

**9th Session of the Expert Mechanism on the Rights of Indigenous Peoples  
11 – 15 July 2016**

**Aliansi Masyarakat Adat Nusantara/AMAN  
The Indigenous Peoples Alliance of The Archipelago, INDONESIA**

**Agenda Item 6: Human rights of indigenous peoples in relation to business enterprises**

Thank you Chair,

In 2013, the Constitutional Court affirms our right to territories and resources including to customary forest. This is very important in the history of Indonesia. The Rule used UNDRIP and ILO 169 as reference to make the decision.

In 2014, for the very first time in the history of Indonesia, we, the indigenous peoples are visible in official agenda of president candidate. After all, President Joko Widodo and Vice-President Jusuf Kalla had included six Indigenous peoples' priorities in NAWACITA!<sup>1</sup> Further, the President has committed to establish a Presidential Task Force on Indigenous Peoples. At this time we also have the Draft Indigenous Peoples Act being discussed by the national Parliament. And currently the Government has adopted 6.8 million hectares of indigenous map into the OneMap Indonesia. Positive developments are happening across Indonesia with legislation process on indigenous taking places in many local parliaments.

Chairperson,

While in fact Indonesian Constitution Article 18 and Paragraph (2) and Article 28I Paragraph (3) recognizes Indigenous Peoples, yet our existence and our rights as Indigenous Peoples have been constantly denied by Indonesian Government. The attitude is inconsistent with the Constitutional Court of Indonesia in 2013 that reaffirmed Indigenous Peoples' rights to land, territories and resources including to forests with reference to the UNDRIP and ILO 169. Also, the denial is inconsistent with the "Concluding observations on the initial report of Indonesia" issued by the Committee on Economic, Social and Cultural Rights of the United Nations on 19 June 2014. The Committee called on the Indonesian government to immediately ratify the Law on recognition and protection of the rights of Indigenous Peoples and to recognize "Masyarakat Adat" as *Indigenous Peoples*.

Chairperson,

In many places across the country, state officials' behaviour in the field thus remains unchanged. Government continue to criminalize, violate and deny indigenous peoples using existing discriminative laws against Indigenous Peoples. All this has a lot to do with the presence of business corporates investing on our lands and territories – again, in the name of development.

The Results of National Inquiry by The National Commission on Human Rights concerning Violations of Land Rights of Indigenous Peoples in the Forest Areas shows that violation of indigenous peoples rights has happened in the past and continue to happen across the country.

The following cases, illustrate to continuation of violations of indigenous peoples rights by business companies:

1. *Semunying Jaya indigenous people vs PT. Ledo Lestari* ended in the rejection of the Semunying Jaya indigenous peoples' lawsuit by the judges of Bengkayang District Court in West Kalimantan, even after the indigenous peoples had gone through the judicial process with dozens of hearings. Semunying Jaya indigenous peoples, Jagoi Subdistrict, Babang Benkayang District of West Kalimantan filed a lawsuit against PT. Ledo Lestari, a plantation company that had grabbed the indigenous lands, at Bengkayang District Court. After going through more than 27 trials, the judges of Bengkayang District Court decided on a NO (*niet ontvankelijke verklaard*) verdict and the claims were not accepted with the argument that the plaintiffs did

not have legal standing. In the judges' legal consideration, the indigenous peoples were considered to have no legal status in the form of a local regulation or decree from the relevant ministries that would recognize their existence as indigenous peoples.

2. More than 700 families belonging to the Tana Ai indigenous people in Sikka, Flores, East Nusa Tenggara, received threats of evictions from Sikka Local Government, Flores, East Nusa Tenggara. They are accused of living on the concession area of PT. Diosis Agung (DIAG), a company engaged in coconut plantation and which later changed its name to PT. Krisrama. The company's HGU (Right to Use Building) expired on 31 December 2013. The people repeatedly attempted to reclaim the public land and territory through a series of activities, both by visiting the relevant agencies as well as by engaging in dialogue with the Local Parliament and Sikka District Head. The result of this dialogue is unclear. The Local Parliament and Sikka District Head claim that they cannot issue a decision because it is the central government that has sole authority to solve the problem. In November 2015, several Tana Ai indigenous representatives struggled to get to Jakarta to seek the settlement of their case. They met with the National Land Agency (BPN), which issued a recommendation: BPN must not process the renewal of the HGU (Right to Use) permit requested by the company until the problems affecting the Tana Ai indigenous people have been resolved.

The President of Indonesia has, on many occasions, promised to grant clemency for the victims of unjustified criminalization, most recently on Human Rights Day, 10 December 2015. However, this commitment to granting clemency to unjustly convicted indigenous leaders has not been fulfilled to date. At the moment, there are at least 260 indigenous leaders and activists with a criminal convictions, 5 of them still languishing in prisons in various regions.

Chairperson,

Our reality is that most of the development aggressions that have been initiated by corporations and supported by the states have caused irreversible and incorrigible damages to indigenous peoples' lands and lives. Loss of lands to "development" is also about our right to food. For decades we have been made to believe that our own food are bad and "Rice" is the good and special food. I would like to show you the case in the eastern part of Indonesian archipelago including Maluku and Papua, big scale companies destroyed the main food of indigenous peoples. In the same time Indigenous Peoples have never been properly trained how to plant rice (the regions do not suitable for rice in the first place), nowadays, they end up buying rice from the market. Rice is brought from other islands. Many of families have to give up their land just so they have money for basic needs including to buy food.

Chairperson,

The impacts of business corporates on the right to food and health status of Indigenous Peoples have to be studied carefully. We believe changing in diet give negative impacts on health conditions including diabetic and obesity.

### **Recommendation:**

1. We call upon the Government of Indonesia to immediately implement the Recommendations of NHRI's National Inquiry
2. We call upon EMRIP to cooperate with the UNWG on Business and Human Rights; to conduct studies concerning Impacts of Business Corporates to the situations of Indigenous Peoples Right to food and Health Status.

### **Notes and references**

1 President Joko Widodo's Presidential Candidates Pledge in 2014.