



AMBASSADOR OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS, WTO AND OTHER
INTERNATIONAL ORGANIZATIONS IN
GENEVA

Geneva, ~~27~~ April 2017

Dear Sir,

With reference to your letter No. REF AL IDN 8/2016 dated 9 November 2016, please find below the information, explanations, and clarifications on the points you raised with regard to the negative health impacts of smoke pollution due to forest fires in Indonesia, particularly after the extreme haze in 2015:

Background

Indonesia is a nation covering almost two million square kilometer territorial area, with the second longest coastline in the world, consisting of more than thirteen thousand islands. This makes us the largest archipelago in the world. The distance between Sabang to Merauke is equal to the distance between London to Tehran which actually covers ten different countries in European continent. This is also equal to the distance between Los Angeles and New York. Our territory covers three different time zones. Indonesia hosts tropical forest area of more than 120 million hectares, the most extensive in Asia and the world's third largest. In terms of economy, we are growing steadily as the largest economy in our region, and one of the top twenty (20) economies in the world.

Given these facts, maintaining control over the vast forest area with unpredictable climate (for example the El Nino) is an enormous challenge for Indonesia.

Article 28H (1) and 33(4) of Indonesia's 1945 Constitution stipulates that good environment is among the human rights. The Government of Indonesia is always committed to the protection and restoration of forest and peatland, cognizant of their domestic and international importance. Our Medium-Term National Development Plan 2015-2019 includes the 'decreasing level of deforestation and forest fire' as one of the Government's priorities.

In this light, much has been learned since the forest fires outbreak in 2015. The Government has taken integrated approaches which include prevention, mitigation, preparedness and stronger monitoring for law enforcement to push for action against possible offenders of forest fires.

President Joko Widodo's administration has been giving examples of a strong political commitment in the environmental law enforcement. President Joko Widodo directly takes the lead on the field visits and gives instruction to the ministers, governors, and officials involved as well as giving policies and directives, such as moratorium of new concessions on peatlands and revoking existing concessions' peatlands that are damaged to be restored.

Learning from the severe 2015 forest fires, the Government has undertaken firm actions by bringing responsible individuals and corporations before the law with both administrative and criminal sanctions. About 500 cases have already been brought to justice and some of them have received sanctions, including a USD 1.2 billion fine to a private corporation proven committing crimes against environment. Furthermore, The Government is also committed to provide remedy for those who are affected. One pertinent example is the decision of the District Court of Palangkaraya dated 22nd March, 2017 on the case between a Community/Civil Society Organization versus the Government of Indonesia. The court ordered the President (as defendant) to immediately issue a number of implementing regulation of Law No. 32/2009 on Environment and to establish a joint team consisting of Ministry of Environment and Forestry, Ministry of Agriculture, and Ministry of Health regarding forest fire management. Moreover, the decision also demanded the Government to build lung-specialized hospitals and evacuation corridors for forest fire.

Kindly find below the response of the Government to your specific questions:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Forest fires particularly in South Sumatra in 2015 caused billions of dollars in economic damage. To measure the impact of the 2015 forest fire, ASEAN is currently conducting a '*Study on the Economic, Health, and Social Impact of Haze in 2015 on ASEAN Region*' as mandated by the 18th Meeting of the Sub-Regional Ministerial Steering Committee (MSC) on Transboundary Haze Pollution on 4th May 2016. The result will be transmitted to the SPMH's office as soon as it is available.

While it is apparent that the land and forest fire have brought about huge economic losses, we have to be more prudent in assessing its impacts in the context of premature deaths. Data from the Ministry of Health indicates that, in South Sumatra the percentage of people suffering from Acute Respiratory Tract Infection reached 83,92% of reported illness during the fire and haze crisis between 29 June 2015 to 29 October 2015. The rest are suffering from skin disease (6,7%), eye disease (4,83%), asthma (3,83%) and pneumonia (1,34%). This data indicates that the high concentration of toxic gas and particle during that period resulted in immediate health problem which ranged from eye and skin disease to respiratory disease. All of these may lead to high incidence of Pneumonia and particularly Acute Respiratory Tract Infection, but will not directly cause premature deaths on their own. The official record shows that the total death related to the haze were 25 peoples, most of them had already suffered existing illness which were aggravated by the haze. This concludes that haze was not the sole causing factor of their deaths. The much acclaimed figure of 100.300 premature deaths in 2015 in Indonesia, Singapore and Malaysia is only estimation, thus did not reflect the real situation on the field and should not be used as a reference.

