



## **Joint Stakeholders' Submission on The Situation of Human Rights of Indigenous Peoples in Indonesia**

**Submission Prepared for**  
**3<sup>rd</sup> Cycle of Universal Periodic Review of Indonesia**  
**27<sup>th</sup> Session of the Human Rights Council (Apr-May 2017)**

### **Submitting organizations**

#### **Aliansi Masyarakat Adat Nusantara (AMAN)**

AMAN or Indigenous Peoples Alliance of the Archipelago is an indigenous peoples' organisation consisting of 2,279 member communities. It has three sister organizations representing indigenous women, youth and lawyers. AMAN works at local, national and international levels for the recognition, respect, protection, and fulfilment of the rights of indigenous peoples in Indonesia.

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#### **Asia Indigenous Peoples Pact (AIPP)**

AIPP is a regional organization founded in 1988 by indigenous peoples' movements. It is committed to the cause of promoting and defending indigenous peoples' rights and human rights and articulating issues of relevance to indigenous peoples. Based in Chiang Mai, Thailand, AIPP currently has 47 member organizations from 14 countries in Asia including AMAN. It has Special Consultative status with the UN Economic and Social Council (ECOSOC).

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## A. INDIGENOUS PEOPLES IN INDONESIA

1. Indonesia has a population of approximately 250 million. The Government of Indonesia recognizes 1,128 ethnic groups. The Ministry of Social Affairs identifies some communities as *komunitas adat terpencil* (meaning 'geographically isolated customary communities'). Recent government Acts and Decrees use the term *masyarakat adat* or *masyarakat hukum adat*, which mean 'customary law societies'. Those customary communities or customary law societies are considered to be Indonesia's indigenous peoples, including for the purpose of this submission. However, there are many more groups, beyond those identified by the Ministry as *komunitas adat terpencil*, who self-identify or are considered as indigenous peoples. AMAN estimates that the population of indigenous peoples in Indonesia is between 50 and 70 million.
2. The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is an implicit recognition of some rights of peoples referred to as *masyarakat adat* or , including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and Indonesia's Legislative MPR Decree No X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term *masyarakat adat* and use the working definition of AMAN.
3. While Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Government argues that the concept of indigenous peoples is not applicable as all Indonesians, with the exception of the ethnic Chinese, are indigenous and thus entitled to the same rights. Consequently, the Government has rejected calls for specific needs by groups identifying themselves as indigenous.
4. However, the government stance is clearly contrary to the Constitutional Court decision No. 35/PUU-X/2012 of May 2013, which affirms the constitutional rights of indigenous peoples to their lands and territories, including their collective rights over customary forests and uses the UNDRIP and various human rights instruments including ILO Convention No. 169 on Indigenous and Tribal Peoples as its references.<sup>1</sup> Further, in contrast to their position, the Government has been using the term 'indigenous peoples' in several official documents and reports, including the Letter of Intent between the Norwegian and Indonesian Governments for cooperation on REDD," signed on 26 May 2010<sup>2</sup>, the Forest Investment Plan (FIP), 2012<sup>3</sup>, and the 5<sup>th</sup> National Report to the Convention on Biological Diversity in 2015<sup>4</sup>, among others.
5. Back in 9 August 2006, then Indonesian President, Susilo Bambang Yudhoyono, participated in marking the International Day of the World's Indigenous Peoples. On the occasion, he affirmed that indigenous peoples continue to be victims of development projects, thus legal frameworks is needed to recognize and protect the rights of indigenous peoples.
6. In 2014, Indonesia's current President Joko Widodo included six commitments related to the recognition, fulfillment, and protection of the rights of indigenous peoples in his Presidential Candidate pledge, NAWACITA<sup>5</sup>. He reaffirmed his commitment in a meeting with AMAN on 25 June 2015,<sup>6</sup> and also in his first state speech. Further, he reiterated to protect indigenous peoples' rights in a joint session with the Regional Representatives Council and the House of Representatives. However, all the commitments are yet to be realized, including adoption of a

Law on Recognition and Protection of the Rights of Indigenous Peoples and formation of an Indigenous Peoples' Task Force.<sup>7</sup>

7. On 10 August 2015, the Ministry of Environment and Forestry agreed to be the trustee of 6.8 million hectares of indigenous maps, for inclusion in the One Map Initiative. Earlier, in 2016, the Government of Indonesia designated a special category for "Indigenous Community Maps" and established Task Force to design and ensure these indigenous maps fit the Government's existing geospatial and information system.

