



المؤتمر الدولي حول
تأثير النشاط البشري على الحق في بيئة صحية وملائمة:
الممارسات والتحديات والحلول

The International Conference on
The Impact of Human Activity
on The Right to a Healthy and Adequate Environment:
Practices, Challenges and Solutions

Wednesday 6th September 2023 | الأربعاء 6 سبتمبر 2023
Manama, Kingdom of Bahrain | المنامة مملكة البحرين

المؤسسة الوطنية لحقوق الإنسان
National Institution for Human Rights



Working Paper

Practices and challenges related to dealing with hazardous waste and their impact on the right to the environment: Gold Mining Case Study in Sangihe Island, North Sulawesi, Indonesia

International Conference: The Impact of Human Activity on the Right to a Healthy and Adequate Environment: Practices, Challenges and Solutions

Dr Jayadi Damanik

Senior Legal Analyst

Indonesia National Human Rights Commission

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Manama – Kingdom of Bahrain

H.E. Eng. Ali Ahmed Alderazi, The Chairperson National Institution for Human Rights of Bahrain,
Dear participants of the “International Conference on the Impact of Human Activity on the Right to a Healthy and Adequate Environment: Practices, Challenges and Solution”,

INTRODUCTION

Indonesia National Commission on Human Right - INCHR would like to thank to The Chairperson National Institution for Human Rights of Bahrain for his invitation to INCHR to attend this conference. We are very sorry, the Chairperson of INCHR Dr. Atnike Nova Sigiro could not attend this conference, because at the same time, there is a plenary session. Dr. Atnike asked me to attend this conference and I hope some notes I introduce at this conference will be useful and meaningful, especially from the perspective of human rights, in line with my academic background and experiences.



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I know that the time for me to speech 10 minutes only. It means that is not easy to elaborate comprehensively the topic of this session regarding practices and challenges related to dealing with hazardous waste and their impact on the rights to the environment. Consequently, I could only mention some notes for introducing us to discuss the topic deeply.

All of us know the Right to a Healthy and Adequate Environment is part of human rights in all over the world, not only for people who live in Bahrain and in my country, Indonesia. That's why it's really important to discuss the topic, because in my opinion, and by referring to some environmental cases in Indonesia, the topic about hazardous waste and their impact on the right to the environment is really important.

THE CASE

One of the cases in Indonesia is the gold mining case in Sangihe Island, North Sulawesi. We know that the hazardous waste of gold mining activities is mercury. Mercury can damage the nervous system, kidneys, liver, and immune system. I would like to describe the case here briefly.¹

Sangihe Island is one of the islands in Northern Indonesia, bordering the Philippines. The area of the Sangihe archipelago is 736.98 km² or about 73,000 hectares, with natural resources in the form of underwater volcanoes, namely the Banua Wuhu volcano on Mahengetang Island and the 6 clusters of West Kawio Volcano. Like other islands in Indonesia surrounded by active mountains, Sangihe Island is vulnerable to natural disasters.

Including a cluster of small islands with rich biodiversity, the Sangihe archipelago is inhabited by various animals, orchids, butterflies, and underwater biota. There is also the rare Sangihe Seriwang bird, or Manu'niu as locals call it. This species only exists on Sangihe Island. The Seriwang, according to the Indonesian Bird Organization, was once on the extinct bird list. However, its existence was finally rediscovered in 1998 by John Riley and James C Wardill of the University of York and the University of Leeds, UK. Another nine endemic bird species – four

¹ Quoted from “Fight against mining operations of PT TMS in Sangihe Islands” (<https://humanrightsmonitor.org/case/criminalisation-of-environmental-activists-fight-against-mining-operations-of-pt-tms-in-sangihe-islands/>).



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critically endangered and five vulnerable – live in the protected forest area of Mount Sahendaruman, Sangihe Islands, North Sulawesi, which is also under threat.

