

## **Universal Periodic Review (UPR) Indonesia 2016**

### **Shadow Report on the situation of the right to a clean and healthy environment and rights to land and housing in Indonesia for the 27th Session of the UN Universal Periodic Review for Indonesia by the Indonesia Civil Society Coalition**

#### **A. INTRODUCTION**

1. This stakeholders' report is a joint submission of WALHI (Friends of the Earth Indonesia), Fransiscans International, the Mining Advocacy Network (Jatam), Jakarta Legal Aid Foundation (LBH Jakarta), the Agrarian Reform Consortium (KPA), Indonesian Legal Aid Foundation (YLBHI), and Women's Solidarity for Human Rights (Solidaritas Perempuan). The report highlights key concerns related to the right to a clean and healthy environment, as well as how the failure to guarantee this right affects the enjoyment of other rights. From 2012–2016, there were two major environmental concerns in Indonesia: the massive forest fires across five provinces in 2015, and the death of dozens of children in abandoned mining pits. Other problems have included the preservation of coastal areas and fishing grounds, the rights of farmers to their land in rural areas, the rights of urban residents to decent housing, as well as threats to environmental human rights defenders.
2. The right to a clean and healthy environment in Indonesia remains a serious concern, despite the fact that the environment received special attention in previous universal period review processes in 2008 and 2012. Large corporations have continued to damage the environment with little consequences.
3. The right to a clean and healthy environment is related to a number of other recommendations made during the last UPR process in 2012, such as guarantees for maternal and infant health, recommendations related to education, adequate food, housing and water, as well as recommendations related to the protection of environmental human rights defenders.

#### **B. BURNING AND DESTRUCTION OF THE FOREST ECOSYSTEM**

4. The national legal framework for the prevention of forest fires is actually quite strong. Article 56(1) of Law No. 39 of 2014 on Plantations states that plantation companies are prohibited from using burning to clear or manage land. Article 49 of Law No. 41 of 1999 on Forestry also states that all licence or rights holders are responsible for any fire occurring on their land. Finally, Law No. 32 of 2009 on Environmental Protection and Management includes many provisions related to environmental protections<sup>i</sup>.
5. Forest fires have been a major problem in Indonesia since 1997, with the granting of forest concession licenses (HPH) on a massive scale. With the clearing of forests and peatland for the establishment of monoculture plantations, forest fires have occurred almost every year. Companies have shown a preference for using burning to clear land, as it is considered quick and cheap. They also dig canals to dry out peatlands for planting oil palm and acacia, which can make peatlands even more flammable. Over the past 18 years, successive Indonesian governments have failed to act on the systematic destruction of forest for the expansion of monoculture plantations, and the consequences this destruction has had on the people living in these areas.
6. The broad authority granted to government to issue licences has not been matched by state efforts to monitor concession holders. Responsibility for natural resource management has been delegated to corporations, and the size of their concessions means that many do not have the capacity to adequately manage their entire holdings. Some corporations hold Industrial Forest Plantation (HTI) estates of up to 300,000 hectares, meaning that if a fire occurs, it can be difficult to control.<sup>ii</sup>

