



PERMANENT MISSION  
OF THE REPUBLIC OF INDONESIA  
TO THE UNITED NATIONS, WTO AND  
INTERNATIONAL ORGANIZATIONS IN GENEVA

Geneva, November 2019

No. ~~167~~/POLII/XI/2019

Let me first of all, express my appreciation for engaging with the Government of Indonesia through your letter. I wish to acknowledge receipt of your joint communication No. AL IDN 1/2019 dated 6 February 2019 regarding the alleged cases linked to coal mining operations in East Kalimantan Province, as well as the alleged harassment and attacks against JATAM (Mining Advocacy Network), an environmental non-governmental organization.

The letter has been forwarded to our capital to seek further information and consultation with the relevant authorities. With this letter I wish to submit explanation and clarifications from the Government of Indonesia.

I wish to highlight that Indonesian law obliges all mining license holders to uphold the principles of environmental management and protection in surrounding areas in carrying out reclamation and post-mining plan as one of the measures to ensure protection of the right to safe, clean, healthy and sustainable environment and clean water. In this regard, it would be highly appreciated that you would consider the comprehensive explanation provided by the Government of Indonesia.

Allow me to reiterate the commitment of the Government of Indonesia to protect all of our citizens. We stand ready to collaborate constructively towards this end.

Yours sincerely,

Hasan Kleib

Ambassador/ Permanent Representative of the Republic of Indonesia

To:

**Mr. Surya Deva, Chair-Rapporteur on the issue of human rights and transnational corporations and other business enterprises**

**Mr. Baskut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

**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**

**Mrs. Hilal Elver, Special Rapporteur on the right to food**

**Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

**Mr. Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association**

**Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders**

**Mr. Leo Heller, Special Rapporteur on the human rights to safe drinking water and sanitation**

**Government of Indonesia's response to SPMHs' joint communication No: AL IDN 1/2019 dated 6 February 2019, regarding the coal mining operations in East Kalimantan Province, as well as the alleged harassment and attacks against JATAM**

As of November 2018, the Government of Indonesia c.q the Ministry of Environment and Forestry and the East Kalimantan Provincial Government recorded that there were 22 deaths related to ex-mining pits. This data is different from the one mentioned in the letter, which stated that more than 30 persons have died after falling into the ex-mining pits.

It is also important to note that JATAM and the Government of Indonesia has used different methodology to determine the existence of mining pits. JATAM used satellite imagery method, which could falsely see any huge body of water – such as irrigation dam and water reserve – as mining pit. Based on the East Kalimantan Governor Regulation No. 38/2015 on the Guidelines for Land Reclamation and Revegetation as well as the Closure of Mining Pits in the East Kalimantan Province, the Government defines a mining pit as pit that has been exploited for its coal and has yet to be reclaimed, whether it is active or not.

**1. Normative and Institutional Framework**

Mineral and coal mining in Indonesia is regulated by Law No. 4/2009 on Mineral and Coal Mining and Government Regulation No. 23/2010 on the Conduct of Mineral and Coal Mining Activities. They regulate, among others, the requirements and procedures for a company to have a coal mining license, responsibilities of coal mining license holders, administrative sanctions, as well as community protection. Law No. 32/2009 on Environmental Protection and Management further regulates the environmental obligation of coal mining industry. The Law obliges coal mining industry to conduct environmental impact assessment prior to the opening of a new mining operation and/or operation. Several ministerial decrees further strengthen these laws, among others: Minister for Energy, Mineral and Natural Resource Regulation No. 26/2018 on Good Mining Conduct and Supervision of Mineral and Coal Mining and the Minister for Environmental and Forestry Regulation No. 5/2012 on Environmental Impact Assessment.

A coal mining company which wishes to obtain a mining license has to fulfil all four requirements, namely administrative; technical; environmental; and financial requirements stipulated in the law. Relevant authorities in local or national level (depending on its working area) will review the documents in order to issue the license, with a maximum period of 7 (seven) years. In this regard, the Government of Indonesia would like to emphasize that all four requirements must be fulfilled by any applicant before a license is being issued. This includes environmental aspects, such as environmental impact assessment documents; post-mining reclamation plan; and reclamation deposit as part of the prerequisites.

