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

No. 81 /POL II/VII/2018

Geneva, 19 July 2018

Dear Special Procedure Mandate Holders,

With reference to your joint communication No. AL IDN 4/2018 dated 23 May 2018 and my letter No. 64/POL-II/V/2018 dated 24 May 2018, please find below further information, explanations, and clarifications regarding the alleged violations of the rights to life, to health, and to a clean and safe environment, of the coastal residents in Balikpapan Bay, East Kalimantan, due to the exposure to toxic fumes and smoke as well as contamination that resulted from oil spill:

Factual Error

PT. Pertamina's subsea pipeline in Balikpapan Bay has been established and utilized since 1998 to funnel crude oil from Penajam Passer to refinery unit V. The pipe is very essential in providing fuel to the eastern part of Indonesia. This subsea pipeline, however, does not relate to the Tempino-Plaju oil pipeline mentioned in your letter.

Moreover, with regard to the issues addressed in the letter, please find our clarifications/comments as follows

Chronology

On 31 March 2018, several members of the community in Balikpapan Bay saw black liquid waste on the sea surface that resembles oil. A few hours later, emergency responders (including police) found MV Ever Judger – a cargo ship containing more than 70,000 tonnes of coal – caught on fire on the ocean. MV Ever Judger carries a Panamanian flag, the owner is a citizen of the British Virgin Island, the ship operator is from Hong Kong, and the captain holds a People's Republic of China passport.

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1. **Mr. Baskut Tuncak**, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes,
2. **Ms. Anita Ramasastry**, Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises,
3. **Mr. David R. Boyd**, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment,
4. **Mr. Dainius Puras**, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

Office of High Commissioner for Human Rights
Special Procedure Branch
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The East Kalimantan police, in cooperation with the Ministry of Environment and Forestry, the Surabaya forensic laboratory, and a diver team from the Navy immediately conducted initial operation to trace the source of spill and found out that the subsea pipeline connecting Penajam Passer to PT. Pertamina Refinery Unit V has been broken. This pipe spans 3.8 km, around 21-25 metres below sea level, with a diameter and thickness of 20 inches and 12 mm respectively.

The police conducted further examination by collecting navigation data and taking the broken pipe out of the water. Navigation data and the material trace of the broken pipe that was found on the vessel's anchor suggested that MV Ever Judger's anchor caused the subsea pipe to break by dragging it as far as 170 metres from its initial position.

Emergency Response

The oil spill in Balikpapan Bay has been treated with the utmost urgency to avoid the spread of fire to the city of Balikpapan. The Government is exerting maximum efforts in responding the oil spill. Shortly after the burst, an emergency response team was created on 1 April 2018 under the command of the Balikpapan Port Authority. The team consisted of the Ministry of Environment and Forestry, the National Armed Forces, the National Police c.q. Balikpapan Police, the Provincial- and District-Level Disaster Agency, the Local Health Office of Balikpapan, PT. Pertamina, and several other agencies/ institution/ business at local level.

The team was dispatched to provide first aid, evacuate the population to safe areas, distribute food supplies, localize the spread of oil spill, and clean the sea. The team managed to clean 34 sub-districts in Balikpapan and North Penajam Passer and to keep the spill under Tier 1 category (oil spill that can be addressed by local authority). Local environmental office has declared the area relatively clean one week after the team started their operation.

To ensure protection of the right to health for affected population, the Balikpapan District Office, through local public health offices supported by PT. Pertamina, has:

- (1) Provided healthcare facilities through a 24-hour, free-of-charge primary healthcare facility (Puskesmas) nearest to the spill site. The most common health symptoms are nausea, headache, and burning sensation in throat/ eyes. The latest data from the Ministry of Health recorded that the primary healthcare facility has facilitated approximately 1500 people;
- (2) Built 7 medical posts in Balikpapan (5 posts) and North Penajam Passer (2 posts). These medical posts have facilitated 672 children aged 1-17 years old (20% from total patients) and 734 people who are older than 56 years old (22% from total patients);
- (3) Prepared the local hospital to be a referral healthcare facility.

Accountability/ Investigation Measure

In handling the oil spill, the Government of Indonesia refers to applicable national laws and regulations, among others Law No. 17/2008 on Shipping; Law No. 32/2009 on Environment; and Presidential Decree No. 109/2006 on Emergency Response for Oil Spill at Sea.

The Law No 32/2009 on Environment stipulates that anyone whose activity utilizes, produces, and/ or manages hazardous and toxic waste, and/ or causing serious threat to the environment bears absolute responsibility for the incurred losses without having to prove the substance of mistake.