7. The high allocation of land to HTI concessions has been influenced by a change in regulations affecting the type of forest that can be used for HTI concessions. Government Regulation No. 6 of 2007 and its revised version No. 3 of 2008 allow HTI concessions in primary forest. In South Sumatra, for example, at least 13 of 20 companies with HTI permits suspected of conducting forest burning in 2015 received their permits between 2006 and 2014.
8. From February–April 2014, in Riau, 2,398 hectares of biosphere reserves and 21,914 hectares of other land were burned. As a result, 58,000 people suffered from respiratory illness, affecting the right to health, and schools were closed, affecting children’s right to education. In 2013, 117 companies in Riau were reported to the Ministry of Environment over allegations of forest and peat burning, with eight eventually named suspects. In 2014, several of the same companies were again named suspects based on reports to the Ministry.<sup>iii</sup>
9. But the worst burning of recent times occurred in 2015. Local civil society organisation Walhi found that most of the burning sites in 2015 were located in the concessions of large companies, which, according to Indonesian law, are responsible for any fire occurring on their concessions. Most fires were found in five provinces: Riau (1,005 sites), Jambi (2,842 sites), South Sumatra (4,416 sites), West Kalimantan (2,495 sites), and Central Kalimantan (5,672 sites). According to data from the Indonesian Aeronautics and Space Agency (LAPAN), from July to October 2015, a total of 2,089,911 hectares of forest was burned.
10. Residents in areas with large areas of peatland, like Riau, Jambi, South Sumatra, West Kalimantan and Central Kalimantan have been most affected. In 2015, at least 21 people died as a result of the fires and smoke, 390,025 people suffered from respiratory illness, and 45 million people were affected by haze. The fires will also increase the risk of global warming, as at least 1.6 tonnes of carbon emissions were released into the atmosphere as a result of the fires.
11. By October 2015, the Indonesian National Police named 247 suspects, consisting of 230 individuals and 17 corporations, from 262 reports received. The Forestry and Environment Ministry suspended the licenses of 16 companies, revocation of the company as well as 10 litigation cases. Eventually, 446 companies, consisting of 308 palm oil companies, 71 Industrial Timber Plantation (HTI) companies and 60 timber concession (HPH) companies, were suspected to have been involved in the massive forest fires during 2015.<sup>iv</sup>
12. On 23 July 2016, the Riau Police closed its investigations into 15 companies reported by the Ministry of Forestry and Environment for forest burning. The dropping of these investigations was typical of the state’s lack of commitment to prosecuting fires and show how law enforcement officials prioritise the interests of corporations over the rights of Indonesian citizens.<sup>v</sup> This was not the first time that Riau Police had bowed to corporations. In 2008, they dropped investigations into 14 companies suspected of conducting illegal logging in Riau. Four of these 14 companies were even among the 15 that had their cases dropped in 2016.<sup>vi</sup>

**Recommendations:**

13. Urge the government to enforce the law and subject perpetrators of forest burning crime to a fair and transparent legal process. Provide compensation to victims of forest burning crime.
14. Law enforcement can begin by reviewing the licences of all companies operating in forested and peat lands. Companies that have been found to burn forests or peatlands should have their licences revoked, in line with the mandate article 79 of Law No. 32 of 2009 on Environmental Protection and Management<sup>vii</sup>. Urge the Supreme Court to apply the principle of strict liability to forest burning crimes.
15. Urge the Indonesian government to protect all peatland and establish preventative mechanism to avoid future burning by corporations or individuals. The total protection of peatland is a crucial step in the management of forest fires. Some 75 per cent of fires occur in peatland areas. Peatland fires last longer, release more haze and greenhouse gases, and are closely related to increased risk of respiratory disease.<sup>viii</sup>

16. Encourage the government to develop a national mechanism, which can be accessed by communities and victims, to hold corporations accountable when they are involved in environmental crime.

### **C. The death of children in mining pits**

17. According to Indonesian law, holders of mining business permits (IUP) are required to monitor and manage the mining environment. This process includes a requirement to meet mining environmental protection and management principles, rehabilitating the environment after mining activities have ceased,<sup>ix</sup> and ensuring that it is safe and secure.<sup>x</sup>
18. The number of mining permits granted by governments has increased dramatically since 2009<sup>xi</sup>. Based on findings of the Corruption Eradication Commission (KPK) in 2015, more than 60 per cent of mining permits do not meet administrative requirements. Such problems include: not having a tax file number (NPWP), failure to contribute to the compulsory reclamation and rehabilitation fund, and failure to obtain a “Clean and Clear” certificate.<sup>xii</sup> The failure to enforce these administrative requirements is indicative of the government and mining companies’ approach to protection and management of the environment in mining areas.
19. From 2011-2016, 24 children have died after falling into abandoned mining pits in East Kalimantan. Of these 24 children, 14 died in the provincial capital, Samarinda, where 71 per cent of the municipal district has been allotted to mining business permits (IUP).
20. Only one of these 24 cases has been processed at the Samarinda District Court. The case involved Dede Rahman (6) and Emaliya Raya Dinata (3) who died on 24 December 2011. A security official for the mine, Muhammad Yusuf Ambo Rape, received a sentence of 2 months in prison over their deaths, while the company, PT Panca Prima Mining, received an administrative fine of just Rp 1,000 (10 cents). Meanwhile, the case of Muhammad Raihan Saputra, who drowned on 22 December 2014, was ignored by police for nearly two years. It was not until 28 July 2016 that the North Samarinda Police called Muhammad’s parents to ask for a witness statement. The Indonesia Child Protection Commission (KPAI) and the Coordinating Ministry for Political, Legal and Security Affairs have said that they will form a special team to investigate the cases.
21. According to Jatam, across East Kalimantan there are 4,464 mining pits, from 1,488 IUP concessions, covering an area of 5.4 million hectares. There are at least 232 abandoned mining pits the capital, Samarinda, resulting from 32 companies that are operating close to residential areas. These 32 companies are operating well inside the 500m limit specified by Ministerial Regulation No. 4 of 2012.

