protection materials for the human rights defenders on the amendment of Law No. 39/1999 because it is very difficult to submitting the Bill on Human Rights Defenders Protection in the National Legislation Program (Prolegnas) 2015-2019, however, actually in the previous periode the Bill on Human Rights Defenders Protection already appeared on the Prolegnas 2010-2014. The existence of this Bill is really important to become the legal foundation for the human rights defenders. This legal foundation will guarantee the freedom of people to conduct, practice and promoting human rights.
7. Meanwhile, in the appearance of article 66 Law No. 32/2009 regarding the Management and Protection of Living Environment (PPLH) stated *“Everyone that enforcing rights of a proper and healthy living environment could not criminally prosecuted or civilly”*, this article has a spirit for the actors of the human rights defenders in the field of economic, social and cultural rights. In fact, the exploitation on living environment massively increased and impated on the more of violence victims on criminalisation against the environment experts, indigenous people or the human rights defenders itsekf conducting their organisation mission.

b. Form of attacks against the economic, social and cultural rights human rights defenders

8. **In the recent four years, various human rights violations, particularly related with the respect, protect and fulfilling the economic and social cultural rights keep increasing.** This is also worsen by the trend of attacks on human rights defenders in the field of economic, social and cultural rights in form of arbitrary killings, torture, until criminalization that frequently perpetrated by the police to break the efforts on defending economic, social and cultural rights.
9. In the case of torture against the economic, social and cultural human rights defenders keep increasing, such as in the case of Indra Pelani, farmer activists that tortured until dead by 4 security persons of a palm field company PT. KWS on February 27, 2015. Similar incident occurred as well in Lumajang, East Java Province on September 26, 2016. Brutal attack against 2 farmer activists rejecting the iron sand mining, Salim Kancil and Tosan, by several unkown persons by order from the sand mining owner, including Pasirian Head of Village. The police that accidentally passing the torture location did not do any actoion that considered necessary to stop the torture act.
10. From the incident above, the effort on law enforcement that already conducted also did not targeted against the main actors of both incidents, therefore it were impacted to the continuation of human rights violations in the practice of defending land rights and human rights violations in the proper and healthy living environment, furthermore the other similar attacks in other region. In the case of Indra Pelani, the police only putting charges against 5 persons of security personnel with the maximum imprisonment for 14 years, without taking responsibility of PT. WKS and PT. APP as the owner of the disputed land consession. Meanwhile, in the case of Salim Kancil, the police only put charges into 35 field perpertrators, without at least trying to uncover the bribery that allegedly occurred by the corporation towards several public officials.
11. On the other hand, criminalization against the person that defending economic social and cultural rights also frequently perpetrated by the police to break the defending efforts of the human rights defenders. They frequently facing criminalization such as activist, labor, fishermen, indigenous people, anti-corruption activist until journalists that conducted a news report on the allegation of human rights violation on economic, social and cultural rights. in the recent four years, civil society organisation recorded at least

already 898 criminalization cases against land's rights defenders, 23 criminalization cases against labors, 40 criminalization cases against fishermen, 220 criminalization cases against indigenous people and 207 criminalization cases against journalists and anti-corruption activists.

III. Development and the living environment sustainability

1. Forest and Land Fires 2015

a. Forestry regulation in Indonesia

- Indonesia is one of the tropical country with the widest forest land in the world after Brazil and Zaire. Therefore, the forest utilisation and protection already regulated in the 1945 Constitutions, Law No. 5/1990, Law No. 23/1997 and Law No. 41/1999, President Decree No. 28/ 1985 and other Forestry Ministerial Decrees and several Decrees of Director General of Forest Protection and Nature Conservation (Perlindungan Hutan dan Konservasi Alam – PHKA) and Director General of Forest Management.

b. Forest fires case

- According from the Ministry of Environment and Forestry data, stated that the indication of forest and land fires area until September 9, 2016 in Kalimantan and Sumatra are 190,993 hectare. The extents of 103,953 hectare in utilisation land, 29, 437 hectare in farms and land release and 58,603 hectare in field of National Land Agency (Badan Pertanahan Nasional – BPN).**¹ National Disaster Management Agency (Badan Nasional Penanggulangan Bencana – BNPB) predicted, the economic deprivation caused by the haze of the forest and land fires in several province in Indonesia, then affecting on the haze disaster, was not the first time. In term of 20 years, similar disaster occurred annually.

