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**EXTRACTIVE INDUSTRY
SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN**



A joint submission of VIVAT International
with local partners:

1. VIVAT Internasional Indonesia.
2. The Commission of Justice and Peace and Integrity of Creation Kalimantan.
3. The Commission of Justice and Peace and Integrity of Creation of SVD Java.
4. The Commission of Justice and Peace and Integrity of Creation of OMI.
5. The Commission of Justice and Peace and Integrity of Creation of SSpS Kalimantan.
6. The Commission of Justice and Peace and Integrity of Creation of SSpS, SVD Timor.
7. The Commission of Justice and Peace and Integrity of Creation of SVD Ruteng.
8. The Samarinda Archdiocese.
9. The Office of Population Control, Family Planning, Women's Empowerment and Child Protection of Sikka District (DP2KBP3A).
10. The Women's Devision of TRUK F (Devisi Perempuan TRUK F).
11. Atambua Women and Children Care Forum (FPPA Atambua).
12. The Commission of Justice and Peace and Integrity of Creation (JPIC) of SSpS West Flores.
13. The Commission of Justice and Peace and Integrity of Creation of SSpS East Flores.
14. The Commission of Justice and Peace and Integrity of Creation of SVD Ende.

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EXTRACTIVE INDUSTRY

I. Introduction

Environmental damage, natural disasters and human rights violations in Indonesia continue to occur from year to year. Deforestation, land grabbing, forest fires and pollution, floods and landslides as well as human rights violations against human rights activists and indigenous peoples, especially in the extractive industry still occur.

One of the reasons for these continuing violations is the policy of the Indonesian Government's Master Plan for the Acceleration and Expansion of Economic Development (*MP3EI*) for a 15-year period, 2011-2025.⁴ *MP3EI* aims to encourage the realization of high, balanced, equitable and sustainable economic growth as a first step to encourage Indonesia to become a developed country and include ten major countries in the world in 2025 and six major countries in the world in 2050.

Tremendous environmental damage and human rights violations occur due to extractive industry practice. This has encouraged us to examine UPR documents and policies from previous UPR cycle, both nationally and internationally, and to investigate and record incidents of violations. Further, there is a need for new important and urgent recommendations to improve the environment and protect human rights in Indonesia.

II. UPR recommendation for the third period

In the third period of the UPR for Indonesia, there are several inputs and recommendations:

2.1. Business & HR

The Government of Indonesia should further strengthen its commitment to the human rights dimension of business activities and continue its leading role in this (Myanmar).⁵

2.2. Human rights defenders & Indigenous Rights

The Indonesian government needs to take further steps to ensure a safe and enabling environment for the protection of all human rights defenders, including those representing the LGBT community and indigenous communities.⁶

2.3. The Government of Indonesia should continue to strengthen national and regional efforts to promote and protect human rights defenders.⁷

2.4. The Indonesian government needs to evaluate the establishment of mechanisms that will allow indigenous peoples to have their rights guaranteed to their ancestral lands.⁸

III. Legal and Institutional Framework

3.1. National Policy:

⁴ <https://peraturan.bpk.go.id/Home/Details/41537/perpres-no-48-tahun-2014>

⁵ Rekomendasi no. 139.38_Myanmar

⁶ Rekomendasi no. 141.56-H1 *Human rights defenders_Norway*

⁷ Rekomendasi no. 139.64_Ecuador

⁸ Rekomendasino. 141.74-G3 Indigenous peoplesS16 SDG 16 - peace, justice and strong institutions_Peru