## **B. FOLLOW-UP OF AND DEVELOPMENTS SINCE THE 2<sup>nd</sup> REVIEW**

8. In the 2<sup>nd</sup> UPR cycle, Indonesia received four recommendations, specifically referring or relevant to indigenous peoples.<sup>8</sup> Indonesia supported only one of those that used the term "traditional communities". Nonetheless, other recommendations are also relevant to the rights of indigenous peoples in Indonesia as discussed below.

### **I. Bill on Recognition and Protection of the Rights of Indigenous Peoples**

9. The Government of Indonesia supported the recommendation to "schedule discussion of the Draft Law on the Recognition and Protection of the Rights of Traditional Communities"<sup>9</sup>. **However, the recommendation is still in the process of implementation with specific date for publication of and discussion on the draft law yet to be certain.**
10. Sectoral laws, both the revised and new laws created after the Indonesian constitutional reform (1999-2002), have confirmed the existence of indigenous peoples and their rights of origin or traditional rights. The synchronization and harmonization of these diverse sectoral laws is currently taking place through the establishment of the Bill on Recognition and Protection of the Rights of Indigenous Peoples (PPHMA) at the initiative of the House of Representatives. The Bill will include provisions on the protection of the rights of indigenous peoples in Indonesia. The House has been working on the Bill since 2009, which has been re-included in the 2015-2019 National Legislation Programme. However, since the House failed to list the bill as a legislation priority, there were reports that the Government was taking over the drafting of the Bill.<sup>10</sup>
11. Meanwhile, the trend of adopting legislation that recognizes and protects indigenous peoples at the regional level has become widespread since 2014 with such legislations adopted in Luwu regency in South Sulawesi province, Bulungan in East Kalimantan, Ende in Flores, East Nusa Tenggara, Mentawai Islands, Lebak in West Java, Enrekang in South Sulawesi, and Bulukumba in South Sulawesi and Central Halmahera in North Maluku. In 2015, two districts passed the Local Regulation on Recognition and Protection of Indigenous Peoples, namely Lebak and Bulukumba districts and in 2016, another two district regulations in Sekadau and Sintang in West Kalimantan.

### **Recommendations:**

12. ***The Government of Indonesia and the House of Representatives shall expedite the adoption of the Bill on Recognition and Protection of the Rights of Indigenous Peoples based on the principles of the UNDRIP in accordance with the recommendation of the Committee on Economic, Social and Cultural Rights (CESCR).<sup>11</sup> Immediate steps shall be taken for discussion and adoption of the Bill by the Parliament in cooperation with indigenous peoples.***
13. ***The State of Indonesia shall promote and facilitate the adoption of necessary local laws and Guideline in other relevant provinces and districts to recognize and protect the rights of indigenous peoples and monitor the effective implementation of those laws.***

### **II. Ratification of ILO Convention No. 169**

14. **Indonesia did not support the recommendation to “consider ratifying ILO Convention N. 169”,** stating that “[though it] supports the promotion and protection of indigenous people worldwide, given its demographic composition, Indonesia, however, does not recognize the application of the indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples in the country”.<sup>12</sup>
15. As noted above, the position contrasts the Constitutional Court decision and the Government’s use of the term ‘indigenous peoples/communities’ in number of official documents. The Committee on the Elimination of Racial Discrimination (CERD), in 2007, noted that Indonesia “recognizes the existence of indigenous peoples on its territory, while using several terms to designate them” and encouraged Indonesia to take into consideration the definitions of indigenous and tribal peoples as set out in ILO Convention No. 169 and envisage ratifying the instrument.<sup>13</sup> The CESCR, in 2014, has also recommended Indonesia ratifying the Convention.<sup>14</sup> Reports suggest lack of coordination among state institutions as one of the main problems for formal recognition of indigenous communities and their customary rights.<sup>15</sup>

### **Recommendation:**

16. ***The State of Indonesia shall immediately consider ratifying the ILO Convention No. 169 as per the CERD and CESCR recommendations<sup>16</sup>. Immediate steps must be taken to enhance coordination among relevant state institutions for recognition of indigenous peoples and their rights in line with the Convention and UNDRIP.***

### **III. National Human Rights Institutions (NHRI) and Cooperation with Indigenous Peoples**

17. **Though Indonesia supported a number of recommendations in relation to strengthening its NHRIs and enhancing cooperation between the government, NHRIs and civil society,<sup>17</sup> the recommendations have not been implemented fully, if at all.**
18. In 2013, the National Human Rights Commission of the Republic of Indonesia (Komnas HAM) assigned a Commissioner dedicated as the Komnas HAM’s Special Rapporteur on Indigenous Peoples. Though this progressive step has contributed to enhance participation and

cooperation of indigenous peoples with the Komnas HAM, it has been inadequate to advance their human rights due to the Komnas HAM's limited mandate.