c. Impacts from forest fires

- Deprivation caused by the forest and land fires are countless. Thousands of people suffered acute respiratory infection. Mostly are children that vulnerable to suffer this disease.** Even, there are cases of the death of baby caused by the acute respiratory infection in Kalimantan. Until now, there are three people dead because of the haze disaster last year.²
- Despite causing victims and decreasing the health quality of the citizen because of acute respiratory infection, forest and land fires also vanishing the habitat of wildlife animals. The habitat of protected elephant in National Forest Sembilang and Nature Preservation in Padang Sugihan Banyuasin Regency, South Sumatra fires scorched. In the Kubu Raya Regency, Central Kalimantan, because of the haze, the habitat of orangutan damaged.
- Forest and land fires that vanishing the habitat of wildlife animals also causing the loss of nutrients, microorganisms and land animals, damage of soil texture, global warming and nature preservation damage also hydrology cycle. The deprivation of victims and

¹ See more: KontraS.2015. KontraS report on Haze: Haze and Residue of Human Rights. The source can be accessed at:
http://www.kontras.org/data/20151112_buletin_Laporan_Kontras_Tentang_Asap_Dan_Residu_Hak_A_sasi:_Jauhnya_Pertanggungjawaban_Negara_Untuk_Menghukum_Perusahaan_Pembakar_Hutan_Dan_Melindungi_Hak-Hak_Dasar_Warga_Indonesia_56444903ca400.pdf

² Ibid. Para 13.

ecology caused by the forest and land fires absolutely countless rather than the deprivation in economy, tourism sectors.

d. Law enforcement on forest fires

17. **National Police already specify 140 suspects, the seven of them are the CEO of the corporation, within the forest and land fires cases that impacted to the haze disaster within a month.** They were facing punishment under the Law on Plantation, Law on Protection and Management of Living Environment, also Law on Forestry with 10 years maximum imprisonment and 10 billion rupiah charge. The numbers of forest and land fires perpetrators predicted to be increasing because the police still investigate dozens of corporations that allegedly conducted forest and land fires. If proved, corporation concession permit will revoke and suspended.³
18. **Ministry of Environment and Forestry data mentioned, hundreds of forest and land fires occurred in the corporation concession area in Sumatra and Kalimantan. In Riau Province there are 37 cases, South Sumatra 16 cases, West Kalimantan 11 cases and Central Kalimantan 121 cases. She also gave administration sanction against 30 corporations that proved in conducted forest fires. However, the sanction is only the revocation of corporation permit.**
19. Meanwhile, Riau Police District only issued Third Warning Letters to 15 corporations, with the reasons there are no clear evidence of the corporations conducted deliberate or omission forest fires.

2. Concurrent reclamation in several provinces

20. **Reclamation in the Jakarta North Coast worsening the lives of fishermen because they have to circle the route further to the area of fish catching.** One of the Fishermen Union members stated, the distance should be circling around similar with the distance between Tangerang – Karawang (appx. 13.9 Km). The far distance overburdening the fishermen because of they will need more fuel, the area of fish catching becoming unclear because the reclamation island with the long period impact, they occupation will be gone.
21. **According to several resources, reclamation will be conducted in several areas in Indonesia, such as in Jakarta Bay, Benoa Bay, Mamuju, Manado, Semarang, Tangerang and Makassar.** The patterns of issues and arguments mostly similar. The shortage of land, therefore, it is necessary to conduct reclamation. These issue as a basic of reclamation in several parts of Indonesia.
22. **The accusation of defamation against I Wayan Gendo Suardana on September 2016.** Gendo is the Chairman of ForBali Movement to reject the reclamation project in Benoa Bay. He was posting several tweets in Twitter pointed to several political parties authority and being reported by mass organization as defamation under the Electronic Transaction and Information Law (UU ITE) No. 28/2008. He was mentioning about his regret of public official cooperation to immediately conduct the reclamation in Benoa Bay.⁴ This action actually showing the state in protecting the reclamation investor in Benoa Bay in criminalized activist. UU ITE frequently used to criminalized some

³ Ibid. Para 14.

⁴ See more: CNN Indonesia. 2016. Aktivis Walhi Penolak Reklamasi Bali Dilaporkan Ormas Pospera. The source can be accessed at: <http://www.cnnindonesia.com/nasional/20160815103906-12-151404/aktivis-walhi-penolak-reklamasi-bali-dilaporkan-ormas-pospera/>

persons that seen as rejecting government policies. Up until now, Gendo still as a suspect of defamation, and the report still not being dropped.

23. The reclamation in Jakarta Bay, according to Minister of Environment, stated that already appeared some sedimentation in the area of north coast, loss of clean water, and vital objects are agitated. Furthermore, the negative impacts of reclamation on the environment involving the physical changes such as hydro-oceanography, coastal erosion, sedimentation, increase of turbidity, sea pollution, changes of groundwater quality, increase of flood potential and abrasion in coastal areas. Meanwhile, the biological impacts such as the disruption of mangrove ecosystem, coral reef, seagrass, estuaria and also the decreasing of biodiversity, as occurred in Boulevard Bay, Manado, North Sulawesi Province.