In conducting exploration and production activities, coal mining license holders are obliged to submit annual working and budget plan to the Minister for Energy, Mineral and Natural Resources and to regularly report the implementation. Coal mining license holders are also responsible to prepare and submit regular reports on the quality of mining waste water; working accidents; statistics on workers' disease; reclamation implementation; and internal audit of safety management system. These reports will then be the basis for relevant authorities to extend, suspend, or revoke the coal mining license from its holder. In addition to reports made by the license holders, the Government also assigns mining inspectors to regularly check the conformity of mining operations with relevant laws and regulations.

## **2. Judicial, administrative, and legislative measures as well as commitment to prevent similar cases to happen in the future**

In line with recommendations of Komnas HAM, Indonesia's NHRI, the East Kalimantan Government is currently conducting an inventory and review of all existing coal mining licenses in the East Kalimantan Province. As of November 2018, there are 1404 coal mining licenses that were issued either by the provincial or municipal government in East Kalimantan. The East Kalimantan Provincial Government has reviewed 874 mining licenses to determine if they meet the relevant rules and regulations. Coal mining license holders that fall into 'Non-Clean and Clear' category (i.e, whose mine overlaps with another mines; does not meet the land planning requirements; or having legality problem) are given administrative sanction such as temporary suspension of exploration activities or forced closure with signage until they could fulfil their obligations to meet the relevant laws and regulations. When companies could not fulfil their obligation within the given time period, their licenses will be revoked. Through this process, 386 coal-mining licenses that fell under non-CNC category have been revoked. The Government will continue to review the remaining licences to ensure the good mining conduct of all mining license-holders.

The Governor of the East Kalimantan Province in March 2019 has issued a directive to all mining license holders and chief technical officers to adhere to relevant rules and regulations in their conduct and to immediately close all pits/working front, particularly those located near residential areas.

With regards to list of casualties/cases mentioned in JATAM and Komnas HAM's report, the Ministry of Environment and Forestry and the East Kalimantan Province have taken efforts to verify and clarify all cases. As previously mentioned in the additional comments of this letter, several cases were proven unrelated to ex-mining pits and the Government was not able to verify 2 (two) casualties.

The government and law enforcement apparatus has taken administrative and judicial measures to resolve verified cases. Administrative coercion to close existing ex-mining pits has been enforced to 2 (two) mining companies, namely PT. Energi Cahaya Industriatma and PT. Cahaya Energi Mandiri. Administrative sanction has also been given to PT. Graha Benua Etam with initial criminal investigation currently underway. Enforced forfeiture has been carried out in ex-mining pits owned by three (3) companies.

With regards to criminal investigation, the local police of East Kalimantan in coordination with national police has processed 15 cases. Eight (8) cases are currently in the initial investigation stage, three (3) cases are in investigation stage; one (1) case files has been submitted to prosecutor office to be reviewed; two (2) cases has been accepted by prosecutor office; and one (1) investigation was halted.

Reluctance of victim's family to provide further statement or to allow post-mortem examination (autopsy) to be carried out has become one of the major challenges for the police to conduct further investigations and proceed with the case. Nevertheless, the Government of Indonesia continues to be committed to uphold the rule of law, including in investigating cases of deaths by accident in open ex-mining pits.

In addition to judicial measure, there are also instances where the victim's family has resolved the grievance through non-judicial mechanism provided by the mining companies. The Government is committed to holistically strengthen the coal mining governance from upstream to downstream. Integrated efforts have been taken by the national and provincial governments in strengthening the coal mining governance, focusing on prevention aspect so that a similar event will not happen in the future. This is being done, among others through stricter and careful issuance of coal mining license and the formation of patrol team to regularly check the safety measures of open ex-mining pits. In August 2018, Corruption Eradication Commission has assigned three provinces – including East Kalimantan – as pilot project of a “National Movement in Safeguarding Natural Resources”. The main focus of this project in East Kalimantan is strengthening prevention and enforcement aspect in natural resources management.

