

**15th Session of the UN Permanent Forum on Indigenous Issues
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Agenda Item 4

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

By Ariana and Rukka Sombolinggi

Thank you Chair,

In 2014, for the very first time in the history of Indonesia, we, the indigenous peoples are visible in official agenda of president candidate. After all, President Joko Widodo and Vice-President Jusuf Kalla had included six Indigenous peoples' priorities in NAWACITA!¹ Further, the President has committed to establish a Presidential Task Force on Indigenous Peoples. Indigenous peoples started 2015 with abundant expectations and determined to embark on reconciliation with the state. However, almost all the items relating to indigenous peoples' agenda have yet to be realized. The failure to include the Bill on Recognition and Protection of the Rights of Indigenous Peoples in the 2015 and 2016 National Legislation Programme is one example.² Furthermore, the Draft Terms of Reference for an Indigenous Task Force have not yet been signed by the president.

Moreover, the president's commitment to indigenous peoples is not reflected in the Intended Nationally Determined Contribution (INDC) Document submitted by the Indonesian government to the COP21 in Paris last year.³ The document shows that the Indonesian government refuses to use the term "Indigenous Peoples of Indonesia" – it only uses the term when beneficial at the international level, even though Indonesia is one of the UN member states that voted for the adoption of the UNDRIP. Likewise, the INDC document is not in line with Constitutional Court Decision No. 35/2012 that uses UNDRIP and ILO Convention 169 on *Indigenous and Tribal Peoples* as legal basis for the Constitutional Court Decisions.

This denial of indigenous peoples is not consistent with the actions and attitude of the Indonesian government. In various treaties and international arenas, as well as in various official Indonesian documents and events, the term *Indigenous Peoples* has been consistently used, e.g., when celebrating International Day of the World's Indigenous Peoples in 2006 (on the part of former President Yudhoyono); in the Letter of Intent (LoI) between the Government of Norway and the Government of Indonesia concerning *Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation*; in the Forest Investment Programme (FIP); and in the Convention on Biological Diversity (CBD), the Nagoya Protocol, and Law No. 11 of 2013 on Ratification of Nagoya Protocol.

Furthermore, the Indonesian government's refusal to recognize and use the term *indigenous peoples* is considered a waiver of the "Concluding observations on the initial report of Indonesia" issued by the Committee on Economic, Social and Cultural Rights of the United

Nations on 19 June 2014. The Committee called on the Indonesian government to immediately ratify the Law on recognition and protection of the rights of Indigenous Peoples and to recognize Indigenous Peoples as *Indigenous Peoples*.

What's more, the lack of reference to indigenous peoples and their rights in the INDC does not reflect the fact that Indonesia has one of the most progressive constitutions in the world with regard to indigenous peoples' rights (Article 18 and Paragraph (2) and Article 28I Paragraph (3) of the 1945 Constitution and various laws).

It is obvious that the officials representing Indonesia in the climate change negotiations have not followed developments in Indigenous peoples' rights over the last four decades in the various UN forums in which Indonesia has, in fact, participated extensively. The biggest concern is that this is the result of Indonesian diplomats at the UN not communicating the developments at the international level to government officials back home.

Encouraging developments are happening in the legislative process for indigenous peoples in various regions across the archipelago. The trend of adopting legislation that recognizes and protects indigenous peoples at the regional level became widespread in 2015. At the end of 2015, two districts passed the Local Regulation on Recognition and Protection of Indigenous Peoples, namely Lebak and Bulukumba districts. Some other districts have included the draft Local Regulation on Indigenous Peoples in their 2015 Local Legislation Programme. This was, among others, the case in the districts of Luwu in South Sulawesi, 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.

Some districts have submitted draft local regulations on indigenous peoples for discussion in 2016, for example: Banyuwangi in East Java, Hulu Sungai Selatan in South Kalimantan, and several other districts. In addition, some districts are initiating and building common perceptions with indigenous peoples regarding the importance of introducing local regulations on indigenous peoples in their respective regions. This has, among others, been the case in the Sinjai regency in South Sulawesi, Hulu Sungai Tengah in South Kalimantan, West Kotawaringin in Kalimantan Central, Musi banyu Asin in South Sumatra, and North Bengkulu regency in Bengkulu. The most encouraging part is that AMAN's political cadres are currently sitting in the legislative bodies of some regions and have become drivers of this legislative process.

At the same time the president has, on many occasions, promised to grant clemency for the victims of unjustified criminalization, most recently on Human Rights Day, 10 December 2015. However, this commitment to granting clemency to unjustly convicted indigenous individuals has not been fulfilled to date. a number of indigenous individuals with a criminal conviction amounted to 217 persons, 11 of them still languishing in prisons in various regions.

In many other places across the country, state officials' behaviour in the field thus remains unchanged. The Law on Prevention and Eradication of Forest Degradation and Forestry Law remain untouched and continue to be a legal tool with which state officials are able to criminalize, violate and deny indigenous peoples' rights to indigenous land and territories.

