

## **INDIGENOUS PEOPLES' ALLIANCE OF THE ARCHIPELAGO (AMAN)**

### **2015 YEAR-END NOTE**

**"Promise remains suspended: Change is only machination occurred in almost every sector, while denial continues".**

“It should be admitted that human rights situation in our state still has a lot of problems to address together. Among others are settlement of cases of past human rights violations, agrarian conflict resolution, respect for the rights of indigenous peoples. As a solution, we all should have the courage, once again the courage to reconcile or find breakthrough settlement through judicial and non-judicial channels. In relation to agrarian conflict, the solution is to fix the problem of overlapping land rights and stop the criminalization against indigenous peoples”.

**Speech of President Joko Widodo on International Human Rights Day, in State Palace, Jakarta, 11 December 2015**

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Indigenous Peoples' Alliance of the Archipelago (AMAN) welcomes the commitment of the President to ensure the recognition and protection of indigenous peoples' rights in Indonesia by presenting the state in the middle of the society. A commitment reflected in NAWACITA (Nine Priorities Agenda), Mid-term Development Plan, Results of hearings with AMAN on 25 June 2015, State Address at the 70th Independence Day of the Republic of Indonesia on 14 August 2015, Presidential Address at the COP21 Paris, Presidential Speech on International Human Rights Day on 11 December 2015, and the ongoing formation of Indigenous Peoples Task Force.

Indigenous Peoples started 2015 with abundant expectation and was determined to start a reconciliation with the state. Imagine, President Joko Widodo and Vice President Jusuf Kalla included six priorities related to indigenous peoples in NAWACITA (nine priorities agenda). Starting the year of 2015, on 2 January 2015 to be exact, President Joko Widodo through the cabinet secretary at the time, Andi Wijoyanto, welcomed AMAN in the Cabinet Secretary's office, where AMAN handed the draft Presidential Decree on Indigenous Peoples Task Force. Task Force is key to the early days of the reign of Joko Widodo and Jusuf Kalla in fulfilling 6 political commitments related to indigenous peoples as contained in Nawacita. Indigenous Peoples consider Task Force could be the first step towards reconciliation between indigenous peoples and the state to make indigenous peoples part of the Indonesian nation. However, almost all priorities agenda relating to indigenous peoples cannot be realized to date, among others are the failure to include Bill on Recognition and Protection of the Rights of Indigenous Peoples into 2015 National Legislation Programme, the ineffectively-performed bureaucratic reform, and the weak position of indigenous peoples before the Indonesian laws. The encouraging news was the legislative process of indigenous peoples have been taking place in various regions across the archipelago.

### **Movement of the Recognition and Protection of Indigenous Peoples at the Regional Level**

Year 2015 is the *local legislation year*. Indigenous peoples movement intensively encourages the House of Representatives and local governments to immediately issue legal products on recognition and protection of indigenous peoples' rights. There are many local governments who have scheduled the preparation of legal product on recognition and protection of indigenous peoples' rights. The most encouraging part is some political cadres of AMAN are currently sitting in the legislative body in some regions and became drivers of this legislative process.

Some districts have entered the draft Local Regulation on Indigenous Peoples into their 2015 Local Legislation Programme, among others are Luwu in South Sulawesi, Bulungan in East Kalimantan, Ende in Flores, East Nusa Tenggara, Mentawai Islands, Lebak in West Java, Enrekang in South Sulawesi, and Bulukumba in South Sulawesi and Central Halmahera in North Maluku. At the end of 2015, two districts have passed Local Regulation on Recognition and Protection of Indigenous Peoples, namely Lebak and Bulukumba. While, the remaining districts are in progress to have the local regulation set in 2016.

The trend of establishing legal product on recognition and protection of indigenous peoples at the regional level became widely spreaded in 2015. Some districts had submitted draft local regulation on indigenous peoples to be discussed in 2016, among others are: Banyuwangi in East Java, Hulu Sungai Selatan in South Kalimantan, and several other districts. In addition, some districts are initiating and building common perception with indigenous peoples regarding the importance of setting local regulation on indigenous peoples in their respective regions, among others Sinjai regency in South Sulawesi, Hulu Sungai Tengah in South Kalimantan, West Kotawaringin in Kalimantan Central, Musi banyu Asin in South Sumatra, North Bengkulu regency in Bengkulu, and many others.

Policy development at the local level was quite encouraging in 2015 and projected to continue in the years to come. AMAN noted the movement of indigenous peoples recognition and protection in these regions must be followed by political awareness among local apparatus and indigenous peoples so that the policy issued is enforceable and not adding the list of unenforceable policies. Another challenge is the limited capacity of state apparatus at the local level both in substantive aspects namely the understanding of indigenous peoples, legislation, human rights; and technical aspects such as preparing academic papers and preparing draft local regulation.