### **D. Efforts made by Komnas HAM, state institutions and the government**

22. The National Commission on Human Rights (Komnas HAM) has monitored this process between 2011-2016, and has observed no significant efforts from the central or regional governments to force mining companies to meet their reclamation responsibilities.
23. Since 2011, only one company has been found guilty in court, PT Panca Prima Mining, over the deaths of Dede Rahman and Emaliya Raya Dinata, and it only received a paltry fine.
24. Civil society organisation Jatam has advocated on behalf of victims’ families since 2015, meeting with the Ministry of Forestry and Environment, the Ministry of Women’s Empowerment and Child Protection, the KPAI, Komnas HAM, and the President’s Office. As a result of its efforts, on 17 December 2015, East Kalimantan Governor Awang Faroeq issued a temporary suspension of the operating permits of 11 companies that had left pits that had resulted in the deaths of children. Despite the suspension order, a number of these companies continued to operate (for example PT Multi Harapan Utama) and in March 2016, the suspensions were lifted, as companies promised to adhere to regulations.

### **Recommendations**

25. Urge the government of Indonesia to guarantee the rights of children living around these mining pits, and ensure that companies responsible for the deaths of children pay adequate compensation to the families of victims.
26. Provide room for the participation of the community in policy related to the Law on Minerals and Coal Mining, including by providing veto rights for local communities and a mechanism for complaint settlement.
27. Establish a mechanism for monitoring and punishment for companies that fail to meet their responsibilities for mining reclamation and clean-up efforts.

#### **E. Right to Land**

28. Law No. 5 of 1960 on Basic Regulations on Agrarian Issues ('the Agrarian Law') recognises the right to land as one of a citizen's basic rights. The law emphasises the role of the government in agrarian reform so that every citizen can enjoy the right to land for a better quality of life.
29. But there are many statutes and regulations that conflict with the spirit of the Agrarian Law, such as Law No. 41 of 1999 on Forestry and Law No. 39 of 2014 on Plantations. These statutes, and other regulations, have provided private companies with greater power in land use decisions, resulting in many individuals being dispossessed of their land. Further, the lack of effective channels for conflict resolution (via litigation or non-legal methods) results in many land conflicts dragging on for years.
30. The government has named agrarian reform as one of its priorities, although it has not made serious efforts to resolve the issue comprehensively. The government has tended to view agrarian reform as a matter of land certification, and has ignored issues like unequal rights to land.
31. Instead of implementing real agrarian reform, forced evictions and land acquisitions have occurred in cities and villages across Indonesia. In 2015, for example, the Jakarta Legal Aid Foundation recorded 113 forced evictions in Jakarta, involving 8,145 families and 6,283 businesses. In 84 per cent of cases, there was no attempt to engage residents in dialogue before the evictions occurred, 67 per cent did not get any compensation and 57 per cent involved state officials with no authority to be conducting evictions (such as the military).<sup>xiii</sup>
32. According to the Agrarian Reform Consortium (KPA), the situation was even worse at the village level. In 2014-2015, it recorded 6,942,381 hectares of land and crops seized by the government and private companies, affecting 1,085,817 families. From 2004-2015, KPA recorded 1,772 land conflicts, with most occurring at the village level. The plantation sector, and oil palm plantations in particular, made a major contribution to these conflicts.
33. In addition to private corporations, state owned enterprises were also responsible for denying citizens their rights to land. In Ogan Ilir, South Sumatra, for example, local residents have clashed with security forces for state plantation company PT Perkebunan Nusantara (PTPN). In 2012, a 12-year-old child was shot dead, and five other people were wounded when members of the National Police's Mobile Brigade (Brimob), conducted an operation in Limbang Jaya village.<sup>xiv</sup>
34. Local residents have also had their rights to land violated by the government as it has established national parks. In Central Sulawesi, for example, the government made the unilateral decision to establish the Lore Lindu National Park (TNLL), affecting 68 villages, without first consulting with the people who would have their forest access restricted.<sup>xv</sup>
35. Another form of violations of the right to land occurred with a major climate change mitigation project, the Kalimantan Forest and Climate Partnership, in Kapuas district, Central Kalimantan. This large-scale project ran from 2009-2014 and affected nine village districts in Matangai and Timpah subdistricts, covering an area of 120,000 hectares. Lack of meaningful consultation with the affected communities before the program started led to conflict. Community members could no longer access the forest that was home to rubber and rattan that was important for their livelihoods. The project resulted in horizontal conflict