3. Social and environmental impact after the mining.

Policy making:

24. According onto the legal framework, based on article 96 point c Np. 4/2009 regarding Mineral and Coals Mining juncto article 2 clause (1) and (2) President Decree No. 78/2010 regarding Reclamation and Post-mining, every license holders of mining shall conduct environment management and monitoring in the field of mining including reclamation and post-mining activities. Article 2 clause (2) and (3) of the Minister of Energy and Mineral Resources Decree No. 7/2014 regarding the Implementation of Reclamation and Post-Mining that regulated reclamation and post-mining shall fulfill the mining environment protection and management principals, including the guarantee of stability and security of excavated mine sites. In the Annex 1 of the Minister of Environment Decree No. 4/2012 regarding the Indicator of Environment Friendly for the Business and/or Coal Open Mining, that regulated the minimum distance of the excavation edge for 500 meters from the residence. Article 54 clause (1) and (2) Law No. 32/2009 regarding the Environment Protection and Management states everyone that conducted pollution and/or exploitation of environmnet shall conducted remedies of environmental functions.

Incidents in the excavated mine sites:

25. According to the policies above, that were not implemented fully by the government and/or the law enforcement apparatus towards the business corporations in the sector of mining, there are several permission procedural and the implementation of reclamation and excavated mine sites problems, such as:
26. The business permission of mining increased drastically since 2009. According to the Commission of the Corruption Eradication (KPK) on 2015, more than 60 percent of mining permission did not fulfill the administrative requirements. Including: the tax ID number, did not delivered the reclamation guarantee funds, did not own the post-mining documents, did not have Clear and Clear status.
27. The non-fulfillment of the permission requirements are the form of ommission by the government and corporations in the environment and mining protection and management. In the period of 2011-2016 there were already 24 children drowned in the excavated mine sites in East Kalimantan province. From the 24 children, 14 of them occurred in Samarinda. Samarinda as the capital city of East Kalimantan, which the 71

percent of the area already occupied by the Coal Mining Business Permission. Across Samarinda, there are 232 excavated coal mine sites that did not being reclaimed.⁵

Responds taken by the government:

28. Since 2011 until now, there is only one corporation that verdicted guilty in the court, which is PT. Panca Prima Mining that affected two elementary school children drowned until dead at the same time. PT. Panca Prima Mining only been punished with the administration charge of one thousand rupiah, and the security operator were sentenced two months imprisonment. JATAM with the victims' family since 2015, already conducted complain report to the Ministry of Environment and Forestry, Ministry of Women Empowerment and Child Protection, National Commission of Child (KPAI), National Commission on Human Rights (Komnas HAM), Presidential Staff Office (KSP).
29. On December 17, 2015, the Governor of East Kalimantan, Awang Faroek published the suspension letter of 11 mining corporations, the owners of the excavated mine sites that impacted to the children drowning. However, in the process of suspension, there were several corporations that found still operated in field. One of them was PT. Multi Harapan Utama. On February 3, 2016 the Ministry of Environment and Forestry conducted isolated 11 excavated mining sites that affected to the death of children. Moreover, the local government revoked the suspension letter in March 2016 with the reason that the corporations already committed to the regulation obligation.

IV. Right to health

1. Artificial vaccines

30. Minister of Health published 14 names of hospitals that proved to provide artificial vaccines with their own excuses, one of the hospitals is Harapan Bunda Hospital. Therefore, KontraS directly investigate to the hospital to collect several evidences and conduct advocacy towards the parents of artificial vaccines victims. On Thursday, July 14, 2016, the parents of artificial vaccines stand by in the Harapan Bunda Hospital, East Jakarta.
31. Several patients did not recognized the spreading of artificial vaccines in the hospital, until there were some news reported that there are 14 hospitals proved to provide artificial vaccines. Each day after the news related with this issues, KontraS and the victim's parents established an Emergency Post to collect and documenting the complaints from the parents that already conduct the vaccination to their babies in Harapan Bunda Hospitals. The vaccines that already falsified were basic vaccines that required to be given to babies which are: measles, poliomyelitis, hepatitis B, tetanus, and BCG (Bacille Calmette-Guerin).
32. The Minister of Health, Nila F. Moeloek revealed the research result related with the ingredients of artificial vaccines spreading amongst the community in the Work Meeting with the Commission IX House of Representatives (DPR) where the Food and Medicine Supervisor Agency (Badan Pengawas Obat dan Makanan – BPOM) already found four

⁵ JATAM Monitoring and Investigation Data. 2016.

artificial vaccines of 39 vaccines samples from 37 Health Facilities in nine provinces. Beside that, she also revealed 14 names of hospitals that using artificial vaccines.