- The preamble to the Constitution of the Republic of Indonesia emphasizes that 'independence is the right of all nations and everyone'... Indonesia Government protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare.⁹
- The 1945 Constitution of the Republic of Indonesia (post-amendment) Article 18B recognizes the unity of indigenous peoples and their traditional rights including nature and customs
- The 1945 Constitution of the Republic of Indonesia (post-amendment), Article 28 concerning Human Rights emphasizes "everyone has the right to protection".....,
- The 1945 Constitution of the Republic of Indonesia (post-amendment) article 33 concerning the national economy and social welfare where "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and balance of progress and national economic unity.
- Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights
- The National human rights commission Regulation No. 1 of 2017 concerning Ratification of the National Action Plan for Business and Human Rights.¹⁰
- Law Number 16 of 2016 Ratification of the Paris Agreement To The United Nations Framework Convention On Climate Change
- Reports from the Indonesian government in the third UPR period, on various efforts to protect human rights defenders (K. HRD, pgs 18), on several national policies, including the Human Rights Law no. 39/1999, Law no. 31/2014 concerning the Protection of Witnesses and Victims.
- Indonesia also has a Law on Environmental Management and Protection of Environmental Fighters in Law no. 32 of 2009, and PP No. 101 of 2014 concerning Hazardous and Toxic Waste Management
- Decision No. 35/PUU-X/2012, the Constitutional Court which affirmed that the customary forest area is a forest located in customary territory, and no longer a state forest.

3.2. International agreements:

- The Universal Declaration of Human Rights states: recognition of the natural dignity and of the equal and inalienable rights of all members of the human family is the basis of freedom, justice and peace in the world.
- The 2015 Paris Agreement which was agreed by 196 countries including Indonesia and the 2002 Bali Principles for Climate Justice on commitments to climate justice, ecological protection.¹¹
- Glasgow Agreement Pact on Climate Adaptation and Mitigation.¹²

⁹https://jdih.mkri.id/mg58ufsc89hrsg/UUD_1945_Perubahan.pdf

¹⁰ Berita Negara No. 856.

¹¹<https://www.walhi.or.id/lima-tahun-perjanjian-paris-kebijakan-iklim-indonesia-tidak-serius-dan-ambisius>

¹²https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf

IV. Real Condition

The implementation of these agreements by the Indonesian Government is questionable and leaves much to be desired. In reality, in the period 2017-2021 there are still many inadequacies and mal-practices. Environmental destruction in the extractive industry sector is still ongoing. This can be seen from the practice of deforestation, land grabbing, forest and land fires, and criminalization of local residents and indigenous peoples, water and air pollution due to large-scale industrial plantations, mining and flooding.

4.1.1.1. Deforestation.

Based on Greenpeace Indonesia's records on the Atlas of Deforestation, it is said that deforestation increases on a weekly, monthly, and yearly basis.¹³ This indicates that the control of forest damage is still insufficient. The granting of permits for large-scale mining and plantation businesses continues.

Based on MODI data from the Ministry of Energy and Mineral Resources, in 2021 there will be 5,474 IUPs, an increase from 5,395 IUPs in 2020, and 3,161 IUPs in 2019. Of the number of IUPs in 2021, there were 1396 metal mineral IUPs and 1,178 coal permits, the rest being non-metallic mineral and rock IUPs.¹⁴

Meanwhile, oil palm business permits in 28 provinces from 2017-2021, led to control of forests and land covering an area of 72,771,004 hectares. It is noted that for 75 years of independence, Indonesia has lost more than 23 million hectares of natural forest, equivalent to 75 times the area of Yogyakarta Province (3.186 km²).¹⁵

This practice causes an increase in damage of forest areas and threatens ecological sustainability and the human rights of indigenous peoples.

4.1.1.2. Deforestation and Land Fires.

In the Indonesian provinces Kalimantan and Sumatra, which are rich in forested areas, the threat of land fires occur regularly. Examples are deforestation and land fires in the 2015-2019 period.¹⁶ Based on data from the KLHK (Ministry of Environment and Forestry), the total land area affected in September 2019 was larger than the area of forest and land fires in the previous three years, which was 857,756 hectares of which mineral land 630,451 was hectares and peat 227,304 hectares. The forest fires in 2018 were spread over 510 thousand hectares, while in 2016 it was 438 thousand hectares. Most of the forest and land fire areas are in the areas of large-scale mining and plantation companies. There is a strong indication that there are efforts to expand mining company's areas in inexpensive and easier ways, namely by burning forested areas.

