

Submission for the UN 3rd Cycle of Universal
Periodic Review Indonesia

LAND RIGHTS

Contributors:



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



Indonesia
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Right to Land

The Commission for the Disappeared and Victims of Violence (KontraS)
Consortium of Agricultural Reform (KPA)

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I. Overview

1. Consortium of Agricultural Reform (KPA) 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. Consortium of Agricultural Reform is a non-governmental organization to defend the agricultural justice for people welfare, including to break the practice of feudal, capital and imperial agricultural management. KPA also conducting advocacy and campaign towards the community and to the government to mainstreaming human rights in agricultural sector.
3. 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.

II. Government of Indonesia policy on the agricultural and right to land in Indonesia

4. **Land's right legislation reform:** Since the establishment of Law on Agricultural Reform in 1960, there are no specific legislation reform that equitable and could accommodate optimally all the human rights violations in the field of right to land in Indonesia. The law that regulated and have a relations such as Law No. 2/2012 regarding the Land Acquisition for Development and Public Interest, Law No. 41/2009 regarding Food Agriculture Land Sustainable Protection, Law No. 39/2014 regarding Plantation, Law No. 41/1999 regarding Forestry and Law No.4/2009 regarding Mineral and Coal Mining still not implemented properly, however it is implicitly could be used as the basis of the protection of right to land. Those laws also weak and overlapping each other and frequently potentially triggered authority conflicts amongst the government. Law on Agricultural Reform actually already try to regulate the right to land for the indigenous people community with raising the *ulayat* conception where the state could not have the land ownership, the state is only an institution

that could manage the regulation. However, there were abuses occurred in the New Order Era when the Right to Control the State (Hak Menguasai Negara – HMN) appeared and attempt to make the state position as the strongest, not only to regulate but also to have the ownership.¹

5. **Government of Indonesia efforts to initiate the establishment of right to land mechanism:** There are no rule of law regulation related with the land's right that ideally equitable established by the government. Every government initiation only finished until arranging the bill of land and did not deliver it to the House of Representatives to be established. Government of Indonesia through the Ministry of Agriculture actually has an effort to fulfill the justice of right to land which is to land re-distribution conflict policy. Nevertheless, the fulfillment of right to land could not embodied only with the land re-distribution. There should be one policy making to regulate the arrangement, sharing, ownership and access to manage the production to support the independent economics activities.
6. There are 7 main sectors that become the focus of right to land, inter alia mining, plantation, environment conservation, forestry, housing, infrastructure and coastal area. There are sectoral regulations that having two major problems, (1) the rule of law that incoherently regulated the agricultural sources or natural resources where the higher laws could not become the reference to the lower laws. (2) the overlapping laws, such as the similar level of rule of law that regulated differently or even contradictive. Thus, there are various ministries and other state institutions that have an authority in regulating the natural resources management without any coordination and could give an overlapping policy towards a some locations.²

The right to land violations in Indonesia:

7. Conflicts and human rights violations in the seven sectors of lands rarely have attention by the government, although there are a lots of public responses that demanding the responds by the government to the completion, however the human rights violations practices keep appears. KontraS and KPA chosed several cases as the consideration of there is impunity and omission of the case completion conducted by the government.
8. At the end of 2014, KPA mentioned in the Annual Report that the number of disputes, conflicts and violence in the right to land issues increased.³ There were some indications such as the lost of control and the citizen access to housing in the remote area to manage land

¹Statement of Nurul Fikri, Expert Staff of the House of Representatives as the participant of expert reader on the Second Focus Group Discussion by KontraS on November 11, 2015.

²See more: KPA. 2013. Konsorsium Pembaruan Agraria. Laporan Akhir Tahun 2013: Warisan Buruk Masalah Agraria di Bawah Kekuasaan SBY. The source can be accessed at: <http://kontras.org/lampiran/Laporan%20Akhir%20Tahun%20Catatan%20Agraria%202013%20KPA.pdf>.

³See more: In KPA Annual Report, KPA focused on the agricultural terminology that related with the access of agricultural resources, including “every part of the earth that give a life for the humans, including the core of the earth, mother land, air, or plantation above the earth”. The source can be accessed at: *Catatan Akhir Tahun 2014 – Membenahi Masalah Agraria: Prioritas Kerja Jokowi-JK Pada 2015*: https://www.academia.edu/9872310/Catatan_Akhir_Tahun_2014_KPA.

and natural resources as their routine for a long time. On the other hand, there were significant regression in the professions that directly related with the access of land resources.⁴ Therefore, there are a constant rejections by public in the project Masterplan of Acceleration and Expansion of Indonesian Economic Development (MP3EI) that mostly dominated with the infrastructures strengthening rather than involving the community from every subject entities from the development itself.⁵