### **Bureaucracy and Sector Reform: Still a long way to go**

President Joko Widodo began his office with striking efforts of "bureaucratic consolidation". One of them is the merger of the Ministry of Environment with the Ministry of Forestry to become the "Ministry of Environment and Forestry". Although the merger is not comprehensive as not all natural resource sectors are merged into one ministry, but at least it shows the intention to run the Ministry of Forestry, which has been sharply criticized over its extractive and exploitative character, under environmental development paradigm that adopts usefulness and sustainability as the fundamental aspects.

During 2015, AMAN noticed that the government created a new political climate. Space for discussion and dialogue become more available and accessible than before. It has been recorded that the Ministry of Environment and Forestry, the Directorate General of Marine, Coastal, and Small Islands of MMAF, the Ministry Home Affairs, and some other ministries, frequently include civil society including AMAN in discussing government policies. AMAN appreciates the small steps undertaken by the government throughout the year of 2015. For example, the Ministry of Environment and Forestry had set legal status on some indigenous forests. The ministry also open space for grievance from public including indigenous peoples. However, AMAN noticed the government particularly the Ministry of Environment and Forestry is too preoccupied with small and partial matters and forget the big and fundamental stuffs. For instance, until recently the old idea to amend the Forestry Law is going nowhere. Likewise, the Ministry of Agrarian and Spatial Planning seemed to take petty much the same step with the Ministry of Environment and Forestry. Instead of amending the Land Registration Regulation by classified indigenous territories as one of the registered object, the Ministry issued Ministerial Regulation No. 9 of 2015 which fails to accept the reality of land tenure in the community. The Ministerial Regulation also simplifies the concept of indigenous rights into communal rights.

Until August 2015, Indigenous Territories Registration Body (BRWA), AMAN, and Participatory Mapping Network (JKPP) had submitted 604 indigenous territory maps measuring a total of 6,8 million hectares to the government through the Ministry of Environment and Forestry. This number will continue to increase along with acceleration of indigenous territory mapping occurred across Indonesia. The question in this context would be how is the legal design for the legislation of indigenous territory map? Discussions on this respect were continuously conducted throughout 2015. One of the entrances to the legalization of indigenous territories is the use of "indigenous forests" scheme as one of the initiatives in PIAPS mechanism. However, the challenge of this process is the "mandatory" recognition of indigenous peoples as the owner of the indigenous forest through local regulation.

Throughout 2015, the legalization of indigenous territory map was also done through the Geospatial Information Agency, but in fact this process is not even close to expected result. It is crucial for Geospatial Information Agency to form an Indigenous Territories Thematic Working Group within its organizational structure, so that indigenous peoples' elements or indigenous representatives or organizations working for indigenous peoples can be parties in decision making at the GIA. Until now, the government's decision on data trustee is going nowhere, among GIA, Ministry of Environment and Forestry, and Ministry of Agrarian and Spatial Planning. The road was clogged to ensure indigenous territories included in the One Map Policy.

### **NAWACITA and Indigenous Peoples: Promise remains suspended**

NAWACITA has been more than 1 year. In fact six priorities on indigenous peoples contained in NAWACITA are still far from implementation. What is presented in front of the eyes is actually small changes occurred on the surface. There are no major changes are fundamental and related to the sixth commitments outlined in Nawacita, which is the vision and mission of the President and Vice President or the Government's vision and mission. AMAN considers which appeared in 2015 gave an impression that the government is slow and not serious in meeting the six commitments in Nawacita. Here are brief notes on the implementation of six commitments in Nawacita during 2015.

***First Commitment*** is indeed a commitment to create legal reforms regarding the recognition, respect, protection and promotion of the rights of indigenous peoples, especially those relating to rights over agrarian resources. To run this first commitment, the government should sign up for the state policy and then make changes to put Decree of the People's Consultative Assembly No. IX/2001 and Constitutional Court Decision No. 35/2012 as the base. But what happened? Instead of amending laws and policies such as the Forestry Law which was declared wrong by Constitutional Court Decision No. 45/2012 and No. 35/2012, and also Law on Prevention and Eradication of Forest Degradation (UU P3H) which does not take the two Constitutional Court Decisions into consideration and raises new legal hassle, the government has issued unpopular policy amidst the complexity of concept and reality of indigenous peoples' rights over their traditional territory. AMAN noticed, in 2015 the government through the Ministry of Agrarian and Spatial Planning issued Agrarian and Spacial Planning Ministerial Regulation No. 9 of 2015 on Communal Rights. This ministerial regulation not just equalize the concept of communal rights to indigenous rights, but is also prone to horizontal conflicts in its application.