19. In April 2014, the Komnas HAM launched a "National Inquiry on the Rights of Indigenous Peoples Rights to Their Territories in Forest Zones". The inquiry looked into 40 selected cases from across Indonesia through data and information gathering, study and examination of cases, public hearings and dialogues with the Government and company officials. The final report of the inquiry published on 16 March 2016 shows that individual and collective rights of indigenous peoples were violated in those cases, with indigenous women and children put in the most vulnerable conditions.<sup>18</sup> The report noted that all cases also contain significant internal conflicts fostered by companies and governments in order to take advantage of community divisions. The report includes a set of immediate actions and policy recommendations for the Indonesian President, House of Representatives, Ministry of Environment and Forestry and other concerned agencies, including security forces. No action has been taken for implementation of the recommendations.
20. Besides immediate ratification of the Bill on Recognition and Protection of Indigenous Peoples' Rights (PPMHA), one of the key recommendations in the Komnas HAM inquiry report is for the Indonesian President to create an independent institution under his office to deal with the recognition, respect, protection and promotion of the rights of indigenous peoples.<sup>19</sup> This is in line with his commitment to set up an Indigenous Peoples' Task Force, which could be first step towards reconciliation between indigenous peoples and the State. However, the Government has been very slow in the formation of the Task Force,<sup>20</sup> citing bureaucratic complexity and budgetary constraints.<sup>21</sup>

#### **Recommendations:**

21. ***The State of Indonesia shall take immediate steps to strengthen the mandate and functioning of the National Human Rights Commission (Komnas HAM), including provision of adequate resources for the Komnas HAM to deal effectively with cases of human rights abuses and its engagement with civil society and law enforcement agencies, officers and personnel.***
22. ***The State of Indonesia, particularly its agencies and the House of Representatives must, without further delay, implement the recommendations from the National Inquiry on Indigenous Peoples Rights to Their Territories in Forest Areas.***
23. ***The Government of Indonesia, specifically the President, shall without any further delay set up the Indigenous Peoples' Task Force as per his commitment, with adequate mandate and resources provided for the effective functioning of the Task Force.***

#### **IV. Criminalization of Indigenous Peoples' Human Rights Defenders**

24. **Indonesia supported a number of recommendations related to protecting and ensuring a safe and enabling environment for all human rights defenders.<sup>22</sup>** In the context of indigenous peoples' rights, community leaders and activists, who act as human rights defenders, face particularly high risks that emanate from the lack of recognition of the indigenous rights itself

and ensuring protection and enabling environment for them require special measures that Indonesia has not implemented yet.

25. The Komnas HAM national inquiry report indicates lack of legal recognition as indigenous peoples, which makes their legal rights/claims over their forests unclear or uncertain as one of the root causes of human rights violations of indigenous peoples.<sup>23</sup> In the resulting tenurial conflicts of indigenous peoples over territories with government and private companies, most cases involve criminalization of and systematic crimes against indigenous leaders and activists defending their territories. In some cases, the indigenous leaders and activists agree to discuss with the security forces even though they realize that they risk violence and criminalization. As per reports received by AMAN, the number of indigenous leaders and activists with a criminal conviction total 217 persons, nine of them still languishing in prisons in various regions<sup>24</sup>.
26. President Widodo has, on many occasions, promised to grant clemency for the victims of unjustified criminalization, most recently in his statement on Human Rights Day, 10 December 2015<sup>25</sup>. However, this commitment to granting clemency to unjustly convicted indigenous individuals has not been fulfilled to date. AMAN has proactively identified and verified the names of convicted indigenous leaders and activists for pardoning by the President, and proposed names of 168 leaders and activists to the Government through the Komnas HAM. In addition, clemency was also requested through the lawyers providing assistance to these indigenous leaders and activists. There has thus far been no step taken towards justice for those indigenous leaders and activists.