between communities who supported the project and those who rejected it. It also fundamentally changed the nature of the affected communities, from productive communities, to “wage-earning” communities.

### **Recommendations:**

36. The Indonesian government should accelerate meaningful agrarian reform by forming an Agency for Agrarian Reform sitting directly beneath the president.
37. The government must immediately resolve agrarian conflict by forming a special independent body for the resolution of land conflict that is able to guarantee local communities their rights to land.
38. The government must review the permits of companies in regions where conflict is occurring with local communities, including state owned enterprises. It should not extend the permits of companies that are involved in conflict with local communities or have shown indications of violating the rights of local communities.
39. The government must put an end to the involvement of the military and police in the management of agrarian conflict, especially in conflict involving state owned enterprises. The government must stop criminalising local residents or activists who advocate for their rights to land.

### **F. Women’s Right to Land**

40. Indonesian law contains a number of protections of women’s right to land. Article 28H(2) of the Indonesian Constitution provides that every person should be facilitated and receive special treatment to have the same opportunities and benefits to achieve equality and fairness. Article 28I(2), meanwhile, states that Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment. Article 4(f) of People’s Consultative Assembly Decree No. IX/MPR/2001 on Agrarian Reform and Management of Natural Resources also states that agrarian reform should be based on gender equality in the control, ownership, use, exploitation and restoration of natural and agrarian resources.
41. In addition to these provisions, women’s right to land is also described in the 1960 Agrarian Law, Law No. 7 of 1984 on the Ratification of CEDAW, Law No. 6 of 2014 on Villages, and Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development.
42. But despite these protections, women are still marginalised and discriminated against in terms of their rights to land, ownership of property and economic assets, as well as access to and control over decision making processes, and income. This results in significant inequality between women and men. Women’s productive work is not recognised as real work, or only supplementary to the work of the male members of the household.<sup>xvi</sup>
43. There is no gender disaggregated data on ownership and control of land in Indonesia. However, a number of case studies have indicated that ownership is highly unequal. In Barati village, Poso district, Central Sulawesi, 90 per cent of land is owned by men.<sup>xvii</sup> Meanwhile, in Seri Bandung village, Ogan Ilir district, South Sumatra, men hold 84.3 per cent of land use documents.<sup>xviii</sup>
44. Women feel the effects of forced evictions and land seizures particularly acutely. Loss of access and control of communities over the land that is a source of livelihood has major impacts on household needs. This can affect women in particular because they are often responsible for ensuring that there is enough food for the family every day. When they can no longer grow or collect food, household expenditures increase.<sup>xix</sup>
45. The intimidation, violence and criminalisation at the hands of security forces that often occurs in agrarian conflict also affects women and men in different ways. In Ogan Ilir, South Sumatra, for example, when their husbands have been detained by police (or are in hiding to avoid criminalisation), women have often had to become family protectors. Women also face intimidation, and describe being frightened about leaving their homes over

the threat of violence or detention.<sup>xx</sup> In addition to this, they are responsible for taking care of their children, dealing with the trauma of witnessing conflict and making sure that they feel safe.

## **Recommendations**

46. The government must review and harmonise environmental, natural resources and agrarian policies so that they are sensitive to the rights of women and girls. It should guarantee the rights of women to land, ensure that they have access to information, and can participate in and have control over decisions over land and natural resource use, starting from planning, to preparation, implementation, monitoring and evaluation.
47. Collect gender disaggregated data and conduct gender differentiated analysis down to the district level to gain a better picture of gender inequality in the management and use of land and natural resources
48. Issue policy or regulations to protect women in every project for the management of natural resources. Such policy should be inclusive, sensitive, and responsive to gender concerns, to create access and strengthen capacity and conditions to support women to overcome social and political barriers in the management and control over natural resources.
49. Formulate a mechanism for the resolution of agrarian conflict that is considerate of the situation of women and how conflict affects them in different ways.