The forest fires cause the decline of air quality and strongly affect human health. BNPB recorded 919,515 people with Acute Respiratory Infections (ARI) in 2019 spread across six provinces affected by forest and land fires, namely Riau, South Sumatra, Jambi, West Kalimantan.¹⁷ The number of children and pregnant women suffering from ARI is increasing-

¹³<https://nusantara-atlas.org>

¹⁴<https://www.cnbcindonesia.com/news/20210709144310-4-259608/bukan-batu-bara-ini-izin-tambang-yang-melonjak-signifikan>

¹⁵<https://fwi.or.id/publikasi/75-tahun-merdeka-hutan-indonesia-hilang-lebih-dari-75-kali-luas-provinsi-yogyakarta/>

¹⁶<https://www.liputan6.com/news/read/4092703/luas-lahan-terbakar-seluruh-indonesia-mencapai-857-ribu-hektare>

¹⁷<https://nasional.kompas.com/read/2019/09/23/17522721/hampir-satu-juta-orang-menderita-ispa-akibat-kebakaran-hutan-dan-lahan>

Added to this the economic life of the community is destroyed and the education for children hampered.¹⁸

4.1.1.3. Water pollution. The loss of water sources and contamination of rivers is still present in mining areas and large-scale plantation expansion.¹⁹ This is the case in Mount Karasik, East Barito Regency, Central Kalimantan caused by coal mining.²⁰ The Ma'anyan Dayak community that inhabits the hills does not have access to clean water thus affecting their daily life.²¹

4.1.1.4. The catastrophic floods in South Kalimantan (2021) and floods in Central Kalimantan (2021) were caused by massive deforestation and landgrabbing for large-scale coal mining and oil palm plantations. BNPB (National Disaster Management Agency) recorded that 633,273 people were affected, 135,656 residents were displaced, 46 people died, and 123,410 houses were flooded. Cross-provincial roads are submerged, disrupting economic activities. The bridge at Jalan Ahmad Yani km 55, Mataraman, Banjar, was also cut off due to the effects of the flood. The head of Hantakan Village, Sri Wanda, stated on January 11, 2021, that five bodies were found by residents in Hantakan, Hantakan, Hulu Sungai Tengah. It is suspected that there are still dozens of victims missing. A toddler was found dead after being swept away by a flood in Banjarbaru on January 14, 2021.²² The continuous rain also caused landslides in Tungkaran, Pelaihari, Tanah Laut, and one person was declared buried on January 15, 2021. Meanwhile, the flood in Central Kalimantan in the same year, swept away a number of people from the community around the river.²³

4.1.1.5. Criminalization of Human Rights Activists and Environmental Fighters.

Criminalization of local communities and indigenous peoples who defend their rights to land continue. In 2017 at least 57 cases of violence and 34 cases of criminalization of human rights defenders were recorded as well as victims of violence such as journalists (101 people), civilians (74 people), activists (59 people), environmental activists (4 people), students (46 people) and community (16 people).²⁴ Cases of land grabbing and deforestation of customary land by palm oil companies in Central Kalimantan were experienced by Efendi Buhing (2020)²⁵ a resident of the Dayak Tomun community, Lamandau Regency and James Watt, members of the Tomuan Dayak community, East Kotawaring in Regency, Central Kalimantan.²⁶ In North Kalimantan Mr. Suande (2021),²⁷ a Dayak Agabag resident, was a victim of criminalization as a result of his efforts to protect and defend the right to live on their land.

V. RECOMMENDATIONS

¹⁸<https://www.menlhk.go.id/uploads/site/post/1634774994.pdf>

¹⁹<https://icel.or.id/berita/banyak-sungai-tercemar-limbah-sawit-berharap-kpk-tangani-tak-hanya-di-danau-sembuluh/>

²⁰<http://walhikalteng.org/2019/07/31/teguh-juang-anak-gunung-karasik-mediiasi-komnas-ham-atas-kasus-sengketa-dugaan-pencemaran-lingkungan-antara-masyarakat-adat-dayak-maanyan-dusun-gunung-karasik-dan-pt-bnjm/>

²¹<https://www.borneonews.co.id/berita/104916-komnasham-kunjungi-gunung-karasik-barito-timur>

²²https://id.wikipedia.org/wiki/Banjir_dan_longsor_Kalimantan_Selatan_2021

²³<https://www.kompas.id/baca/nusantara/2021/11/25/banjir-di-kalimantan-tengah-seret-korban-jiwa>

²⁴<https://kontras.org/2018/02/21/rakyat-tak-seharusnya-menjadi-korban-seruan-penghentian-kriminalisasi/>