#### **Recommendations:**

27. ***The Indonesian President shall immediately grant clemency for the indigenous leaders and activists, who have become victims of unjustified criminalization and the Government of Indonesia should establish and implement effective process to rehabilitate them.***
28. ***The State of Indonesia shall institute legislation and procedures to prevent prosecution of human rights defenders aimed at harassing them for their legitimate activities to defend human rights, in line with the recommendation of former Special Representative of the Secretary-General on the situation of human rights defenders.<sup>26</sup> Indigenous peoples human rights defenders must be given special in such legislation and procedure.***
29. ***The State of Indonesia shall implement a comprehensive, independent and adequately resourced protection programme for human rights defenders with the Komnas HAM, including for implementation of the recommendations of the former Special Representative to the Komnas HAM<sup>27</sup>.***

#### **V. Freedom of Religion and Belief**

30. **Indonesia supported a number of recommendations to ensure full protection of freedom of religion and belief for religious minorities and fight against all forms of discrimination against them.<sup>28</sup> The recommendations have not been implemented yet** as indigenous peoples continue to face restrictions to exercise their indigenous religion and belief as laws and practice remain discriminatory against persons and families following indigenous religion and

belief. Though freedom of religion and equality are guaranteed as one of the fundamental human rights in the Indonesian constitution<sup>29</sup>, indigenous peoples have been forced by law to identify with one of six official religions<sup>30</sup> as otherwise they face great difficulties to obtain citizenship ID and register civil status (as regulated on the Law No. 1/PNPS/1965 and the Citizenship Administrative Law).

31. It also tend to systematic violation on the rights of Children belong to parents who identify with indigenous religion/beliefs are denied birth certificate resulting to denial of access to education and other social services. The CERD has noted these challenges, which Indonesia acknowledged, with particular concern.<sup>31</sup>
32. The State has not taken any step to recognize the religion and belief of indigenous peoples despite opposition from many indigenous communities against the law, including Baduy tribe in West Java (which practice Sunda Wiwitan religion)<sup>32</sup> and Sedulur Sikep tribe (followers of Samin faith)<sup>33</sup>. There have also been reports of Sedulur Sikep children facing discrimination during religion lesson in school by being forced to learn Islam.

### **Recommendation**

33. ***The State of Indonesia shall promptly take measures to recognize and protect the right of indigenous peoples to identify with and practice their indigenous religion and belief, as well as to get rights of identity as a citizen and other social services without any discrimination in law or practice in line with the recommendation of CERD<sup>34</sup>. A special program shall be put in place immediately, in cooperation with the Komnas HAM and indigenous peoples, to ensure that those who were forced to convert from their religion can have the freedom to choose to go back to their former religion as they wish.***

## **VI. Human Rights Education for Law Enforcement Officers**

34. **Indonesia supported two recommendations to continue promoting promoting human rights education and training for law enforcement officers.** Amidst historical injustice and prejudice against indigenous peoples, lack of understanding on indigenous peoples' rights, including to their traditional livelihoods, among law enforcement officers in Indonesia has contributed to criminalization of indigenous peoples in Indonesia. The Komnas HAM national inquiry also shows indigenous peoples have been mistreated and discriminated before the law that in many cases. Further, in the recent context of haze problem in Indonesia<sup>35</sup>, indigenous peoples faced intimidation and arrest for practicing traditional farming that involves the use of fire. The ban on traditional farming seriously impacts the food security of indigenous peoples and also prevents them from conducting rituals and ceremonies as part of the traditional farming.

### **Recommendation:**

35. ***Human rights education and trainings of law enforcement officers must include the rights of indigenous peoples in the curriculum. The State of Indonesia should develop a human rights-based Standard Operating Procedures and Guidelines for the National Police to deal***

*particularly with conflicts between indigenous peoples, the Government and private companies.*