2. As a party to the ASEAN Agreement on Transboundary Haze Pollution since 2014, is Indonesia in compliance with the obligations under this agreement? If not, how does it plan to remedy non-compliance?

Indonesia has ratified the AATHP on 14th October 2014 through Law No. 26/2014. As a Party to the Agreement, the Indonesian government has fulfilled its obligation by carrying out monitoring, assessment, prevention, preparedness and law enforcement.

Indonesia has actively participated in AATHP meetings and presented the national report concerning concrete measure taken to anticipate, prevent and monitor transboundary haze pollution under the agreement. As part of its commitment, in March 2017 Indonesia hosted the third meeting on AATHP to finalize the Agreement on the Establishment of ASEAN Coordinating Centre for Transboundary Haze Pollution (ACC THPC), which scheduled to be operational in 2018.

3. Please explain appropriate measures taken by your Excellency's Government to monitor fire prone areas, all land and/or forest fires, the environmental conditions conducive to such land and/or forest fires and haze pollution arising from such land and/or forest fires to initiate immediate action to control or to put out the fires, in accordance with article 7 of the ASEAN Agreement?

As has been mentioned previously, efforts to control land and forest fire is an implementation of our Constitution's mandate, particularly article 28H (1) and 33 (4). Furthermore, the protection of forest and peatland is also mandated by Law No. 41/1999 on Forestry and Law No. 32/2009 on Protection and Management of Environment. President Joko Widodo's administration has also included the 'decreasing level of deforestation and forest fires' as one of Government's priority in the Medium-Term National Development Plan 2015-2019.

With regards to to Article 7 of the ASEAN Agreement on Transboundary Haze Pollution (AATHP), Indonesia has taken the following steps:

a. Monitoring: The Ministry of Environment and Forestry has established the Sipongi Portal (sipongi.menlhk.go.id) as the basis for early warning system to monitor all potential hotspots that may cause land and forest fires. On the field, the Ministry deploys its officials and firefighters coordinated under the Manggala Agni taskforce which responsible to control 37 prone areas in 12 provinces.

b. Prevention:

The government has taken several measures, among others:

- (1) Held regular coordination meetings among ministries.
- (2) Developed specific early warning system called the Fire Danger Rating System (SPBK) through collaboration among various ministries and institution.
- (3) Dug trenches and canal in peatland area to localize land and forest fire.

- (4) Conducting socialization and campaign to peoples in 750 villages in the surrounding area.
- (5) Undertaken regular patrol and hotspots ground check to prevent forest fires.
- c. Extinguishment: In the case of fire break, local firefighters are in place on the ground to extinguish land and forest fire, supported by water bombing operation. If the fire spread in a huge and escalating scale, the agency for Meteorological, Climatological and Geophysical will step in to carry out rain making operation.
- d. Law Enforcement: The establishment of regulation with the aim to reduce land and forest fire, the requirement for companies to conduct due diligence, and the use of administrative sanctions are among additional measures to supplement the existing criminal law enforcement mechanism. To ensure effective law enforcement, professional certification for environmental judges is another important measure by creating professional judges who are fully committed to ruling on environmental laws in the judicial ruling.
- e. The latter ranges from temporarily revoke of the companies' license to more severe punishment such as fines or prison sentence.
- f. Restoration: The establishment of the Peatland Restoration Agency (BRG) which responsible for the peatland restoration. The government already set the target that the restoration will cover 2.2 million ha of peatland in 5 years.

Such measures have successfully reduced the number of reported land and forest fire in 2017 compared to 2016 and 2015. In 2015 the number of hotspot observed through NOAA were reported to reach 21.929 spots, in 2016 the number drastically dropped to only 3.915 spots (83% decrease) and further reduced until April 2017 with only 254 spots. Another data from the TERRA/AQUA reveals that there were only 157 spots recorded until April 2017 compared to 3.844 spots in 2016 and 70.971 spots in 2015.