²⁵<https://regional.kompas.com/read/2020/08/29/06070061/menyoal-penangkapan-effendi-buhing-pejuang-adat-laman-kinipan?page=all>

²⁶<https://tirto.id/kasus-effendi-buhing-terkait-pencaplokan-tanah-adat-pak-mahfud-f3sg>

²⁷<https://news.mongabay.com/2021/04/indigenous-dayak-jailed-palm-oil-north-kalimantan/>

1. That the Indonesian government ensures an environmentally friendly and ecologically sustainable development program.
2. That the Indonesian government reevaluate and cancel legal practices that are not environmentally friendly and do not support respect for human rights, including revoking and cancelling Law no. 11 of 2020 concerning Job Creation or OMNIBUS LAW.
3. That the Indonesian government gives protection and compensation to the victims of land grabbing and forest-fires.
4. That the Indonesian government strengthens and commits to the inclusion of all parties, at the central and regional levels, and especially state actors (POLRI and TNI) and business actors as well as Indonesian civil society, to joint action to reduce carbon emissions.
5. That the Indonesian government outlaw the criminalization of indigenous peoples and local communities in extractive industry areas.
6. That the Indonesian government adopt laws concerning the recognition and protection of the Rights of Indigenous Peoples to Land, Forests, Water and their culture and traditional practices.

SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN

I. Legal framework

1. The Constitution of the Republic of Indonesia of 1945 contains special articles on Human Rights, namely - Article 28D, Article 28B concerning children's rights, Article 281-where it is stated that everyone has the right to be protected from any form of discrimination.²⁸
2. Law Number No.1 of 1974 concerning Marriage and changed to Law Number 16 of 2019 concerning Marriage Article 7 paragraph (1) Marriage is only permitted if a man and woman have reached the age of 19 (nineteen).²⁹
3. Indonesia has ratified the CEDAW Convention on July 24, 1984.³⁰ Through Law no. 7 of 1984, Indonesia has ratified the convention concerning the elimination of all forms of violence against women and Law Number 23 of 2004 concerning the Elimination of Domestic Violence.³¹
4. Indonesia has ratified the Convention on the Rights of the Child (CRC), in which it is stated in Law Number 23 of 2002 that Child Protection has two main pillars, namely

²⁸ Undang-Undang Dasar Republik Indonesia 1945 hal.8

²⁹ Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan hal.3

³⁰ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

³¹ Undang-Undang No. 7 Tahun 1984

Tentang Pengesahan Konvensi mengenai Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan

the fulfilment of children's rights and special protection of children.³² The law has been revised twice through Law 35 of 2014 and Law Number 17 of 2016.³³

II. THE THIRD Cycle of the UPR RECOMMENDATIONS (2017)

In the third UPR cycle the Republic of Indonesia received several recommendations from several UN member countries regarding the protection of the rights of women and children as stated in the recommendation numbers 139.104, 139.112, 139.115, 139.30, 139.121, and 139.34. Even though these recommendations have been accepted by the Republic of Indonesia, the cases of violence and injustice still occur. In fact the number of such cases are increasing, as stated in the reports of several institutions as mentioned below (in the implementation section).

III. IMPLEMENTATION

1. The Ministry of Women's Empowerment and Child Protection (Kemen PPPA) released news about the increasing number of cases of violence against children and women from year to year. In the last three years, namely from 2019-2021, cases of violence against children and women in 2019 were reported as 11,057. In 2020 they increased to 11,279 and in November 2021 the number reached 12,566. The most common types of violence are physical 39%, psychological 29.8%, and sexual 11.33%.³⁴ Komnas Perempuan announced that cases of violence in 2021 increased two-fold compared to 2020, including cases of online gender-based violence which reached 940 cases in 2020.³⁵
2. Two major occurrences affecting children in 2021.
 - Cases of child trafficking in four pubs in Maumere. The Directorate of Criminal Investigation for the Regional Police of East Nusa Tenggara (NTT), after receiving reports from the public and after conducting an investigation, found 17 minors employed in a number of nightclubs in Maumere, Sikka Regency. The children were employed to serve the needs of customers seeking entertainment including sexual entertainment. Of the 17 children found, two were pregnant.³⁶
 - Cases of sexual abuse of 12 Santriwati by Islamic boarding school teachers in Bandung. These cases occurred since 2017 and were only revealed in December 2021. There was a dozen of children who were victims of sexual violence. There