## **VII. Rights of Indigenous Peoples, particularly over their Lands, Territories and Resources**

36. **Indonesia noted the recommendation to “ensure the rights of indigenous peoples and local forest dependent peoples in law and practice, in particular regarding their rights to traditional lands, territories and resources”.<sup>36</sup> This recommendation has not been implemented yet.** In fact, violations of indigenous rights have only continued and increased due to lack of legal recognition of and protection for indigenous peoples and their rights,
37. One of the constitutional rights of indigenous peoples in Indonesia is the right to indigenous territory, which has been long ignored and violated since the publication of Basic Forestry Law No. 5 of 1967, later replaced by the Forestry Law in 1999. The Forestry Law legalized land-grabbing and converted customary forests into state forests. Through this Law, the Government has been granting concessions to private companies for mining, logging and plantations in indigenous peoples’ traditional lands in violation of their rights.
38. Further, in 2013, the Parliament adopted a Law on the Prevention and Eradication of Forest Destruction that criminalized indigenous peoples living within national parks, protected forests and wild life reservation. Between 2014 and 2015 only, a total of twelve indigenous leaders have been put in jail for living in those areas while there have also been cases of burning and displacing indigenous villages. Few representative cases of violations of indigenous peoples’ rights in the context of mining, logging and plantations and in the name of conservation, which were reported to AMAN after 2012 or have been unresolved since earlier are listed in Annex 1 and 2 respectively.<sup>37</sup>
39. Although the Constitutional Court decision No. 35/PUU-X/2012 has affirmed that these two laws violate indigenous peoples’ rights, the two laws are yet to be amended in order to ensure the rights of indigenous peoples. While not relating as a broader legal issue, land disputes are being considered on a case-by-case basis. Meanwhile, the number of land disputes cases, including indigenous forestlands, continues to grow. The Komnas HAM notes that 20% of the complaints submitted to the Commission are related to land disputes. In 2012, there were 1213 complaint files concerning on land disputes, 1,123 complaints in 2013 and 2,483 complaints in 2014.<sup>38</sup> Not only review and improvement of laws and regulations non-compliant with the Constitutional Court decision, it has also identified the need for an independent institution with adequate mandate and resources to resolve land conflicts.
40. Further, the CERD has also repeatedly written to the Government of Indonesia on four representative cases of violations of indigenous rights reported to the Committee between 2009 and 2015. These include violations of indigenous rights over their traditional lands, among others, in implementation of Kalimantan Border Oil Palm Mega Project<sup>39</sup>, formulation of the Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation (REDD) within the frame of the United Nations Framework Convention for Climate Change (UNFCCC)<sup>40</sup>, continuation of Marueke Integrated Food and Energy Estate (MIFEE) project in Papua<sup>41</sup> and granting license to PT. Menara Group Consortium for sugarcane



plantations in Aru peoples' ancestral territory in Moluccas.<sup>42</sup> The Indonesian Government has not responded to any of those early warnings from the CERD.

### **Recommendations**

- 41. The State of Indonesia shall immediately implement the Constitutional Court decision No. 35/PUU-X/2012 by undertaking review and necessary amendments of various laws and regulations that are non-compliant with the decision.**
- 42. The State of Indonesia shall set up an independent institution tasked with the settlement of land disputes and provided with adequate mandate and resources within necessary policy framework. Customary laws and judicial systems of concerned indigenous communities shall be recognized and respected in settlement of land disputes.**
- 43. The State of Indonesia should engage in a constructive dialogue with the CERD towards effective implementation of the Convention on Elimination of All Forms of Racial Discrimination and consider inviting the Special Rapporteur on the rights of indigenous peoples, as suggested by CERD.<sup>43</sup>**

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<sup>1</sup> Constitutional Court Decision No. 35/2012 can be downloaded at: <http://bit.ly/2cxNT8f>

<sup>2</sup> Copy of the Letter of Intent between the Government of the Kingdom of Norway and the Government of the Republic of Indonesia on "Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation" available at <http://www.redd-monitor.org/2010/05/28/norway-indonesia-forest-deal-us1-billion-dollars-worth-of-continued-deforestation/>

<sup>3</sup> The Plan was presented before the FIP Steering Committee on 5 November 2012.

<sup>4</sup> Report available at <https://www.cbd.int/doc/world/id/id-nr-05-en.pdf>

<sup>5</sup> NAWACITA can be downloaded at: [http://kpu.go.id/koleksigambar/VISI\\_MISI\\_Jokowi-JK.pdf](http://kpu.go.id/koleksigambar/VISI_MISI_Jokowi-JK.pdf)

<sup>6</sup> <http://iva.aippnet.org/indonesia-indonesian-president-pledges-to-accelerate-long-delayed-indigenous-rights-law/>

<sup>7</sup> See IWGIA 2016 yearbook, Page 264

<sup>8</sup> In the 1<sup>st</sup> UPR cycle of Indonesia, there was no recommendation specifically referring or relevant to indigenous peoples.