## **Impact of reclamation projects and artificial islands on the rights of coastal populations**

50. Indonesia ratified the 1982 UN Convention on the Law of the Sea with the passage of Law No. 21 of 2009. This convention regulates efforts to protect the marine environment, conserve marine biodiversity, to protect the economic needs of coastal fishing communities, protect them from detrimental effects, and ensure that small-scale, traditional and female fishermen and women have access to fish stocks. Although the Convention does not specifically address reclamation, international law mandates the protection of marine resources and small scale fishermen and women in the 1995 Code of Conduct for Responsible Fisheries and the 2014 Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication.<sup>xxi</sup>
51. Indonesia has great maritime potential, given that it is an archipelagic nation, located on the equator between two continents and the Indian and Pacific oceans. But historically, people living in coastal areas have been some of Indonesia's poorest.<sup>xxii</sup> In a number of coastal areas, large-scale reclamation projects are further damaging the social and economic lives of Indonesian fishing communities.
52. Reclamation projects in Jakarta Bay, Benoa Bay, Makassar Bay and Balikpapan Bay are seeking to create artificial islands or extend the shoreline. These projects have not properly considered their effects on the environment. On the whole the environmental impact assessments (*amdal*) were problematic, and community participation, if it occurred at all, was just a formality.
53. In Jakarta, reclamation activities have occurred since the 1980s. PT Harapan Indah added about 400m of land to Pluit Beach, which was then used for the luxury Pantai Mutiara development. PT Pembangunan Jaya extended the shore to the north of Ancol for recreational activities and industry. Ten years later, the Kapuk mangroves were reclaimed for a luxury residential project, now known as Pantai Indah Kapuk. In 1995, this was followed by the Berikat Marunda industrial complex. The negative effects of these projects are well known, but reclamation is still considered a solution for the lack of space in Jakarta.
54. Reclamation activities in Jakarta Bay have caused a massive reduction in available fishing grounds for small-scale fishermen and women, because the coastal regions that they can reach have become polluted and disturbed by the construction process. Their yields have decreased dramatically. Further, up to 17,000 fishermen and women and their families may face eviction from coastal settlements. The 17 islands built in the reclamation process will affect at least 600 of the 5,600 fishing boats in Jakarta.

55. The reclamation process will also result in environmental damage. There is a strong possibility that the project will disturb water flows from the many rivers near the coastline and lead to more flooding in coastal regions. It will also further reduce Jakarta Bay's already limited mangrove forests. These mangroves are crucial nurseries for newly hatched fish, and provide important protection against erosion. The reclamation area will not only damage also severely damage the coastal area around Jakarta Bay, but also the areas that are the source of the sand for the reclamation project. Each reclaimed hectare needs about 632,000 cubic meters of sand and the planned total reclamation area is 5,153 hectares, meaning that the project will require 3.3 million cubic meters of sand.
56. Permits for the Jakarta Bay reclamation project were issued in breach of several national laws<sup>xxiii</sup>. The Jakarta Regional Legislative Council (DPRD) is set to pass Regional Regulation on Planned Zoning of Coastal Regions and Small Islands, which is a legal requirement for the reclamation project, despite the fact that the project has already been started. The large sums of money involved in the project mean that it is highly vulnerable to corruption.
57. Judges in the Jakarta State Administrative Court (PTUN) found that the preparation of the environmental impact assessment for the project was not participatory and did not involve local fishermen. Judges stated that there was no public benefit from the project and, most importantly, that it would cause environmental destruction and cause losses for traditional fishermen.

#### **Recommendations:**

58. Stop the Jakarta Bay reclamation project, because it will lead to significant environmental damage, violate the rights of local fishermen and women and coastal communities.
59. Rehabilitate the coastal regions that have been damaged for the reclamation project.
60. Involve coastal communities (women and men) in the planning, implementation, and monitoring of development in coastal regions.