**Second commitment** is where the government under the reign of President Jokowi and Vice President Jusuf Kalla would continue the legislation process of Bill on Recognition and Protection of the Rights of Indigenous Peoples to its enactment into Law. This commitment was followed by a necessity for greatly welcoming the proposed material changes presented by Regional Representative Council, Indigenous Peoples' Alliance of the Archipelago, and various components of civil society. Unfortunately, this commitment is soundless. The Ministry of Justice that is supposed to be leading agency on the government side did not show certain response, even at the Meeting between the Legislative Body and the Government on 10 December 2015, the government did not include Bill on Recognition and Protection of the Rights of Indigenous Peoples (PPHMA) into the list of the Government's proposal for 2016 Legislation Programme . It is very discouraging. AMAN noted the bureaucratic consolidation in respect of the Recognition and Protection of the Rights of Indigenous Peoples does not seem to function as it should be, not to mention the limited ability of the President's assistants in interpreting Nawacita, especially this second commitment.

**Third commitment** is related to the desire of President Joko Widodo and Vice President Jusuf Kalla to ensure the legislation process relating to land and natural resources management in general, such as Agrarian Bill and others, can be done in accordance with the value of recognition and protection of the rights of indigenous peoples as mandated by Constitution Court Decision No. 35/2012. As regard to this commitment, AMAN recorded that some government policies are not in accordance with Constitution Court Decision No. 35/2012. For instance, Agrarian and Spatial Planning Ministerial Regulation No. 9 tahun 2015 on Communal Rights. This Ministerial Regulation is not only conceptually incorrect by just equalizing the concept of communal rights and indigenous rights, but also established based on the paradigm that all lands are owned by the state. Besides, this Ministerial Regulation also contains horizontal conflict potential by not paying attention to the reality of current land tenure where other group of society exists on indigenous territories.

**Forth commitment** is the drafting of bill on agrarian conflicts resolution. The implementation of this commitment is uncertain, whether the idea of agrarian conflict resolution will be incorporated in the Agrarian Bill currently being discussed or will become a seperate initiative. As we all know, House of Representatives is currently discussing the Land Bill, which may currently be included in the priority list of 2016 National Legislation Programme .

**Fifth commitment** is to establish an Independent Commission given a special mandate by the President to work intensively in preparing various policies and institutions that will deal with all matters concerning recognition, respect, protection, and promotion of the rights of indigenous peoples in the future. The implementation of this commitment remains uncertain. The implementation of this commitment is supposed to be demonstrated by clarifying two things: First, the government seriously promote and accelerate the discussion to have Bill on Recognition and Protection of the Rights of Indigenous Peoples enacted as a Law, as confirmed in the second commitment. Second, the president immediately issue a presidential decree on Indigenous Peoples Task Force.

**Sixth commitment** is about ensuring the good implementation of Law No. 6 of 2014 on Villages, especially preparing the Provincial and District/Municipal Government in dealing with

indigenous peoples' rights set as traditional village. AMAN considers that the model of "traditional village" has raised a polemic regarding the empirical insights in the field where the situation of indigenous peoples is not as simple as that. For some indigenous peoples, the Village Law can be implemented without raising any issue. For many indigenous peoples, however, the implementation of Village Law will be confronted with situation where indigenous peoples cannot be simplified to "traditional village". Until now, this commitment has not been implemented as intended. Challenges in terms of paradigm and social realities of indigenous peoples could not be addressed until today. Home Affairs Ministerial Regulation No. 52/2014 has not been massively implemented, while one of keys to find certainty about indigenous peoples is to have this Ministerial Regulation No. 52/2014 implemented.

### **Weak political commitment caused uncertainty of Bill on Recognition of the Rights of Indigenous Peoples**

How about the Bill on Recognition of the Rights of Indigenous Peoples? After the failure of the House of Representatives and government to adopt and enact Bill on Recognition of the Rights of Indigenous Peoples (PPHMA) in 2014, the House of Representatives and government in 2014-2019 period were also NEGLIGENT in including the Bill into the priority list of 2015 National Legislation Programme. Perhaps the unintegrated "bureaucratic consolidation" was the root cause of state apparatus' low awareness in promoting Bill on the Recognition and Protection of the Rights of Indigenous Peoples as one of the promises given by President Jokowi and Vice President Jusuf Kalla in Nawacita, resulting in the government did not propose Bill on Recognition of the Rights of Indigenous Peoples to the priority list of 2015 National Legislation Programme. It means 2015 is gone without discussion on Bill on Recognition of the Rights of Indigenous Peoples. It is indeed unfortunate that the bill was absent from the priority list of 2015 National Legislation Programme considering this bill has gone through preliminary stages of discussion with the special committee since June 2013.