Furthermore, the Presidential Decree No-109/2006 on Oil Spill mandates the ship owner or operator and/ or the highest authority of oil and gas company/ off-shore oil activities/ any other activities, who caused the spill to be responsible for bearing the costs of: (1) handling the oil spill at sea; (2) handling the environmental impact caused by the spill; (3) the people's economic loss caused by the oil spill; and (4) environmental damage caused by the spill.

In this regard, the Ministry of Environment and Forestry on 30 April 2018 has issued a Ministerial Decree specifically obliging PT. Pertamina to, among others:

- a. Restore the natural environment of Balikpapan Bay and its surroundings that were impacted by the oil spill in 180 days;
- b. Improve its environmental license in 180 days, taking into account the impact of ship traffic in Balikpapan Bay on the safety of its pipes;
- c. Conduct an audit to all PT. Pertamina Refinery Unit V Balikpapan's activities;
- d. Establish an automatic early warning system as part of the standard operating procedure in handling an oil spill incident; and
- e. Conduct a regular inspection of the pipeline annually.

The Government of Indonesia places great importance to the criminal investigation process and is highly committed to hold responsible parties accountable for their conduct. A criminal investigation is being carried out by the East Kalimantan Police with direct support from the national police.

Based on the initial examination previously mentioned under the chronology section, the East Kalimantan Police has declared the captain of the MV Ever Judger as a suspect and has interrogated the chief superintendent at PT. Pertamina - who was responsible for controlling the pump system of the subsea pipeline.

Further investigation to collect evidence for trial is currently underway. The East Kalimantan Police has interrogated 24 people relevant to the case, detained 5 other MV Ever Judger crews who were in charge of dropping the anchor and confiscated the ship for further investigation. To ensure thorough and evidence-based investigation, the East Kalimantan police invited 15 experts in various fields, including: dangerous and toxic waste, metallurgy, mangrove, coral reef, criminal law, environmental law, modelling, transportation, industrial process, and experts from the Navy's Hydrography and Oceanography Center.

It is important to note that the investigation is not without challenges, including: (1) the pipe is located in a high traffic area for ship, around 21-25 meters below sea level, and with less than 30 cm of visibility. In addition, 1 meter of pipe weighs around 500 kilograms. Efforts to collect evidence from the scene are often time-consuming and require a sophisticated technology and human capability; (2) the East Kalimantan police has sent a notification to examine the owner of the ship and the owner of the coal company through their respective missions in Indonesia, but has yet to receive any response.

Remedy and Way Forward

While the legal process is ongoing, PT. Pertamina as the owner of the pipe bears strict liability for costs incurred by the event. In this regard, compensation fund has been given to the family of 5 victims of initial fire caused by the spill. With regard to the coastal people's economic loss and environmental damage caused by the spill, the Directorate of Law Enforcement at the Ministry of Environment and Forestry is in the process of compiling a baseline data for compensation fund.

The Government also regularly monitors the seawater quality in beaches, ports, recreational areas, and residential areas after the event. The standards include the level of marine ecosystem,

prerequisite components, and/ or the level of pollutants tolerated in sea water. As of June 8 2018, the Ministry has declared Balikpapan Bay safe for brackish water aquaculture. However, to protect the right to health of the people, the local government has issued an official announcement and put up warning signs for nearby population to refrain from swimming in the area.

To prevent similar events from reoccurring in the future, the Government has instructed PT. Pertamina to establish an automatic early warning system for subsea pipe breakage. The Government c.q. the Ministry of Energy and Mineral Resources has also conducted an audit to the other 8 oil refineries in Indonesia from April-June 2018.

In the same breath, I believe it is important to reiterate that Indonesia attaches a great importance on the issue of Business and Human Rights, including the implementation of the UN Guiding Principles on Business and Human Rights (UNGPR). We share the view of the Working Group that capacity building as well as increasing stakeholders' awareness is paramount towards this end. The Government has incorporated the promotion of Business and Human Rights as a priority within our National Action Plan on Human Rights (NAP-HR) as a measure to raise government institutions and/ or agencies' awareness on this issue as well as to promote their effort in formulating business-related policies that protect the human rights of the people. Furthermore, the Government is currently preparing a draft National Guideline on Business and Human Rights, which will be a reference document for all stakeholders, including State-owned enterprises in realizing a human rights-based business activities.

To conclude, I wish to underline that investigation measures are still on-going and the Government of Indonesia is committed to investigate the event. The Government is also committed to work together with relevant stakeholders, including PT. Pertamina, to provide remedy for the affected population. I would also like to underline that the Government of Indonesia is committed to investigate the event.

I trust that my explanation has addressed the salient points raised in your letter. I wish to once again reiterate the Government of Indonesia's commitment to protect and fulfill the rights of our citizens to health and clean environment as well as to implement the UNGPR. We stand ready to collaborate constructively towards this end.

Yours sincerely,



Hasan Kleib

Ambassador/Permanent Representative