4. Please provide any information about land use policies and management strategies which are in place that could most effectively mitigate the downwind smoke exposure and consequent costs to human health if another extreme haze event would happen.

- a. One Map Policy. In accordance with the Law No. 4/2011 the Geospatial Information Agency (BIG) is the government institution responsible for providing geospatial information, and establishes one national basic map. This policy brings together land use, land tenure and other spatial data into a singular incorporated database to govern peatland and forest areas.
- b. Government Regulations (PP) No. 1/2016 on Peatland Restoration Agency, which among its mandate is to restore the damage of 2.2 million ha peatland in 5 years from 2016.
- c. Government Regulation No.57/2016 on Amendment to Government Regulation No.71/2014 concerning Protection and Conservation of the Peatland Ecosystem.

Since its approval by the President on 1 December 2016 the regulation stipulates the moratorium on land clearing within the peatland area.

- d. Minister of Environment and Forestry Decree No. P14/2017 concerning the peatland ecosystem function regulates the designation of peatland for conservation and cultivation.
- e. Review and evaluation on existing land clearing permits.
- f. Various measures to restore peatland function are taken, such as pro-peatland village programme, social mapping, joint research and monitoring and pilot project for cattle breeding and sago plantation in the peatland.

5. What policy, legal or regulatory measures has the Government of Indonesia taken to encourage or require that companies whose concessions are linked to the burning of peat lands, timber or oil plants meet their responsibility to respect human rights throughout their operations? This may include measures and/or guidance on, inter alia, conducting human rights due diligence, meaningful consultations with potentially affected stakeholders, and addressing and mitigating any negative impacts.

- a. Implement domestic laws and regulations such as:
 - Law No. 41/1999 on Forestry;
 - Law No. 32/2009 on the Environmental Protection and Management;
 - Government Regulations No. 4/2001 on Environmental Damage and/or Pollution Management in relation to land and forest fires;
 - Government Regulations No. 45/2004 on Forest Protection;
 - Government Regulations No. 71/2014 on the Protection and Management of Peat lands Ecosystems;
 - President Instruction No.11/2015 on the Increase in Forest Fires Control;
 - Minister of Environment and Forestry Regulation No. 32/2016 on Land and Forest Fires Control;
 - Issuance of 6 (six) Minister of Environment and Forestry Regulations in 2017, which represents the consistent efforts of the Government in protecting and managing peat-land, in order to prevent forest and land fire in 2015, which had brought devastating impact towards the Government and people of Indonesia. Those decrees are as follow:
 - Minister of Environment and Forestry Regulation No. 77/Menlhk-Setjen/2015 on Procedures for Handling Burned Area in the Forest Utilization License in Production Forests;

- Minister of Environment and Forestry Regulation on the Procedures for Inventory and Establishment of Peat Lands Ecosystem Function;
 - Minister of Environment and Forestry Regulation on the Procedures for the Measurement of Groundwater Level in Peat Land Ecosystem Structuring Point;
 - Minister of Environment and Forestry Regulation on the Revision P.12/Menlhk-II/2015 on the Development of Plantation Forest;
 - Minister of Environment and Forestry Regulation on the Determination Peat Land Hydrologic Unit Map;
 - Minister of Environment and Forestry Regulation on the Determination Peat Land Ecosystem Function Map.
- b. To provide rights to Adat Communities in managing their indigenous forests, the Minister of Environment and Forestry presented the Decree on Acknowledgement of *Adat* Forests to nine *Adat* Communities (13.122 Ha) in December last year. The rights of the *Adat* Communities are also regulated through Minister of Agraria and Land Reform Regulation No. 5/1999 on Guidelines for Conflicts Resolutions of Land Rights of the *Adat* Communities.
- c. Conducting environmental due diligence to companies through Minister of Environment and Forestry Regulation No. 30/2016 on the Assessment of Sustainable Production Forest Management and Timber Legality Assurances.
- d. Providing advices and early-warnings to all companies before the dry season to ensure their preparedness in preventing forest fires.
- e. Issuing professional certification for environmental judges to create professional judges who are fully committed to and capable of ruling on environmental laws with the application of '*in dubio pro natura*' principle in their judicial rulings. Up to this day, 577 Indonesian judges have been environmentally certified.
- f. Conducting law enforcement measures through investigation of suspected companies and to impose sanctions to those who are proven to set forest fires in their land clearing processes. Sanctions can be manifested in forms of removal of permits, freezing permits, or fines depending on the decision of the court.