### **3. Measures related to the protection of the right to health; water and sanitation; and right to food**

Law No. 4/2009 on Mineral and Coal Mining stipulated that coal mining license holder must implement the good mining practice which requires companies to fulfil the minimum requirement of work health and safety standard; environmental management, including protection of water source, environmental monitoring, land management, reclamation and post-mining plan; and waste management. Good mining practice an integral element that is

regulated by the Government in order to realize a sustainable mining and to ensure that mining operation does not bring ill effects to the livelihood of people in areas surrounding the mine. In the same vein, Indonesian law obliges all mining license holders to uphold the principles of environmental management and protection in surrounding areas in carrying out reclamation and post-mining plan. These includes the protection of the quality of surface and groundwater; seawater; land; and air in accordance to a regulated standard. Coal mining license holders must report on the water and air quality assessment once every one and three months, respectively.

While it is true that post-coal mining soil contains less nutrients compared to regular soil, the Government is committed to work together with business and other relevant stakeholders to encourage the effective utilization of post-coal mining land. Example of good practice has been found in Kutai Kartanegara area of the East Kalimantan, where the Center of Agricultural Research and Development of East Kalimantan Province together with farmer community and coal-mining company has successfully implemented integrated farming and livestock raising area in reclaimed land. Other ex-coal mining pits have also been used for fish pond and clean water reservoir.

Furthermore, the Government Regulation No. 23/2010 obliges all coal mining license holder to prepare a community development plan in consultation with affected community and provincial government annually and to report its implementation bi-annually. East Kalimantan is the first province in Indonesia to have a Community Development Forum of Mining Companies (Forum Pengembangan Masyarakat Pengusahaan Tambang) initiated by coal mining license holders. License holders within this forum meet regularly to identify the community development priorities that need to be addressed. In doing so, the forum also engages with provincial government to ensure that does not overlap – and rather complements – existing Government priorities.

One example of this community developments is the provision of healthcare infrastructure and facilities; access to clean water; and livestock to support the fulfillment of the rights to health, clean water and sanitation, as well as the right to food by people in surrounding areas.

#### **4. Partnership with *National Human Rights Institutions* and Civil Society Organizations**

The Government of Indonesia recognizes the important role of National Human Rights Institutions and non-governmental organizations in the promotion and protection of human rights and puts high importance in engaging all national human rights stakeholders as partners towards that end. This is shown by, among others, the constant support of the Government of Indonesia for Human Rights Council's resolution on human rights defenders. Furthermore, the

Minister for Environment and Forestry has also explored possible measures to further strengthen the protection of environmental human rights defenders, one of which is through regulation/directives.

With regards to the alleged attack and threats received by JATAM office, the East Kalimantan Police has conducted investigation to the robbery case reported by JATAM on Monday, 26<sup>th</sup> November 2018. The police has examined the crime scene and interviewed 6 witnesses. Investigation is currently still on-going, as witnesses' testimony and CCTV record has yet to provide any conclusive evidence regarding perpetrator(s) identity.

## **5. Business and Human Rights**

The Government of Indonesia attaches great importance on the issue of Business and Human Rights, including the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). Inclusive, constructive, and balanced are three keywords for us in relations to the UNGP implementation.

In Indonesia, the principles of the UNGPs has been enshrined in our various laws and regulations, including the Law on Enterprises, Law on Environment, Law on State Owned Enterprises, and Law on Investment.

The Government believes that capacity building as well as increasing stakeholders' awareness is paramount in promoting business and human rights. In this light, 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 the matter as well as to promote efforts of formulating business-related policies that protect human rights of the people. The Government has conducted various public awareness campaigns which also involved business sector as well as law enforcement apparatus at the national and local level. The Government has also issued the Guidance on Business and Human Rights that translates the United Guiding Principles on Business and Human Rights into Indonesia's context and contains example of concrete measures that could be taken by all national stakeholders in implementing the UNGPs. It is expected to be a reference document for all stakeholders in realizing a human rights-based business activities.