<sup>9</sup> A/HRC/21/7, Para. 108.140 (Iran)

<sup>10</sup> <http://www.thejakartapost.com/news/2016/03/08/govt-take-responsibility-indigenous-rights-bill-house.html>

<sup>11</sup> The Committee has expressed concern at the absence of an effective legal protection framework of the rights of *Masyarakat Hukum Adat* due to inconsistencies in relevant legislative provisions and referred to the State party's statement that it would make use of relevant principles contained in the United Nations Declaration on the Rights of Indigenous Peoples. E/C.12/IDN/CO/1, Para. 38

<sup>12</sup> A/HRC/21/7, Para. 109.7 (Norway) and A/HRC/21/7/Add.1, Para. 6.3

<sup>13</sup> A/62/18, Para. 357

<sup>14</sup> E/C.12/IDN/CO/1, Para. 38

<sup>15</sup> <http://www.thejakartapost.com/news/2016/03/17/govt-yet-grant-rights-indigenous-communities.html>

<sup>16</sup> E/C.12/IDN/CO/1, Para. 38; A/62/18, Para. 357

<sup>17</sup> A/HRC/21/7, Para. 108.32 (Nepal), 108.33 (Azerbaijan), 108.34 (Saudi Arabia), 108.35 (Jordan), 108.51 (Republic of Korea), 108.52 (Malaysia), 108.53 (Egypt), among others

<sup>18</sup> Summary of the report available at <http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/komnas-ham-nationalinquiry-summary-apr2016.pdf>

<sup>19</sup> Summary of Findings and Recommendations for Improvement of Law and Policy Concerning Respect, Protection, Compliance and Remedy Relating to the Human Rights of Indigenous Peoples over their Territories within the Forest

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Zone, Komnas HAM, Page 21, <http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/komnas-ham-nationalinquiry-summary-apr2016.pdf>

<sup>20</sup> <https://news.mongabay.com/2015/08/promised-task-force-on-indigenous-rights-in-indonesia-hits-snap/>

<sup>21</sup> <http://www.reuters.com/article/us-indonesia-landrights-indigenous-idUSKCN0WR02S>

<sup>22</sup> A/HRC/21/7, Para. 108.115 (Republic of Korea), 108.117 (Greece), 108.118 (Norway), 108.119 (France)

<sup>23</sup> Supra note 21, Page 14, <http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/komnas-ham-nationalinquiry-summary-apr2016.pdf>

<sup>24</sup> See IWGIA 2016 yearbook. Mongabay reports mentioning 150 persons:

<https://news.mongabay.com/2016/01/jokowi-asked-to-push-indigenous-rights-through-reluctant-parliament/>

<sup>25</sup> See the Remarks by President of Indonesia on Human Rights day: <http://setkab.go.id/sambutan-presiden-joko-widodo-pada-peringatan-hari-hak-asasi-manusia-ham-se-dunia-di-istana-negara-jakarta-11-desember-2015/>

<sup>26</sup> A/HRC/7/28/Add.2, Para. 90 and 96

<sup>27</sup> A/HRC/7/28/Add.2, Para. 92-94

<sup>28</sup> A/HRC/21/7, Para. 108.68 (Argentina), 108.106 (Japan), 108.107 (Netherlands), 108.108 (Norway) and 108.111 (Spain), among others

<sup>29</sup> Constitution of the Republic of Indonesia, 1945, Articles 28D and 28E

<sup>30</sup> Indonesia's Ministry of Religious Affairs (MRA) extends official status to six religious groups: Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism. Members of unofficial groups, however, have the right to establish a place of worship, register marriages and births, and obtain national identity cards. Laws allow followers of beliefs outside the six recognized religions to leave the religion section blank on their identity cards. See *Indonesia 2015 International Religious Freedom Report*, US Department of State, <http://www.state.gov/documents/organization/256319.pdf>

<sup>31</sup> The Committee notes with particular concern that under Law No. 23 of 2006 on Civic Administration, individuals are required to mention their faith on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the "non-recognized" religions reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party A/62/18, Para. 363