33. However, the vaccines supplies already have its own regulation and systems such as the vaccines should be according to the ISO standards, hospital should have Standards of Procedures (SOP) related with the medicine and health care tools supply, BPOM or state should be supervised and controlled periodically.
34. After a month the Emergency Post opened, there are six hundred from the parents of artificial vaccines victims that asking for responsibility from the government and from the hospital.⁶ Since the incident, the measure taken by the Minister of Health is only to provide the re-vaccination towards the artificial vaccines victims. Until now, there are no firm actions such as law enforcement to prevent the similar incident in the future or to evaluate the work of several state agencies related with the availability and spreading of foods and medicine in Indonesia.
35. In September, 15 representatives from the parents coalition will conduct class action to the East Jakarta District Court to put the case on the legal enforcement system. Therefore, the justice for the victims and the prevention for the future could be enacted.

VI. Recommendations:

The Government of Indonesia should:

- The government should establish and accelerate the process of Bill on Protection of Human Rights Defenders;
- The government should ensure the implementation of an accountable and transparent law enforcement to give deterrent effect against the perpetrators as well as preventing the similar incident in the future;
- The government should ensure every spaces existed from the weakness of legal system in Indonesia should also become a serious attention of the government such as the regulation on business enterprises and human rights to prevent the non-state actor spaces in perpetrating the human rights violations in Indonesia. As well as to prevent the criminalisation against the human rights defenders;
- The government should give clear explanation and wider definition to several articles that essentially provide a protection for human rights defenders.
- The government should make an instruction to the Chief of National Police to immediately conduct the criminal prosecution against the individuals (even state or non-state actors) including corporations that already causing significant deprivation towards all of the citizen in Indonesia related with the forest fires. Furthermore, to guarantee the availability of right to information absolutely necessary. The public officials should not using the excuse 'exceptional information' to limiting the public rights. Published information will open the access of the citizen that affected to directly conduct accusation or charge of responsibility of the deprivation from the problems occurred, also to request the related ministries to conduct several urgent measures to protect the preservation and reparation and also to evacuate the wildlife within the forest in a long period;
- President of Republic Indonesia through several state institutions should immediately coordinating to push the support maximizing and cooperation that offered by several other countries in Southeast Asia. Haze incident in this region could not resolve partially year by year, however there should be a solid and consolidative measures to provide several limitation in investation spaces towards the corporation that keep violating the law and give

⁶ According to a complaint submitted to the Emergency Post by KontraS and Parents Coalition of Artificial Vaccines Victims. Updated until July 2016.

extreme deprivation against the environment and the basic rights of citizen. Therefore, there should be international law amongst the region to establish common regulation in investing agricultural business that could harming the environment with several limitations to prevent the disaster in the future;

- President of Republic Indonesia should make an instruction to the law enforcement apparatus to establish legislation products that could provide transparency spaces and responsibility fro the business sector with the national rule of law and universal human rights standards. Government commitment in the business and human rights agenda will facing obstacles if the criminal corporation in form of forest fires still neglected and not resolve comprehensively.
- There should be a comprehensive research and study regarding human rigths and reclamation also regarding the impacts of the reclamation itself to the future condition of the environment and citizen aftermath the reclamation;
- There should be a firm terms and requirements before the reclamation conducted, such as the responsibility to the fishermen and also to the environment istself. Therefore, it is necessary to establish several regulations regarding the reclamation and its provisions.
- The settlement of artificial vaccines should begin from the production phase. Which means, the state agencies such as BPOM that has an authority to supervise and controlling the flow of medicine circulation;
- The government should establish working networks and coordination with the related state institutions such as National Police, Ministry of Health, and President to ensure the maximum services for the victims and families, fair legal processes and the remedy access;
- The government should ensure the guarantee of proper public services and also fulfilling the right of the child of health, also to ensure the business stakeholders (hospitals, corporations and providers) profession group (doctors) to be oblige to the human rights standards on right to health and proper public services.
- The government should review every mining permissions that exists or close with the residence territorals. According to the Ministry of Environment Regulation No. 4/2012 that regulated about the minimum distance of mining sites with the residence territorial.
- The government should take a firm law enforcement for the 17 corporarations of the mining sites that impacted to 24 children dead because of drowned in Easr Kalimantan using rhe Law No. 39/1999 regarding Human Rights, Law No. 35/2014 regarding Child Protection and Law No. 32/2009 regarding Protection and Management of Environment.
- The government should take a legal action of environmental as mentioned in the article 112 Law No. 32/2009, which is the public officials that did not conducting supervision and affecting to the exploitation and human rights violations that should be imprisonment by 1 year or 500 million rupiah charges. Also the article 114 Law No. 32/2009, every persons in charge of business did not committed to the regulations should be imprisonment and 1 billion rupiah charges.
- The government should review the energy policy that provides the coal mininf expansion. Such as electricity project of 35 gigawatt and the Government Regulations No. 79/2014 regarding National Energy Policy.