9. According KPA data monitoring in the last decade, there are 1391 conflicts and human rights violations. Including 536 plantation conflicts, 23 land disputes, 90 infrastructure developments, 140 forestry conflicts and 87 other natural resources. Impacts of the conflicts were 70 people dead, 553 people were injured, 1354 people were being criminalized because they try to defend their rights. Logically, the numbers of policy in the agricultural sector could press or even preventing the conflict that continuously occurred since a long time ago after the colonial era. Nevertheless, the fact is the number of agricultural conflicts in the last decade still numerous, similar with all the legislations that have been issued. Which means, all the legislations that have been issued still could not resolve the problems.
10. According to KontraS data, at least 40 human rights violations of right to land have been occurred in 2015. Along with that, the violence act by the security apparatus and the lack of public recognition (particularly farmers) for using their rights. The cases not only occurs in 2015, mostly the cases already occurred from another time before and continuously occurred with various form of violations.⁶
11. **Reclamation Project, Benoa Bay Bali:** Reclamation project have been appear since the past few years in Indonesia. One of the project is in Benoa Bay, Bali province. The rejection of Benoa Bay reclamation was begin with the issued of Bali Governor Decree No. 17727/01-B/HK/2013 regarding the Permission of Expediency Study of the Utilization Plan, Expansion and Management of Benoa Bay Bali Province⁷. The community from Sidakarya Village reject the reclamation that will include 838 hectare of a new land, with piling up the Pudut Island until 5 meters above the sea level with giving a direct impact towards the existance of Sidakarya Village. It is acknowledge that the unilateral effort to develop the reclamation project will vanishing 7 villages near the Benoa Bay. This project which involved the local government and also corporations already violated several national and international human rights law, not only in the scope of right to adequate housing, but also

⁴Ibid. Hal. 7. KPA report also explained that every 60 seconds there is 1 house of farmer vanished, similar with the quarter hectare of agricultural land, changed with the area of non-agricultural land. The transfer of agriculture land to become the economic units in the larger scales such as mining, plantation, forestry and infrastructure are the situation that almost could not be prevented.

⁵See more: Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia 2011-2025. The source can be accessed at: http://www.ristek.go.id/file/upload/ebook_web/mp3e1/MP3EI_versi%20Ind.pdf. On the other hand, there are several critics mentioned by KontraS on the plan to continue the MP3EI program, such as there is no clear procedures while there are land aquisition with violence apporach.

⁶ See Annex 1.

⁷ The Governor Decree was given to PT. Tirta Wahana Bali Internasional. See more: Bali Governor Decree No. 17727/01-B/HK/2013. The source can be accessed at: http://www.forbali.org/wp-content/uploads/2013/09/sk_2_gubernur.pdf

impacted to the other fundamental rights, such as right to education for the children and also right to work, because all the fishermen near the coastal area in Benoa Bay will lost their occupation.⁸

12. **Giant Sea Wall, Jakarta:** The project of Giant Sea Wall in Jakarta was part of the Masterplan of Acceleration and Expansion of Economic Development (MP3EI). This development project using the proposition of the flood prevention in Jakarta that already become the annual issue and make a huge amount of deprivation for the local government and for the community itself. Despite of all the justification as the protector of the Capital Province, this project eventually inflicted to several other problems because it is already neglected the threat potentation of the ecosystem including the welfare of thousands fishermen living in the coastal area. This project also allegedly has not yet assessing the environment impacts. According to data from Kiara⁹, not less than 16.855 fishermen families will be evicted if the giant sea wall build. The allocation of flats by the government for the fishermen instead not giving an exact solution because it will complicate the fishermen to go fishing and further will forcely giving up their occupation.¹⁰
13. **Forced Eviction in Jakarta:** According to Jakarta Legal Aid Institute, there are 113 cases of forced eviction occurred in Jakarta from January until December 2015. The forced eviction occurred for several development such as for reservoir, waters normalization, city parks, private or state company properties, road constructions (highway, inspection road, freeway) for Indonesian Police facilities, MRT construction and for local government assets. The execution of the forced eviction frequently conducted with the threat of a heavy equipment and vehicle that suddenly came to the location of the forced eviction. The policing also conducted by collaboration personnel of Pamong Praja Police (Satpol PP), National Military Forces (TNI) and Indonesian National Police (Polri). There are 8.145 householders and 6.283 business unit that became the victims of forced eviction. According to the General Comments of CESCR No. 7/1997 regarding Forced Eviction mentioned eviction that fulfill the human rights standards is include with the consolidation between every parties involved. From the 113 cases of forced eviction in 2015, around 18 cases were decided by consolidation and 95 cases conducted unilateral.¹¹ In the case of Kalijodo forced eviction, the local government did not conducted comprehensive data collection towards all the citizen

⁸ See more: ForBali Organization. 2014. Save Bali From Drowning-We Reject the Reclamation of Benoa Bay. The source can be accessed at:

<http://www.forbali.org/en/save-bali-from-drowning-we-reject-the-reclamation-of-benoa-bay/>

⁹ See more: Koalisi Rakyat Untuk Keadilan Perikanan (KIARA). Proyek Giant Sea Wall Rugikan Warga Jakarta. 2014. The source can be accessed at:

<http://www.kiara.or.id/proyek-giant-sea-wall-rugikan-warga-jakarta/>

¹⁰Lihat: Mongabay (2015). *Giant Sea Wall*, Berikut Dampak Bagi Lingkungan dan Nelayan. Dapat diakses di: <http://www.mongabay.co.id/2014/10/18/giant-sea-wall-berikut-dampak-bagi-lingkungan-dan-nelayan/> diakses pada 19 Juni 2015.