<sup>32</sup> As informed to AMAN, since January 2011, Baduy tribepeople in Banten have not been allowed to put Sunda Wiwitan as religion on their identity card, although it was possible before. Baduys protested at the Provincial Registration Office but did not receive a positive answer. They thus decided not to issue or renew their identity card anymore or to demand that the space for religion is left blank. The traditional leader of the Baduy committed to advocate for the recognition of Sunda Wiwitan as religion to be included in identity cards. They still await response from the Ministry of Religious Affairs. Also see <http://www.thejakartapost.com/news/2014/09/26/religious-law-and-problematic-marriage-law.html>

<sup>33</sup> See <http://www.thejakartapost.com/news/2012/07/02/saminism-followers-want-exemption-religion-section-e-id.html>. Even after the news report, in December 2013, AMAN has been informed that Sedulur Sikep children in the public Middle School 2 Undaan have been forced to attend Islam lessons in school unless the parents contested such discrimination with the school principal. AMAN also received report of discrimination against Sedulur Sikep children in admission to the school

<sup>34</sup> Ibid.

<sup>35</sup> <http://jakartaglobe.beritasatu.com/opinion/commentary-real-roots-indonesias-haze-problem/>

<sup>36</sup> A/HRC/21/7, Para. 109.36 (Norway); A/HRC/21/7/Add.1, Para. 6.3

<sup>37</sup> For more reports of human rights violations of indigenous violations, see IWGIA yearbook available at <http://www.iwgia.org/regions/asia/indonesia>

<sup>38</sup> Supra note 21, Page 7, <http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/komnas-ham-nationalinquiry-summary-apr2016.pdf>

<sup>39</sup> See CERD Early Warning, 13 March 2009, <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia130309.pdf>

<sup>40</sup> See CERD Early Warning, 28 September 2009, <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092009.pdf>

<sup>41</sup> See CERD Early Warning, 2 September 2011, <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia02092011.pdf> and 30 August 2013,

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[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CERD/ALE/IDN/7098&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CERD/ALE/IDN/7098&Lang=en)

<sup>42</sup> See CERD Early Warning, 28 August 2015

<http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf>

<sup>43</sup> See CERD Early Warning, 2 September 2011,

<http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia02092011.pdf>

## **ANNEX 1. Violations of indigenous peoples' rights in the context of mining, logging and plantations**

### **1. Killing of indigenous peoples in Mesuji in South Sumatera**

In mid-April 2011, there was a clash between the PT Treekreasi Margamulya (TM)/Sumber Wangi Alam (SWA) company and the indigenous peoples living in the district of Mesuji in South Sumatera. The forced planting of oil palm on the indigenous people's territory and the subsequent occupation of the plantation and cropping of the oil palm fruits by the indigenous inhabitants triggered the conflict. The company reacted by calling in the special police. In the clash that followed between the special police forces and the indigenous population, seven people lost their lives. On 21 April, the palm oil company's security guards and police forces killed another two people from the indigenous community of Sodong. During a clash on 11 November, two people were killed and four were injured by gunshots. Five company staff were shot dead during the counter-attack by local inhabitants. The conflict in Mesuji remains ongoing.

### **2. The conflict in the territory of Rakyat Penunggu people in North Sumatera**

On 25 May 2011 the state-owned plantation company PTPN 2 ordered the mobile brigade (a special police force entrusted with domestic counter terrorism and law enforcement), heavily armed and clothed like thugs, to displace the indigenous inhabitants of the village of Secanggang. Representatives of PTPN 2 tried to erect a signpost stating that the territory was controlled by the special police forces. They were, however, hindered from this by hundreds of local indigenous peoples. Finally the plantation company decided to abandon the territory but threatened to come back with 1,000 security personnel in order to rid the territory of Secanggang of its indigenous inhabitants.

The indigenous community of the village of Sei Jernih experienced a similar incident, in the Deli Serdang Regency. On 17 June 2011, 20 members of the special police forces and security guards from the PTPN 2 arrived, heavily armed, and beat and mistreated five members of the community. The conflict escalated on 18 June when five trucks with special police and PTPN 2 security forces burned down the traditional community house of Sei Jernih, destroyed the plants, and beat up and injured 14 inhabitants. On 21 July, PTPN 2 instructed 300 people to destroy 24 houses and burn down another two in the village of Klambir. The traditional territory of Rakyat Penunggu in Klambir is still controlled by the police and the situation is very tense.