Some of the following events illustrate how the state continues to use a formal legal paradigm in perceiving the problems facing indigenous peoples.

1. *Semunying Jaya indigenous people vs PT. Ledo Lestari* ended in the rejection of the Semunying Jaya indigenous peoples' lawsuit by the judges of Bengkayang District Court in West Kalimantan, even after the indigenous peoples had gone through the judicial process with dozens of hearings. Semunying Jaya indigenous peoples, Jagoi Subdistrict, Babang Benkayang District of West Kalimantan filed a lawsuit against PT. Ledo Lestari, a plantation company that had grabbed the indigenous lands, at Bengkayang District Court. After going through more than 27 trials, the judges of Bengkayang District Court decided on a NO (*niet ontvankelijke verklaard*) verdict and the claims were not accepted with the argument that the plaintiffs did not have legal standing. In the judges' legal consideration, the indigenous peoples were considered to have no legal status in the form of a local regulation or decree from the relevant ministries that would recognize their existence as indigenous peoples.
2. More than 700 families belonging to the Tana Ai indigenous people in Sikka, Flores, East Nusa Tenggara, received threats of evictions from Sikka Local Government, Flores, East Nusa Tenggara. They are accused of living on the concession area of PT. Diosis Agung (DIAG), a company engaged in coconut plantation and which later changed its name to PT. Krisrama. The company's HGU (Right to Use Building) expired on 31 December 2013. The people repeatedly attempted to reclaim the public land and territory through a series of activities, both by visiting the relevant agencies as well as by engaging in dialogue with the Local Parliament and Sikka District Head. The result of this dialogue is unclear. The Local Parliament and Sikka District Head claim that they cannot issue a decision because it is the central government that has sole authority to solve the problem. In November 2015, several Tana Ai indigenous representatives struggled to get to Jakarta to seek the settlement of their case. They met with the National Land Agency (BPN), which issued a recommendation: BPN must not process the renewal of the HGU (Right to Use Building) permit requested by the company until the problems affecting the Tana Ai indigenous people have been resolved.
3. In March 2015, five Sedulur Sikep persons from the two districts of Kayen and Tambakromo in central Java filed a lawsuit with the State Administrative Court in Semarang. The lawsuit was against District Head Decree No. 660.1/4767 dated 8 December 2014 on the Environmental Permit for the Cement Plant Construction and Limestone and Clay Stone Quarry in Pati District by Sahabat Mulia Saksi Factory (SMS). The District Head Decree potentially displaced and eliminated the people's farmland, which has been contributing to their food security. The District Head Decree is contrary to several laws.⁴ After going through a quite lengthy and tiring process, on 17 November 2015, the State Administrative Court in Semarang granted the plaintiffs demands entirely and invalidated the District Head Decree. In the consideration made by the judges, the decree was proved contrary to the Regional Spatial Planning (RTRW) of Pati District and good governance principles.

The Paris Agreement has to be implemented in cooperation with Indigenous Peoples as we fear that the need to expand national parks, protected forests and other conservation initiatives will again remove us from our ancestral territories, lands and resources. We are also experiencing threats to our life and existence as indigenous peoples from mega dams development for what so called green energy. Green energy must be truly green and is not painted RED with the bloods and tears of indigenous peoples. We call upon all member states to ensure there will be no more killings, arrests, and all forms of harassments toward Indigenous Peoples. Enough is enough

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

Recommendation:

1. We call upon the President of Indonesia to release our leaders from prisons and rehabilitate the victims and families of indigenous leaders affected by criminalization by the State.
2. We call upon the President of Indonesia to immediately establish the Task Force on Indigenous Peoples and start the reconciliation process between Indigenous Peoples and the State.
3. With regards to the strategic role of National Human Rights Institutions, we call upon the UN Permanent Forum to allow accreditation/status for NHRIs with A Status as NHRIs, not as Non Government Organization.
4. We strongly encourage the UN Special Rapporteur on Indigenous Peoples, and the UN Permanent Forum to strengthen their cooperation with NHRIs in the future.

Notes and references

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

2 See *The Indigenous World* 2015, p. 262. Available at <http://www.iwgia.org>

3 One of the major elements of the discussions among the parties to the UNFCCC in 2015 was the elaboration of Intended Nationally Determined Contributions (INDCs). Through their INDCs, nations submit their individual plans / pledges for reducing emissions. These individual plans should then add up to a common global goal for reducing emissions.

4 Law No. 26 of 2007 on Spatial Planning, Government Regulation No. 26 of 2008 on the National Spatial Plan, the Energy and Mineral Resources Ministerial Decree No. 0398 K/40/MEM/2005 on Determination of Karst Sukolilo Area and Ministry of Environment Regulation No.16 of 2012 on Guidelines for Preparation of Environmental Documents, and contrary to the general principles of good governance.