According to company data in Minerba One Data Indonesia (MODI) of the Ministry of Energy and Mineral Resources, the (foreign) company PT Tambang Mas Sangihe (PT TMS), mining operation, has obtained a production operation license in the form of a Contract of Work (CoW) from the Minister of Energy and Mineral Resources with Decree number SK 163. K/MB.04/DJB/2021. In the decree, TMS obtained an operating license for 33 years (2021 to 2054). Sangihe Gold Corporation holds 70% of PT TMS shares and 30% of the shares are held by Indonesian companies, namely PT Sungai Belayan Sejati (10%), PT Sangihe Prima Mineral (11%), and PT Sangihe Pratama Mineral (9%). PT TMS entered the production stage with gold as its commodity. PT TMS's mining production operation license covers an area of 42,000 hectares, more than half of Sangihe Island.

The islanders strongly opposed PT TMS operations. Fifty-six islanders filed various permit documents at the Manado State Administrative Court and the Jakarta State Administrative Court. Meanwhile, PT TMS continued to deploy heavy equipment to which the islanders responded by blocking the movement of the equipment. This active protest has led to the criminalisation of 15 local people. The Save Sangihe Island Coalition suspects that the repeated mobilisation of heavy equipment amid a cancelled environmental permit is meant to provoke islanders to take action and later criminalise them.

The community was disappointed in the police, who were quickly to one of the local people name Robison as a suspect. In contrast, the police allowed and escorted the transportation of PT TMS heavy equipment even though the court had cancelled PT TMS's license. According to the law, Article 26 of Act Number 1 the Year 2014, Article 26A of Act 1 in Year 2014 jo. Job Creation Law Jo. Constitutional Court Decision Number 91/PUU-XVIII/2020, in the context of foreign investment, the utilisation of small islands and the utilisation of waters around them require Business Licenses from the central government and have to be regulated under the provisions of laws and regulations in the field of investment.



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LEGAL ACTIONS

Fifty-six Sangihe island women sued PT TMS's environmental permit at State Administrative Court (PTUN) Manado. Their lawsuit was won by the PTUN Manado on 2 June 2022. PTUN Manado annulled the Decree of the Head of the Regional Investment and One-Stop Integrated Service Office of the North Sulawesi Provincial Government regarding the Granting of an Environmental Permit for PT TMS Gold Mining Activities in Sangihe Islands Regency Number 503/DPMTSPD/IL/182/IX/2022 dated 25 September 2020. The court also stated that the implementation of mining activities had to be postponed until the verdict was legally binding.

On 23 June 2021, 7 people from the Sangihe Islands community also sued the Minister of Energy and Mineral Resources (ESDM) regarding the Decree of the Minister of ESDM Arifin Tasrif Number 163. K/MB.04/DJB/2021, dated 29 January 2021, to the Jakarta State Administrative Court. The decision was related to the Approval to Increase the Stage of Production Operation Activities of PT TMS's Contract of Work. On 19 August 2021, PT TMS filed an intervention lawsuit at the Jakarta Administrative Court. So, in the end, the Sangihe community was the plaintiff against the Minister of Energy and Mineral Resources and PT TMS. The Sangihe community lost at the PTUN level and appealed the Jakarta State Administrative Court Decision Number 146/G/2021/PTUN.JKT dated 20 April 2022, to the State Administrative High Court. PTTUN, through its appeal decision number 140/B/2022/PT.TUN.JKT, on 31 August 2022, finally won the lawsuit of the Sangihe community. It was legally binding based on the verdict of Supreme Court in the beginning Year 2023.

In its verdict, the panel of judges of PTTUN Jakarta granted the lawsuit of Sangihe islanders in its entirety. The court annulled the Decree of the Minister of Energy and Mineral Resources Number 163. K/MB.04/DJB/2021 dated 29 January 2021, concerning Approval to Increase the Stage of Production Operation Activities of the Contract of Work of PT TMS; and obliged ESDM to revoke the Decree of the Minister of Energy and Mineral Resources Number 163.