#### **Right to Water**

61. Article 33(3) of the Indonesian Constitution states that the earth, water, and natural resources contained within shall be managed by the state for the full benefit of the people. Guarantees of the right to water can also be found in the Constitution under Articles 27(2), 28A, 28C, and 28H. In fact, on 18 February 2015 the Constitutional Court, in Decision No. 85/PUU-XI/2013, cancelled Law No. 7 of 2004 on Water Resources, which would have allowed private companies control over water resources, and stated that the right to water was a basic human right and was needed for the realisation of other rights.<sup>xxiv</sup>
62. Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights also clearly states that the right to water is required for the right to an adequate standard of living.<sup>xxv</sup> Jakarta Regional Regulation No. 13 of 1992 on Water Utilities states that water in Jakarta should be managed by the state, in this case PAM. Further, the Convention on the Elimination of All Forms of Discrimination Against Women also emphasises, under Article 14(2), that the state must guarantee the right of women to an adequate standard of living, which includes clean water.
63. Although water should be a public and cheaply available commodity, privatisation of water supplies has occurred in a number of areas in Indonesia. In Jakarta, for example, responsibility for the management of water supplies has been handed over to a private company.<sup>xxvi</sup> Monitoring conducted by Solidaritas Perempuan in five regions of Jakarta has shown that Jakarta is facing a water crisis, including issues of quantity, quality, and continuity. Apart from having a water supply that is discoloured, cloudy and smelly, Jakarta residents must also face the problem of a lack of reliable supply of water.
64. The Jakarta example shows that the involvement of private operators has not provided any benefit for residents in terms of the quality of their water supply. Privatisation has led to increased tariffs, making water inaccessible for many Jakarta residents. It is not uncommon

for women – who usually bear the burden for sourcing clean water - to have to work odd jobs just to get clean water.

65. The Coalition of Jakarta Residents Against Water Privatisation (KMMSAJ) has tried a number of strategies to obtain their rights to water. One of these was to launch a class action, on 12 November 2012, to sue the president, vice president, Ministry of Finance, Ministry of Public Works, Jakarta provincial government, and the Jakarta water utility company, PAM Jaya, as well as its contractors Palyja and Aetra.<sup>xxvii</sup>

### Recommendations:

66. Return the management of water to the state, as the party with responsibility to respect, fulfil and protect the right to water.
67. In the case of the privatisation of water in Jakarta, the Jakarta provincial government must improve the governance of water, so that residents (male and female) can enjoy the right to water that is of good quality, available at all times, safe to consume, and affordable. The Jakarta administration must also improve facilities and mechanisms of complaint, so that they are easier to access, including by women.

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i Article 69 (1) of Law No. 32 of 2009 on Environmental Protection and Management states that Everyone shall be prohibited: (a) to carry out activities that cause pollution and/or damage of environment; and (h) to conduct land clearing with a method of slashes and burns;

ii <http://www.walhi.or.id/menolak-lupa-melawan-asap-studi-signifikansi-kebakaran-konsensi-app-di-sumatera-selatan.html>

iii <http://www.walhi.or.id/kunjungan-blusukan-ke-lokasi-kebakaran-hutan-riau.html>

iv <http://www.walhi.or.id/the-defect-of-law-in-the-case-of-forest-and-land-fires.html>

v ibid

vi Law Enforcement Update per August 24<sup>th</sup>, 2016: [1] In Riau province, only 15 legal cases involving companies were suspended by Riau Police in 2016, after a public outcry subsided by the process and the legal promises in 2015. The 15 companies consisted of 9 HTI companies, 3 palm oil companies and 3 logging HPH companies. [2] In South Sumatra, based data of South Sumatra WALHI, from 20 HTI Companies and 70 plantation companies involved in the burning of forest and land in 2015, only 12 cases were the legal processes pursued: 2 cases of HTI companies, and 10 cases of plantation companies. Regarding the phases of the legal processes of the 12 corporations, 3 companies are under investigation, 8 companies under examination, while the legal case of one company, namely PT. PSM, located in OKI was terminated (SP3) due to insufficient evidence. For cases handled by Environmental Ministry only one case that went to court, i.e. PT. Way Agro Jaya (WAJ) in OKI. [3] In Jambi, from the fire that hit 7 districts in Jambi, involving 46 palm oil companies, from the 23 reports received by Jambi Police, legal process against 27 individual cases which now entered the trial phase and six companies still in the investigation process. [4] In West Kalimantan, West Kalimantan Regional Police launched an examination of 35 companies in 2015, targeting 31 suspected individuals and four examinations to corporations. 12 files have been submitted to the Attorney, 4 files have been declared complete (P-21), while the other 7 are still in the examination phase of the case file by the Attorney. While 4 cases got investigation termination letters (SP3) by the West Kalimantan Police, which included 1 Company and 3 individuals. [5] In East Kalimantan, one of the HTI companies finalized with coercive sanctions imposed by Environmental Ministry in 2015 forest fire is PT ITCI Hutani Manunggal (IHM), for their concession located in the Penajam Paser Utara district. In the same month (November 2015), PT IHM reported two (2) Lung Anai villagers to the Kutai Kartanegara Police for burning with their concession in Kutai Kartanegara. As a result, the two villagers are until now sued by the Police with Act 41 of 1999 on Forestry