Apparently different perception exists between the President's assistants and the President himself, even with AMAN. They did not see the Bill on Recognition and Protection of the Rights of Indigenous Peoples is very important. It is proven by the fact that the government did not even propose the Bill to be included in the priority list of 2016 National Legislation during the national legislation working meeting between the Legislative Body and government. The weird thing was, a day after the aforesaid meeting, the President delivered a speech on International Human Rights Day at the State Palace. In his speech, the President said that his government will soon resolve the issues concerning indigenous peoples and agrarian conflicts. With such statement, it is obvious that President Jokowi remembers his commitment quite very well on the fulfillment of the rights of indigenous peoples.

With the exclusion of Bill on Recognition and Protection of the Rights of Indigenous Peoples in 2015 National Legislation Programme, AMAN should engage in dialogue, hearing, and consultation with the related parties. Throughout 2015, AMAN re-encourage the Legislative Body and various factions in the House of Representatives namely the National Awakening Party (*PKB*), the Functional Group Party (*Golkar*), and the National Democratic Party (*Nasdem*) to insert the Bill on Recognition and Protection of the Rights of Indigenous Peoples into 2016

National Legislation Programme . Finally, on 11 December 2015 the Bill on Recognition and Protection of the Rights of Indigenous Peoples has officially been included in the 2016 Priority List.

### **Indigenous Peoples Task Force as the Key to Reconciliation between Indigenous Peoples and the State**

Constitutional Court Decision No. 35/2012 has certainly become the foundation of a process that must be undertaken by the government and indigenous peoples. Constitutional Court Decision No. 35/2012 is a fundamental ruling against the state's arrogance that have grabbed indigenous territories through Forestry Law. The land grabbing resulted in many indigenous territories conceded without any prior consent of the indigenous peoples. Not only that, a numbers of indigenous peoples were criminalized and abused. Constitutional Court Decision No. 35/2015 mentions the rights of indigenous peoples has been long neglected by the state. This message should be interpreted into a notion that the relationship between indigenous peoples and the state must be reestablished in a more civilized manner in the future. It can be done through reconciliation that requires all elements, in this case, the indigenous peoples and the state (government) to admit that the applicable laws turned out to be wrong and contrary to the constitutional principles. |

Reconciliation is a political process. Since the issue is complex and occurs in almost every sector, the reconciliation process should be done by a single state institution operating directly under the President and intentionally established for such purpose. In January 2015, AMAN has affirmed that Presidential Task Force for Recognition and Protection of the Rights of Indigenous Peoples is crucial for the reconciliation process. This task force shall be responsible to conduct the following things:

1. Identifying indigenous peoples, who because of their efforts to defend the rights over indigenous territories, has been sentenced by a court verdict or IPs members who are under investigation and examination in district court, and further request the President to grant them amnesty/pardon/restitution/rehabilitation or termination of an investigation or examination in court;
2. Identifying and categorizing all cases on human rights violation, agrarian and social conflicts involving indigenous peoples in order to find appropriate resolution based on the characteristic of the respective case.
3. Establishing quick win mechanism to resolve “simple” cases and systematic mechanism for handling “severe” or complicated case;
4. Promoting and accelerating the enactment of Bill on Recognition and Protection of the Rights of Indigenous Peoples by the House of Representatives;
5. Conducting study and further suggest changes to legislations concerning indigenous peoples and natural resources management;
6. Reviewing all licenses given by the central government and local government to any third parties which resulted in violation of indigenous peoples' rights;
7. Preparing the establishment of an independent and permanent state institution to carry through and uphold the recognition, respect, protection, fulfillment, and promotion of the rights of indigenous peoples.
8. Coordinating the work Programme of the ministries and agencies in respect of indigenous peoples.

## **Half-Hearted Decision: Judicial Review of Law on Prevention and Eradication of Forest Degradation (UUP3H)**

As in previous years, with the support from civil society organizations the society including indigenous peoples make efforts to seek for justice. As widely known, injustice among the society is mostly stem from the laws and state policies. Fortunately, this state still provide rooms for people to complain and request for judicial review examining laws and policies issued by both legislative and executive body. After the success with Constitutional Court Decision No. 35/2012, indigenous peoples are now waiting for whether the Constitutional Court will grant the demands contained in petition against Law on Prevention and Eradication of Forest Degradation and Forestry Law which are reported to have become a source of criminalization and violence against indigenous peoples in the field.