³²<https://www.balitbangham.go.id/po-content/peraturan/Konvensi%20Hak-Hak%20Anak.pdf>

³³Undang-Undang No. 1 tahun 2016 Tentang Perlindungan anak

³⁴[Nn], Kemen PPPA: Kasus Kekerasan Anak dan Perempuan Meningkat di 2021, <https://www.cnnindonesia.com/nasional/20211208195408-20-731671/>, diakses 18/12/2021

³⁵ [Nn], Kasus Kekerasan Berbasis Gender Online di Indonesia Meningkat, Ini Kategorinya! , <https://www.kompas.com/parapuan/read/532750556/kasus-kekerasan-berbasis-gender-online-di-indonesia-meningkat-ini-kategorinya>., diakses 18/12/2021.

³⁶ [Nn], "Polisi Temukan 17 Anak Dipekerjakan di Tempat Hiburan Malam Maumere NTT", <https://news.detik.com/berita/d-5607789/polisi-temukan-17-anak-dipekerjakan-di-tempat-hiburan-malam-maumere-ntt>. diakses 18/12/2021

might be a greater number as a result of victims not wanting to report such issues. These cases occurred even though the school was founded to render assistance to students with the offer of free schooling and Islamic boarding schools. However, from the outset, the perpetrators had intended to abuse female students, attested to by the practice of the perpetrators seeking students from remote areas who were considered innocent.³⁷

3. The number of complaints and reports received by the Women's Division of the Volunteer Team for Humanity (TRUK), noted that in the last 5 years (2018-2021) there were 519 victims of Violence against Women and Children (KtPA) consisting of 221 adult women and 298 children. Of the 298 types of violence, the most dominant are sexual violence and trafficking in persons.³⁸ TRUK also handles 15 cases of Online Gender Based Violence (KBGO).³⁹
4. In the last 5 years the Women and Children Protection Forum (FPPA) assisted 287 victims, of which there were 31 cases of violence against girls, including 12 cases of rape. In June 2019 an underage girl was sexually harassed by three young men. In 2018 there were 102 cases of violence, of which there were 22 cases of sexual violence, 7 cases of physical violence, 10 cases of psychological violence, 13 cases of neglect, 15 cases of abuse, 5 cases of broken marriage promise, 3 cases of TIP.⁴⁰

IV. RECOMMENDATIONS

1. **We urge the Indonesian government to immediately ratify the Draft Law on the Crime of Sexual Violence (RUU TPKS).**
2. **We urge the Indonesian government to eliminate domestic violence against women by adopting and putting into practice the CEDAW and CRC guidelines in formulating effective strategies to prevent child marriage.**
3. **We urge the Indonesian government to ensure access to free legal aid and assistance, for those who are in the process of recovery from being victims of Domestic Violence (KDRT), Sexual Violence and Human Trafficking and allocate funds for socialization and monitoring of the enforcement of the law.**
4. **We urge the Indonesian government to ensure a fair distribution of law enforcement facilities throughout the unitary territory of Indonesia.**

³⁷ Farid Assifa , "Awal Mula Terungkapnya Kasus Pencabulan 12 Santriwati oleh Guru Pesantren di Bandung", <https://www.kompas.com/wiken/read/2021/12/12/073001681/awal-mula-terungkapnya-kasus-pencabulan-12-santriwati-oleh-guru-pesantren?page=all>, diakses 18/12/2021

³⁸[Nn], Kasus Kekerasan Berbasis Gender Online di Indonesia Meningkatkan, Ini Kategorinya! , <https://www.kompas.com/parapuan/read/532750556/kasus-kekerasan-berbasis-gender-online-di-indonesia-meningkat-ini-kategorinya>., diakses 18/12/2021.

³⁹ Data oleh Lembaga Divisi Perempuan Tim Relawan Untuk Kemanusiaan (TRUK), Kabupaten Sika dan Ende

⁴⁰ Data oleh Forum Peduli Perempuan dan Anak Atambua (FPPA)