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K/MB.04/DJB/2021, dated 29 January 2021, concerning Approval to Increase the Stage of Production Operation Activities of the Contract of Work of PT TMS.

The Save Sangihe Island Coalition said that the victory of the people of Sangihe Island in court was proof that the decision-making process for the issuance of environmental permits and PT TMS's Contract of Work by the government was full of problems. For example, the initial AMDAL socialization process only involved one Village Head and three islanders who were allegedly all appointed by the company.

The President Director of PT. TMS, Terry Filbert, said he would continue the resource development program in the Sangihe Islands, North Sulawesi, despite the annulment of its operational permit by the Jakarta Administrative High Court (PT TUN). PT TMS argues that it has a work contract legitimizing mining exploration in the concession area. Meanwhile, the PTTUN verdict only relates to the mining operational permit issued in January 2021. Therefore, according to PT TMS, the court decision does not affect the Contract of work from the Ministry of Energy and Mineral Resources (ESDM).

ESDM has not implemented the court's decision. According to the government, the environmental permit only confirms that in the short term, mining business activities are only allowed on 65.48 hectares (ha) of PT TMS's total Contract of the Work area of 42,000 ha. Therefore, the government is evaluating the 42,000 ha Contract for the Work area of PT TMS.

PT TMS is suing President Joko Widodo and Coordinating Minister for Maritime Affairs and Investment Luhut Binsar Pandjaitan. The lawsuit was also addressed to National Police Chief Listyo Sigit Prabowo, Minister of Law and Human Rights Yasonna H. Laoly, INCHR, Regent of Sangihe Islands, Mardi Posumah, Grace Kapal, Sonny Posungulah, and Andri Mailoor. Other defendants include Coordinating Minister for Maritime Affairs Luhut Binsar Panjaitan, Investment Minister Bahlil Lahadalia, and the Indonesian Ombudsman. The lawsuit was registered under case number 772/Pdt.G/2022/PN JKT.SEL on 23 August 2022. The demand of the suit states that the defendants have committed unlawful acts.



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THE ROLE OF INCHR

At the same time the local people complaint to the office of INCHR in Jakarta and they claimed that their human rights violation has been done by PT. TMS. By referring to the authority based on Act No.39 the Year 1999 concerning Human Rights, INCHR investigated the case and found some evidence related to the human rights violation.

As Attorney at Law in Courts on behalf of INCHR, I and Partners responded the above lawsuit was registered under the case number 772/Pdt.G/2022/PN JKT.SEL on 23 August 2022. In responding the lawsuit, we prepared and analyzed all the evident we have and brought it to the court. This way is very important meaningful for all parties in this case, including the court, so that the parties know well their legal strength and legal weakness. Based on Article 89 (3) of Act Number 39 the Year 1999, INCHR has authority to submit the legal opinion to the court and then the court delivered it to the parties.

This case has stopped in the middle of the legal process, because PT. TMS withdrew the lawsuit (case number 772/Pdt.G/2022/PN JKT.SEL.). It could be possible that the corporation realized the legal position of PT. TMS was weak enough after analyzing the evidence and/or the opinion of INCHR. Maybe they have estimated that the corporation will lose in this legal case.

One of the lessons learned we could note from this case is, INCHR has opportunity to respect and/or to protect the human rights of the Islanders by way of investigating the complaint, collecting and analyzing the evidence, and submit it to the court and/or the parties.



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CLOSING NOTE

Not all the victim of human rights violation has enough “energy” to sue the actors, state actor and/or non-state actor. Moreover, there is no guarantee for the victim will win at the court, not only because of their limited skill and knowledge but also because of the state and/or the non-state actor are too “strong” based on their power relation. Even though, we hope the victim in the future organize themselves and the INCHR respond their complaint seriously and do the best.

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End /-