After a year of waiting, Constitutional Court finally decided its ruling on public petition against Law on Prevention and Eradication of Forest Degradation on 10 December 2015, coincidentally at the same time with International Human Rights Day. In its ruling, the Constitutional Court only granted the petitioner's demand for article 50 paragraph 3 (e) and (i) of the Forestry Law. The Constitutional Court considered that Article 50 paragraph 3 (e) and (i) does not have binding legal force if the forest products are taken by peoples who live in the forest for generations and for no commercial purposes. Meanwhile, demand related to a number of articles of the Law on Prevention and Eradication of Forest Degradation that contains criminalization was "not accepted" by the Constitutional Court on the reasons that such demand is unclear and obscure. Despite a number of criticisms addressed to the Constitutional Court over this ruling such as the Constitutional Court's limited consideration on the facts presented and the testimonies of experts, this decision at least leads to several things, among others: **First**, the application of the forestry criminal law should be regarded as the last resort (*ultimum remedium*). In Indonesian context, this principle should be applied by bearing in mind that the criminalization articles stipulated in the Law on Prevention and Eradication of Forest Degradation and Forestry Law were established on the fact of unclear regulated object; whether the state forest or indigenous forest.

**Second**, the need and the importance of forestry conflict resolution. Even if we associate this point to the Constitutional Court Decision No. 45/2011 and No. 35/2012, as well as the Human Rights Commission's findings in the last 2014 National Inquiry, forestry conflict resolution is not only important and necessary but also **very urgent**. Constitutional Court Decision No. 95/2014, its previous decisions, and the findings of other state institutions e.g. National Human Rights Commission must be used as the background in preparing the action plan for forestry conflict resolution.

**Third**, there is an urgent necessity to stop criminalization against the people living in the forest for generations and to release free member of IPs who are currently undergoing legal proceeding or has been sentenced by a court order. Of course, criminalization in this instance should be understood broadly than which previously set forth in Article 50 paragraph (3) letter e and letter i of the Forestry Law. The idea to stop criminalization should also be suggested to various forestry provisions regulating the people living in the forest for generations, depending on the existence of the forest itself.



**Forth**, forestry conflict should be resolved by prioritizing social approach. This approach is believed to be able to guarantee three things at once: the sustainability of forests, public welfare (economic), and respect the rights of IPs over forest (read: indigenous territories).

**Paris Agreement: Half-heartedly Protecting Human Rights and Indigenous Peoples' Rights**

On 12 December 2015 after a lengthy negotiation finally the world leaders sign an agreement called the "Paris Agreement". This agreement initiates termination of fossil fuels consumption to be replaced with renewable energy. However, the Paris Agreement is still disappointing from the perspective of agendas fought by AMAN. AMAN has fought for this agreement to apply human rights-based approach. Unfortunately, human rights approach is only accommodated in the preamble and not included in the operational section.

Paris Agreement states that indigenous peoples has mitigation role potential, but only its adaptation role that has been taken into consideration. This indicates denial of the role and contribution of indigenous peoples in climate change mitigation. Meanwhile, the analysis of Holewood expert shows that indigenous forests worldwide save at least 26% of the world carbon. In Indonesia alone, Holewood shows that all indigenous territories save at least 32.7 Giga tons of carbon. With a strong legal framework and good governance of indigenous territories, Indigenous peoples are highly potential in achieving Indonesia's commitment to reducing carbon emissions, not to mention other greater benefits in terms of water provision, biodiversity protection, green and blue community-based economic development throughout the archipelago.

On the other hand, AMAN also fights for the ambitions of 1.5 degrees Celsius to save small islands of the archipelago. However, the decision to keep the temperature increase below 1.5 degrees Celsius was not confirmed in the Paris Agreement. (Official documents must be checked)

If we recall a few days earlier at the opening of COP21 in Paris, the President in his speech stated the indigenous peoples have contributed positively in Indonesia's emission reduction although "indigenous peoples" did not appear in the official speech distributed to various parties including the media.

Moreover, the President's commitment is not reflected in INDC Documents submitted by the Indonesian government. The document shows that the Indonesian government insincerely place Indigenous Peoples of Indonesia as *Indigenous Peoples* at the international level, while Indonesia is one of the UN member states that support the adoption UN Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly on 13 September 2007. Likewise, INDC document is not in line with the Constitutional Court Decision No. 35/2012 that uses UNDRIP and ILO Convention 169 on *Indigenous and Tribal Peoples* as evidence and considerations for its issuance.