### **3. Members of Tengger community displaced by logging**

On 16 October 2011, on the orders of the state-owned logging company Perhutani Lumajang, dozens of people destroyed and burnt down the homes of the Tengger community in Kandang Tepus village in Senduro district in East Java. The forest management said that the Tenggers were guilty of encroaching the forest, illegal

logging activities and inhabiting 60 hectares of land in the protected forest. Several buildings and cattle sheds were burnt down. On 11 October the police arrested four inhabitants blaming them for encroaching and destroying the forest illegally. The inhabitants are still hiding in the forest and frightened because of the forest management forces' brutality.

#### **4. Golo Lebo community in East Nusa Tenggara**

The Golo Lebo in East Manggarai district in the province are constantly under pressure from the local government as they resist the mining of PT. Manggarai Manganese operating in their ancestral territory. The company's permit has reportedly expired on 7 December 2013.

#### **5. Tana Ai people in East Nusa Tenggara**

More than 700 families belonging to the Tana Ai indigenous group in Sikka, Flores of East Nusa Tenggara, received threats of evictions from the Sikka Local Government. They were accused of living on the concession area of PT. Diosis Agung (DIAG), a coconut plantation company, which later changed its name to PT. Krisrama. The company's HGU (cultivation right on land) had expired on 31 December 2013. So, 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 the Sikka District Head. Both the Local Parliament and the Sikka District Head claimed that the authority to solve problem lied with the central government, not them. 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 decided not to process the renewal of the HGU requested by the company until the problems affecting the Tana Ai indigenous people have been resolved.

#### **6. Sedulur Sikep tribe in Central Jawa**

In March 2015, five Sedulur Sikep persons from the two districts of Kayen and Tambakromo in Central Jawa filed a lawsuit at the State Administrative Court in Semarang. The lawsuit was against the District Head Decree No. 660.1/4767, dated 8 December 2014, granting the Environmental Permit for the Cement Plant Construction and Limestone and Clay Stone Quarry in Pati District by Sahabat Mulia Saksi Factory (SMS). The Decree, if implemented, would have potentially destroyed farmlands and displaced indigenous communities. After a lengthy and cumbersome process, on 17 November 2015, the State Administrative Court ruled in favour of the plaintiffs and invalidated the Decree. The judges found the Decree was contrary to several laws, the Regional Spatial Planning (RTRW) of Pati District and good governance principles.

## **ANNEX 2. Violations of indigenous peoples' rights in the name of conservation**

### **1. Tungkal Ulu community in South Sumatera Province**

On 21 October 2014, the District Court of Palembang in South Sumatra sentenced five indigenous leaders to 2 years and six months in jail, a fine of 50 million rupiah (subsidiary 4 months confinement). Mr. M. Nur and four others of Tungkal Ulu community were charged with violating the Conservation Law as the government claims their ancestral territory as conservation area.

### **2. Arrest of Bachtiar M. Sabang (Turunan Baji community) in South Sulawesi**

Mr. Sabang of Turunan Baji community has been arrested since October 2014 and his case is currently proceeding at Sinjai District Court. He is facing at least 3 years in jail in accordance with the Conservation Law as the Government claims his ancestral territory as protected forest.

### **3. Semende community in Banding Agung, Bengkulu Province**

On 24 April 2014, the District Court sentenced 3 years imprisonment and a fine of 1.5 billion rupiah (or additional one-month imprisonment) to four members of the Semende community in Banding Agung, Sumatra. The appeal at the Appellate Court was rejected and the sentence has been confirmed by the decision of the Supreme Court. The four villagers were charged under the Law on Prevention and Eradication of Forest Destruction as the Ministry of Forestry has claimed their ancestral territory as National Park.

### **4. Indigenous peoples of Pekasa in West Nusa Tenggara**

On 21 December 2011, about 30 members of security forces, including special police forces, military and forestry police of the Regency West Sumbawa, arrived in the territory of the indigenous peoples of Pekasa with barrels and straight away destroyed and burned down the indigenous villagers' houses. They refused the request of Pekasa villagers to talk and did not provide any possibility for the villagers to save their possessions in their houses. 63 houses were demolished, only the mosque was left undestroyed.

After seeing the brutality of the government forces, many villagers escaped in the forest to hide. It was the third time the community was expelled from their territory and the reason given was prevention of forest encroachment, which is illegal under Forestry Law 1999 (Law No. 41). Besides destroying the community's houses and plants, the combined security forces arrested the community's traditional leader and brought him to the local police. He was released after three days, as evidence could not be brought against him. It is further reported that police forces are investigating 23 Pekasa villagers on charges laid by the Forestry Department.