vii The administrative sanction such as suspension or revoke of environment permit as cited in Article 76 paragraph (2) letters c and d do shall be imposed upon in case that the person in charge of the undertakings and/or activities fails to accomplish the compulsion by Government.

viii <http://www.walhi.or.id/kunjungan-blusukan-ke-lokasi-kebakaran-hutan-riau.html>

ix Pasal 96 huruf c UU No. 4 tahun 2009 tentang Pertambangan Mineral dan Batubara juncto Pasal 2 ayat (1) dan (2) PP No. 78 tahun 2010 tentang Reklamasi dan Pascatambang; Pasal 54 ayat (1) dan (2) UU No. 32 tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup

x Peraturan Menteri ESDM No. 7 tahun 2014 tentang Pelaksanaan Reklamasi dan Pascatambang yang mengatur

xi 2009 Minerals and Coal Mining Law authorized District Head, until Regent level, to issue the mining permits.



- xii The CnC certificate indicates that the mining company has no outstanding royalty and other tax debts, has fulfilled its exploration and environmental commitments, has no property delineation issues and obtained the necessary forestry permits.
- xiii Laporan Tahunan LBH Jakarta tahun 2015
- xiv Laporan Hasil investigasi Solidaritas Perempuan Palembang, April 2016
- xv Status kawasan Taman Nasional Lore Lindu ditetapkan berdasarkan Surat Keputusan Menteri Kehutanan dan Perkebunan No. 464/Kpts-II/1999 tertanggal 23 Juni 1999 dengan luasan 217.991,18 hektar, yang mana kemudian Luas kawasan direvisi berdasarkan Permenhut No. 44/Menhut-II/2012 tanggal 12 Desember 2012, menjadi seluas 215.574,50 Ha akibat perlawanan yang dilakukan di beberapa desa. Sebelum ditetapkan sebagai kawasan Taman Nasional Lore Lindu, masyarakat yang hidup di sekitar hutan, dengan mudah mengakses sumber daya hutan untuk kehidupan mereka sehari-hari dan bercocok tanam, namun setelah penetapan kawasan dan pematokan tapal batas secara sepihak, konflik tapal batas pun mulai terjadi. Masyarakat merasa takut untuk masuk hutan dan mengambil hasil hutan ataupun bercocok tanam di kawasan, dengan adanya penjagaan oleh polisi hutan dan pemberlakuan denda kepada masyarakat bila kedapatan memasuki hutan atau memotong kayu untuk bahan ramuan rumah mereka, yang mana berkisar Rp300.000,- hingga Rp1.000.000 (solidaritas Perempuan Palu, 2014).
- xvi Sensus Pertanian 2013 menunjukkan jumlah petani perempuan hanya 23,16% dibandingkan petani laki-laki sebesar 76,84% dari total 31,70 juta petani di Indonesia, sedangkan dari jumlah rumah tangga usaha pertanian sebanyak 26,14 juta, 23,14 juta rumah tangga usaha pertanian memiliki petani utama berjenis kelamin laki-laki dan 3,00 juta rumah tangga memiliki petani utama berjenis kelamin perempuan.
- xvii Laporan hasil investigasi Solidaritas Perempuan Poso
- xviii Laporan hasil investigasi Solidaritas Perempuan Palembang
- xix Laporan Hasil investigasi Solidaritas Perempuan Makassar 2016
- xx Laporan hasil investigasi SP Palembang 2013.
- xxi Secara tegas dalam kedua hukum lunak tersebut mengatur bahwa nelayan skala kecil termasuk dalam nelayan tradisional/artisanal memiliki preferential access (hak diutamakan akses) dalam setiap pemanfaatan sumber daya pesisir untuk menghindari konflik pemanfaatan. Dari pengakuan preferential access tersebut, diakui adanya hak ternatural nelayan skala kecil yang kemudian diterjemahkan lebih jelas dalam VGSSF 2014. Lebih lanjut setiap pembangunan proyek skala besar yang berdampak kepada setiap perikanan skala kecil haruslah dilakukan konsultasi publik kepada setiap nelayan yang akan terdampak. Sehingga tidak serta merta proyek tersebut dapat dilaksanakan sebelum adanya persetujuan dari publik nelayan