The denial is not consistent with the actions and attitude of the Indonesian government in various treaties and international arena that has been consistently use the term of *Indigenous Peoples* as contained in various Indonesian official documents e.g. Celebration of the International Day of the World's Indigenous Peoples in 2006 by former President Yudhoyono; Letter of Intent (LoI)

between the Government Norway and the Government of Indonesia concerning *Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation*; Forest Investment Programme (FIP); Convention on Biological Diversity (CBD), Nagoya Protocol, and Law No. 11 of 2013 on Ratification of Nagoya Protocol.

Furthermore, this attitude of Indonesian government is considered as waiver of the "Concluding observations on the initial report of Indonesia" by the Committee on Economic, Social and Cultural Rights of the United Nations on 19 June 2014. The Committee asked the Indonesian government to immediately ratify the Law on recognition and protection of the rights of Indigenous Peoples and to recognize Indigenous Peoples as *Indigenous Peoples*.

Besides, the attitude of the Indonesian government in INDC does not indicate that Indonesia, from constitutional aspect, is one of the most developed countries in the recognition and respect of the rights of indigenous peoples as mandated in Article 18 and Paragraph (2) and Article 28I Paragraph (3) of the 1945 Constitution dan various laws.

This attitude of Indonesian government is still upheld by the negotiators representing Indonesia at COP21 Paris. It strongly denotes the Indonesian government officials are still stuck with the paradigm in colonization period where Indigenous Peoples is only considered as "Natives". And that the officials do not follow the developments on "Indigenous Peoples" in the last four decades in various UN forums especially the UN Working Group who prepared the United Nations Declaration on the Rights of Indigenous Peoples, in which Indonesia government has great attendance. The most concerning is that it could have been because there was no transfer of knowledge from Indonesian diplomats at the UN to government officials in the home country.

### **Voice from behind bars: When will the President set us free?**

2015 was a year of waiting for indigenous peoples. Whether or not the government supported by indigenous peoples have earnestly implemented their commitments. Many promises to grant clemency for criminalization victims has been made by the President on many occasions. Last commitment was on the commemoration of Human Rights Day on 10 December 2015. However, the President's commitment to grant clemency to members of indigenous peoples who have been convicted has not been fulfilled to date. Though AMAN has taken proactive steps by identifying and verifying the names of IPs' members who have been convicted, and then proposed to the Government through the National Commission on Human Rights. Besides submitting names to the President and the National Commission on Human Rights, other measures were also taken through the Ministry of Environment and Forestry. In addition to institutional mechanisms as mentioned above, the initiative of requesting clemency was done through the lawyers providing assistance to indigenous peoples being victims of criminalization. Until today, there has been no encouraging information in this respect.

Until December 2015, the numbers of Indigenous Peoples being criminalized amounted to 217 persons, 11 of them are still languishing in prisons of various regions.

### **The Search for Justice Stumbles upon the State Legal Paradigm**

In the aspect of criminalization and violence against indigenous peoples, AMAN noted that 2015 is not much different from previous years, although there are situations in which criminalization and violence against indigenous peoples seems to decline. It should be noted that the decrease in the number of criminalization and violence are not followed by adequate legal and political efforts by the state in protecting its indigenous peoples, either through policy change or paradigm shift in the implementation of law.

The unchanged of these two matters resulted in the unchanged of the state officials' behavior in the field. Previous criminalization cases continue at district court. It shows that the viewpoint in perceiving a range of problems facing indigenous peoples remain unchanged. Everyone knows that injustice to indigenous peoples is stem from state law, meaning the settlement should be placed outside the normative legal framework i.e. above the law. If the settlement of indigenous peoples' issues is placed on normative legal framework then indigenous peoples will never have their justice. Not even close. The same thing applies to situations where indigenous peoples act as "plaintiff", either against the policies issued by the state or business community. The "requirement" to have legal umbrella such as legislation of Indigenous Peoples becomes barrier for the indigenous peoples in their pursuit of justice.

On the other hand, the state keeps silent to legal products that have been criminalizing indigenous peoples. Law on Prevention and Eradication of Forest Degradation and Forestry Law remain untouched and continue to be legal tool for the state officials to commit criminalization, violence, and acts of denial to the indigenous peoples' rights over indigenous land and territories.

Some of the following events illustrate how the state stays on the legalistic formal paradigm in perceiving the problems facing indigenous peoples. The following events indicate the discussions in the seminar rooms, hearings and dialogue have not been able to change the viewpoint of the state officials in perceiving and applying the law in the field.