Until the end of 2016, The Indonesian National Police, in cooperation with the Ministry of Environment and Forestry, had handled various cases with details as follows:

- 29 cases currently under investigation
- 11 cases of P-19 (charging documents are in the process for completion)
- 5 cases of P-21 (charging documents are ready to be submitted to the court)
- 2 cases currently being trialled in court

On the other hand, the investigators from the Ministry of Environment and Forestry had handled cases as follows:

- 4 cases currently being investigated
- 1 case being trialled in court
- 2 cases had reached convictions

In 2016, several individuals, including companies involved in forest and land fire cases have been convicted by court decisions: 1 person serves 2 years in jail with IDR 3 billion fine; 2 persons each serves 3 years with IDR 3 billion fine; and 1 person serves 4 years with IDR 3 billion fine.

g. Encouraging business sector to respect human rights through, among others, the dissemination of UN Guiding Principles on Business and Human Rights (UNGPs). The Government has incorporated the promotion of Business and Human Rights as a priority within the National Action Plan on Human Rights (NAP-HR) as a measure to raise awareness among stakeholders, including business sector. The Government has relevant legal and institutional framework as well as policies which provide foundations for business to comply, promote and protect human rights, the environment and society at large. Those who do not adhere to these laws have been and will be sanctioned and even prosecuted. Inclusive, constructive, and balanced are three keywords in relations to UNGP implementation. In addition, to further mainstream human rights perspective in business sector, the Government is expecting to finalize and adopt a draft Guidance on Business and Human Rights at early 2018.

6. Please provide the details of early-response efforts to forest fires in view to reduce the emission of toxic elements in haze and smoke as well as the measures undertaken to ensure the decrease or the end of such practice.

In 2016, the Government of Indonesia established coordinated patrol prevention with a target of 750 villages and in 2017 with a target of 900 villages. This coordinated patrol prevention is involving related stakeholders, such as the Forest and Land Fire Brigade (Manggala Agni) from the Ministry of Forestry, the Police, the National Army, local communities, Forest Police, and the local Government.

The patrol teams are equipped with sufficient tools to conduct activities such as public awareness campaign, socialization, hotspot ground check and fire extinguishing equipment. Manggala Agni has been established in 12 provinces in Indonesia, namely North Sumatera, Riau, Riau Islands, Jambi, South Sumatera, West Kalimantan, Central Kalimantan, South Kalimantan, East Kalimantan, North Sulawesi, South Sulawesi, and Southeast Sulawesi.

Furthermore, these patrol teams also conduct early response measures when forest fires occur. In provinces prone to forest and land fire, the local Governors also set up task force, comprising of officials from the National Army, Police, officials from the Ministry of Environment and Forestry, and other relevant stakeholders.

7. Please provide information about initiatives taken by the competent authorities to study the health impact of exposure to multiple hazardous elements in the air as well as the measures taken in view of the increased emissions of toxic elements from fires.

The Government of Indonesia through concerned ministries, including the Ministry of Health, has undertaken researches in analyzing the impacts of forest and land fires to health. In 2015, Research and Development Agency of the Ministry of Health had analyzed the impact of forest fires to people's health in Pekanbaru, based on air quality measurement, epidemiology of morbidity and mortality data in the regional hospital and health centers, and other related environment data. Researches were also undertaken in other vulnerable provinces such as Jambi, Central Kalimantan and South Sumatera.

Measures taken in view of the increased emissions of toxic elements from fires include:

- a. Daily monitoring of the outbreak of diseases related to forest fires such as acute respiratory infection, pneumonia, asthma, and eye and skin irritations;
- b. Monitoring of air quality. Analysis of air quality, based on air pollution standard index data that is gathered from the Regional Agency for Environmental Control (BPLHD) and/or private-owned monitoring stations, is done for determining danger level/category and its mitigation measures recommendation;
- c. Dissemination of information on air quality and its impacts to people's health, including to NGOs and all related sectors in order to ensure their preparedness in dealing with forest fires disaster;

8. Please provide detailed information on the data and plans of your Government to ensure the surveillance of the health situation of people affected in the medium and long term as well as access to health services.