¹¹ See more: Lembaga Bantuan Hukum Jakarta (LBHJ). Atas Nama Pembangunan: Laporan Penggusuran Paksa di Wilayah Jakarta Tahun 2015. 2015. The source can be accessed at:

http://www.bantuanhukum.or.id/web/wp-content/uploads/2016/02/Laporan-Penggusuran-2015_LBHJ_web.pdf

to have the numbers of householders, children and women. The warning letter of forced eviction also conducted by the collaboration apparatus with intimidating and involving state security apparatus, whose actually overlapping the mandates. Mostly, from all of the forced eviction cases in Jakarta, the allocation for the new flats for the compensation are actually did not fulfill the standards of living. Moreover, even the flats are free at the beginning, or having a low price of rent, the other allocation (water, sanitation, electricity, etc) are higher than the price of the rent itself. Therefore, most of the citizen have a difficulties and did not want to move because they could not afford the allocation for their routine.

14. **Industrialization:** In the dispute of PT. Semen Indonesia (Indonesian Cement Company) Rembang citizen, after many years of rejection towards the factory construction of the PT. Semen Indonesia in their area, all the efforts have been conducted to reject the project, the relation between the government and PT. Semen Indonesia still strong and neglecting all the right to land of Rembang Village, Central Java. The threat of losing the source of water, have a big impact to the agriculture land as the only occupation for the Rembang people to live, with this impact it could also spread into the other human rights violations such as access to education, healthy living and right to health. Meanwhile, the threat of environmental damage from the factory construction above the Karst mountain will harm the source of water for Rembang.
15. The violation on right to land in the name of development also attacked the citizen in the area of indigenous people in Bitung, North Sulawesi on last February 2016. The area of 1.458 people should lost their right to land, housing and cultural heritage that they have been preserved for more than two centuries, because of the development of Special Economic District (Kawasan Ekonomi Khusus – KEK) initiated by Joko Widodo presidency. The long defence of the indigenous people in Bitung should be payed with the arrests of 2 persons since January 2016 by the North Sulawesi Police District with the allegation of state land grabbing, according to the report from Bitung Mayor. According to Law No. 2/2012 regarding the land Acquisition for Development and Public Interest, the development should not necessarily victimize the people that live around the area of development process.¹²

III. Recommendations

The government of Indonesia should:

- The government should ensure the land policy that recommended by the people and also by the environment and human rights activists to conduct the development according to human rights standards and justice for the people that will have the direct impact of the development.

¹² See more. Mongabay. Program Pembangunan KEK Bitung Diliat Abaikan Hak-Hak Masyarakat. 2016.

The source can be accessed at:

<http://www.mongabay.co.id/2016/03/07/progam-pembangunan-kek-bitung-dinilai-abaikan-hak-hak-masyarakat/>

- To ensure the guarantee of agricultural stability amongst the plan of mega development projects.
- To immediately make a regulations and legislation regarding the business and also development that involving the private investors with including the human rights standards and considering the ecosystem preservation.
- To ensure the protection of the farmer activists and other human rights defenders in the economic, social and cultural rights that trying to defend their rights for the living environment.
- To ensure the Masterplan of Acceleration and Expansion of Economic Development (MP3EI) will consider the international or national human rights standards, also for the healthy environment and ecosystem in the future will not be exploited.
- To ensure that the citizen who already forcibly evicted still have their fundamental rights. the government should fulfill all the rights such as right to education, right to work and other rights that potentially lost after the forced eviction occurred.
- To ensure the forced eviction as the last resource to be conducted, and should be a human rights standards in the implementation of the forced eviction according to the international mechanisms that already regulated at the UN Human Rights Council Resolution.
- To ensure the involvement of security apparatus such as Indonesian Military Forces (Polri) and National Military Forces (TNI) should be taken out from the implementation of the forced eviction, since it is not according to the mandates of the security apparatus.
- To ensure there will be no intimidation, threat and other human rights violations by the security apparatus that involved in the forced eviction. The security apparatus that already perpetrated such action should be followed up firmly by the government according to the law, not only with the administration sanctions.
- To make a conflict resolutions mechanism on the poverty, conflict and human rights violations from the economic, social and cultural sectors. Since as we may know, the conflict that already occurred since the post-colonial era still have no conflict resolutions initiated by the government.