1. Bahtiar bin Sabang, a member of Turungan Baji' indigenous peoples in Sinjai, South Sulawesi was eventually sentenced to 1 year imprisonment for allegedly cutting down trees without permit in protected forest areas. This ruling shows that the judges examining this case in no way connected with the findings of the National Commission on Human Rights, which previously stated that the cases experienced by indigenous peoples is caused by the absence of the rules that recognize and protect indigenous peoples' rights to land and natural resources.
2. Indigenous peoples of Seko in North Luwu, South Sulawesi has been fighting for the departure of PT. Seko Power, a hydroelectric power company, from Seko indigenous territories. For Seko indigenous peoples, the presence of the company has been formally violate the rights of Seko indigenous peoples to express their attitude towards this company. To gain public legitimacy, this company has made divisive efforts among Seko indigenous peoples themselves. Substantively, the company's presence is not desired by Seko indigenous because it will be detrimental for the environment. State, in this case the North Luwu district police, were also not neutral in dealing with the issue. The police are in favour of the company, providing massive escort at the time the company visit Seko indigenous territories.

3. Semunying Jaya indigenous people against PT. Ledo Lestari ended with the rejection of Semunying Jaya indigenous peoples' lawsuit by the Judges of Bengkayang District Court in West Kalimantan, even after the indigenous peoples has gone through the judicial process with dozens of hearing. Semunying Jaya indigenous peoples, Jagoi Subdistrict, Babang Benkayang District of West Kalimantan filed to Bengkayang District Court a lawsuit against PT. Ledo Lestari, a plantation company that grabbed the indigenous lands. After going through more than 27 times trials, the judges of Bengkayang District Court decided NO (*niet ontvankelijke verklaard*) verdict in respect of the lawsuit, claims were not accepted because it contains formal defect. In the judges' legal consideration, the indigenous peoples is considered to have no legal status (legal standing) in the form of local regulation or decree from the relevant ministries that recognizes their existence as indigenous peoples.
4. More than 700 families of Tana Ai indigenous peoples in Sikka, Flores, East Nusa Tenggara received threats that they will be evicted by Sikka Local Government, Flores, East Nusa Tenggara. They are accused of living in the concessions area of PT. Diosis Agung (DIAG), a company engaged in coconut plantation which later changed its name to PT. Krisrama. HGU (Right to Use Building) permit of the company expired on 31 December 2013. Peoples' attempt to reclaim public land and territory was done repeatedly through a series of activities, both in the form of visiting the relevant agencies as well as engaging in dialogue with the Local Parliament and Sikka District Head. The result of the dialogues is always unclear. Local Parliament and Sikka District Head cannot issue a decision by reasoning that the central government is the sole authority to solve the problem. In November 2015, several Tana Ai indigenous representatives struggled to Jakarta to seek for settlement of the case they encounter. They met with the National Land Agency (BPN) that issued a recommendation: BPN shall not process the renewal of HGU (Right to Use Building) permit requested by the company before the problems affecting Tana Ai indigenous peoples resolved.
5. Sedulur Sikep indigenous peoples in Central Java  
In March 2015, five Sedulur Sikep peoples from two districts namely Kayen and Tambakromo filed to the State Administrative Court Semarang a lawsuit against District Head Decree No. 660.1/4767 dated 8 December 2014 on Environmental Permit of Cement Plant Construction and Limestone and Clay Stone Quarry in Pati District by PT. Sahabat Mulia Saksi (SMS). The District Head Decree potentially displace and eliminate the people's agricultural land that has been contributing to food security. The District Head Decree is deemed contrary to Law No. 26 of 2007 on Spatial Planning, Government Regulation No. 26 of 2008 on the National Spatial Plan, the Energy and Mineral Resources Ministerial Decree No. 0398 K/40/MEM/2005 on Determination of Karst Sukolilo Area and Ministry of Environment Regulation No.16 of 2012 on Guidelines for Preparation of Environmental Documents, and contrary to the general principles of good governance. After going through quite lengthy and tiring process, on 17 November 2015, the State Administrative Court in Semarang granted the plaintiff's demands entirely and invalidated Pati District Head Decree No.660.1/4767/2014 on Environmental Permit of Cement Plant Construction and Limestone and Clay Stone Quarry. In the consideration

made by the judges, the decree is proved in contrary to the Regional Spatial Planning (RTRW) of Pati District and good governance principles.