Measures undertaken during and aftermath of crisis:

- Undertaking proper assessment of situations during the phase of preparedness and routinely report the situation to the Directorate General of Diseases Prevention and Control as well as the Health Crisis Centre of the Ministry of Health;
- Activating all health services units, ranging from field medical posts, small and medium medical centers and clinics, to hospitals, to ensure the delivery of health services to the victims free of charge;
- Distributing logistical needs to areas affected by forest fires disaster, including masks, medicines, and other logistics;
- Installing public spaces, such as schools, gymnasiums, etc., in areas affected by forest fires disaster with haze filters in order to create safe zones for the people.
- Empowering the local people in preparing camps equipped with fans, air purifier, and air conditioners for vulnerable groups such as babies, children, pregnant women, and senior citizens.

- Assigning teams of experts from Central Hospital to assist and improve regional public hospital services in the effected provinces.

Government's plans to ensure surveillance of health situation of as well as access to health for people affected in the medium and long-term:

- Improving the standard for the delivery of health services as well as the level of preparedness in disaster risk reduction based on risk analysis and mapping of regions prone to any disaster, including forest fires.
- Undertaking research and study on the long-term impact of haze to health.
- Provision of national health insurance program (BPJS) for the people to ensure better access to health services by the people. The government also provides Indonesia Health Card (KIS) for the poor in order to access the health services free of charge.
- In cooperation with WHO, Ministry of Health conducted technical training and advocacy to assess the health status and preparedness of provinces affected by haze.
- Ministry of Health also conduct lung capacity *assessment* for victims of haze to ensure there is no prolonged health effect of haze.
- Despite increasing amount of financial resources needed, the Government is committed to allocate sufficient budget in to mitigate the health impact of haze in affected areas.

9. What judicial, administrative, legislative or other steps has the Government of Indonesia taken to ensure that victims of smoke exposure and haze have access to effective remedies?

Laws and regulations, as well as administrative measures, related to health services to be given to the victims of any disaster, including of haze caused by forest and land fires, have already in place and been effectively applied, such as:

- a. Law no. 36/2009 on Health regulates the equal rights of every citizen to get access to health services;
- b. Law no. 44/2009 on Hospitals requires that hospitals may not refuse patients asking for health treatment;
- c. Minister of Health's Regulation no. 289 of 2003 on the procedures for control of air pollution impacts to health
- d. Minister of Health Regulation No. 64/2013 on the Health Crisis, which stipulates that Ministry of Health is responsible to assist relevant technical units in procuring health resources as well as verification and hospital claim payment.
- e. Health treatments given to the victims on the field have already been done in an integrated manner. All levels of government administrations have coordinated and

collaborated in a task force that specially established in order to give proper health treatment to the victims of haze caused by forest and land fires;

- f. Comprehensive and tiered health treatments have already been given to the victims on the field based on their medical needs.
- g. Head of National Agency for Disaster Management (BNPB) Regulations no. 173 of 2014 on National Clusters for Disaster Management regulates the application of cluster system in the national disaster management. According to the Decree, national disaster management involves all related government institutions who will work together with different areas and responsibilities.
- h. Court decisions, for example decision of District Court of Palangkaraya No. 118/Pdt.G/LH/2016/PN.PLK, which instructed the President (as defendant) to immediately issued a number of implementing regulation of Law No. 32/2009 on Environment and to form a joint team consisting of Ministry of Environment and Forestry, Ministry of Agriculture, and Ministry of Health regarding forest fire management. The decision also instructed the Government to build lungs specialty hospital and an evacuation room for forest fire.

I trust that my explanation has addressed the salient points raised in your letter. I continue to have confidence that the Special Procedure Mandate Holders could play its vital role constructively, objectively, and impartially. On a final note, I appreciate your commitment to maintain dialogue with the Government of Indonesia.

Please accept, Sir, the assurances of my highest consideration.

Yours sincerely,



Hasan Kleib

✓ Ambassador/Permanent Representative

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