- xxii Data Badan Pusat Statistik tahun 2008 menyatakan bahwa sebanyak 127.983 Rumah Tangga Perikanan/Usaha Perikanan (RTP/UP) tergolong sangat miskin, sebanyak 198.958 RTP/UP tergolong miskin dan sebanyak 157.916 RTP/UP tergolong hampir miskin. Kemiskinan pada nelayan tradisional ataupun komunitas pesisir memiliki karakteristik yang unik dan berbeda dengan sektor lainnya.
- xxiii The permits are contrary to (i) Law No. 32 of 2009 on the Protection and Management of the Environment, (ii) Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands, (iii) and the Regulation of the Minister of Public Works No. 40 / PRT / M / 2007 on the Guidelines of Spatial Planning on Coastal Reclamation Region.
- xxiv Dalam putusan tersebut, Mahkamah Konstitusi juga memberikan pandangan bahwa pemaknaan bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh Negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat mengamanatkan bahwa air adalah salah satu unsur yang sangat penting dan mendasar dalam hidup dan kehidupan manusia atau menguasai hajat hidup orang banyak, haruslah dikuasai oleh negara. Maka dalam pengusahaan air harus ada pembatasan yang sangat ketat sebagai upaya menjaga kelestarian dan keberlanjutan ketersediaan air bagi kehidupan bangsa.
- xxv Komite PBB untuk Hak Ekonomi, Sosial dan Budaya melalui Komentar Umum No. 15 Tahun 2002 menyatakan bahwa hak asasi manusia atas air memberikan hak kepada setiap orang atas air yang memadai, aman, bisa diterima, bisa diakses secara fisik dan mudah didapatkan untuk penggunaan personal dan kebutuhan rumah tangga
- xxvi Pada tanggal 6 Juni 1997, Pemerintah Provinsi DKI Jakarta menandatangani Perjanjian Kerjasama konsesi yang mengalihkan pelaksanaan penyediaan air bersih di Provinsi DKI Jakarta dari PT PAM Jaya (BUMD milik Pemprov DKI Jakarta) kepada pihak swasta, yakni PT PAM Lyonnaise (PALYJA) untuk wilayah barat Jakarta dan PT Thames PAM Jaya untuk bagian timur Jakarta.
- xxvii Pengadilan Negeri Jakarta Pusat melalui Putusannya Nomor 527/PDT.G/2012/PN.JKT.PST tertanggal 24 Maret 2015 pun telah menyatakan bahwa kontrak konsesi PAM Jaya dengan Palyja dan Aetra batal demi hukum dan tidak berlaku. Pengadilan juga memerintahkan Pemerintah Provinsi DKI Jakarta untuk menghentikan kebijakan swastanisasi air di Jakarta, mengembalikan pengelolaan air ke negara dan melaksanakan pengelolaan air di Jakarta berdasarkan prinsip dan nilai-nilai hak asasi atas air. Putusan yang memenangkan warga Jakarta bersama dengan CSO yang

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tergabung dalam Koalisi Masyarakat Menolak Swastanisasi Air Jakarta (KMMSAJ) ini dibatalkan oleh Hakim Pengadilan Tinggi dengan pertimbangan hukum yang tidak substantif dan sama sekali tidak memeriksa pokok perkara. Untuk terus memperjuangkan hak warga Jakarta atas air, maka KMMSAJ bersama warga Jakarta mendaftarkan kasasi pada tanggal 4 Maret 2016 yang hingga laporan ini ditulis masih berjalan prosesnya