AMAN noted that besides the lack of legality in the eyes of the law, indigenous peoples in some cases also forced to deal with the security forces even though they realize that they will get violent and would be criminalized. Even in the event of Seko indigenous peoples, for example, shows clearly how the state security officers is siding to the company. The state security officers is not only intimidated the Seko indigenous peoples, but fundamentally has shown neglect to the indigenous peoples who are fighting for justice.

### **Recommendation:**

#### **Seriousness is Imperative to Implement 6 Commitments on Indigenous Peoples given by the President in NAWACITA**

AMAN appreciates the progress achieved in 2015 no matter how small it is. However, it must also be recognized that the implementation of NAWACITA commitments especially the six commitments related to indigenous peoples are very slow and obscure. It is not surprising that 2015 ended with a big question in the mind of the entire indigenous peoples “IS THE GOVERNMENT SERIOUS AND SINCERE TO 6 COMMITMENTS THAT HAVE BEEN MENTIONED IN NAWACITA?”

To prove the seriousness and sincerity of the government’s commitment, AMAN considers that the Indonesian government should take clear measures in implementing the 6 commitments, among others:

1. President Ir. Joko Widodo as head of state to immediately apologize to the indigenous peoples being victims of violence and criminalization in defending their rights to indigenous lands, territories, and natural resources, and to immediately grant amnesty to them.
2. President Ir. Joko Widodo as head of state to immediately and unconditionally release all members of indigenous peoples from prison and to stop the litigation and investigation on indigenous peoples who are being criminalized.
3. President Ir. Joko Widodo and Vice President Muh. Jusuf Kalla to immediately realize their commitments to indigenous peoples by establishing Indigenous Peoples Task Force.
4. President Ir. Joko Widodo to ensure that the recommendations from the House of Transition become reference in various policies and programmes of the Working Cabinet.
5. President Ir. Joko Widodo to immediately begin the process of resolving the violations of indigenous peoples’ rights in accordance with the findings and recommendations of the National Inquiry by the National Commission on Human Rights on the Rights of Indigenous Peoples in Forest Areas.
6. President Ir. Joko Widodo to declare the recognition of indigenous peoples as *Indigenous Peoples*. It can be started by conducting constructive dialogue between indigenous peoples and government that presents competent experts including the UN Special Rapporteur for Indigenous Peoples, member of the UN Permanent Forum on Indigenous

Peoples Issues, member of the UN Expert Mechanism on Indigenous Peoples, and other relevant parties.

7. Working Cabinet to ensure the policies and programmes are made to implement President Ir. Joko Widodo and Vice President Muh. Jusuf Kalla's commitments as contained in Nawacita
8. Parliament to ratify the Bill on Indigenous Peoples in accordance with the aspirations of indigenous peoples that have been submitted by AMAN to the Special Committee of the House of Representatives.
9. Local Government to immediately recognize and protect indigenous peoples and their rights through the establishment of Local Regulation on Recognition and Protection of the Rights of Indigenous Peoples, and also through the full implementation of Home Affairs Ministerial Regulation No. 52 of 2014 on Guidelines for the Recognition and Protection of Indigenous Peoples.

**Six President Joko Widodo and Vice President Jusuf Kalla's Priorities in NAWACITA related to Indigenous Peoples:**

- 1. Reviewing and adjusting all laws and regulations concerning the recognition, respect, protection, and promotion of the rights of indigenous peoples, especially those relating to rights over agrarian resources, as mandated by People's Consultative Assembly Decree No. IX / MPR / 2001 on Agrarian Reform and Natural Resources Management in accordance with legal norms established by the Constitutional Court Decision No. 35/2012.**
- 2. Continuing the legislation process of Bill on Recognition and Protection of the Rights of Indigenous Peoples which is now on the final stages of discussion to be enacted as Law, by incorporating changes as proposed by the Regional Representative Council, Indigenous Peoples' Alliance of the Archipelago, and various components of civil society.**
- 3. Ensuring legislative processes related to the management of land and natural resources in general e.g. Land Bill, and others, run according to the norms of recognition of the rights of indigenous peoples as mandated by Constitutional Court Decision No. 35/2012.**
- 4. Encouraging an initiative in the form of the preparation of bill on settlement of agrarian conflicts that arising from the denial to various sectoral legislation on the rights of indigenous peoples during this time.**
- 5. Forming an Independent Commission with specific mandate given by the President to work intensely in preparing various policies and institutions that would take care of matters relating to recognition, respect, protection, and promotion of the rights of indigenous peoples in the future**
- 6. Ensuring the implementation of Law No. 6 of 2014 on Villages, especially in terms of preparing the Provincial and District/Municipal Government in implementing the recognition of indigenous peoples' rights set as traditional village.**