

Indonesia: Rollback in the Time of COVID-19

Non-Transparent Policy Changes, Continued Neglect and Criminalisation of Indigenous Peoples during the COVID-19 pandemic in Indonesia

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Cover images

Left: Samuel and his son check their fishing net for a catch. Dayak Bahau Busaang indigenous community of Long Isun, East Kalimantan, Indonesia. Credit: Angus MacInnes / FPP

Right: People of the village, sprayers in hand, lining up to fill their tanks with disinfectant - Dayak Iban from Sungai Utik, Borneo, Indonesia

Credit: Kynan Tegar / If Not Us Then Who

Foreword

The Covid-19 pandemic became a ghost terrifying everybody throughout 2020 and has yet to end. Indonesia is one of the most affected countries in South East Asia. Thousands have lost their lives, and hundreds of thousands, or even millions, of people have lost their job, which will in turn affect those dependent on them. This is not to mention the impacts on those whose lives are completely dependent on land and forests.

The report assessing the impacts of the pandemic on indigenous peoples has opened our eyes that when the world is increasingly centered on industrial and urban-centric lives, there are millions of people out there who have been struggling hard to survive on land and forests, even long before the pandemic. They are indigenous peoples living in and around tropical forests – forests that have been sustaining earth's life. These peoples are the true land and forest defenders.

There is an old saying “*air susu dibalas dengan air tuba*” (biting the hand that feeds you), which seems to accurately paint the fate of Indonesian indigenous peoples. So many narratives speak highly of these peoples as the forest and environmental defenders. Quite a lot of research reports reveal the vital role these peoples play in maintaining our Mother Earth. Since Rio 1992, the slogan ‘economic, social and environmental balance in development’ has been key to sustainability and indigenous peoples are the key actors.

However, there is always a gap between narratives and practice, between orthodoxy and orthopraxy. State's policy room and bureaucracy structures, and the business sector are the key to bridging the gap. What is happening on the ground shows that indigenous peoples are facing uncertainty about recognition and protection of their lives and rights given violation of their rights that has been continuing up to now. That is exactly the situation to which the Report and its recommendations are relevant.

Aliansi Masyarakat Adat Nusantara (AMAN), Forest Peoples Programme (FPP) and Yayasan Masyarakat Kehutanan Lestari (YMKL) are grateful that the Report has revealed the ugly face of severe lack of recognition and protection of indigenous people, particularly in practice. This has seriously impacted the daily lives of indigenous peoples as it is directly related to their food sovereignty. Food sovereignty is the key factor in one's respect for other's right to life. Without the right to food – one of human's basic rights – being fulfilled and protected, all policies stating the significance of protection of right to life would be useless and meaningless. That is the issue of the gap between orthodoxy and orthopraxy.

Lastly, we would like to express our grateful thanks to Ms. Mia Siscawati, who has undertaken the research and prepared the report; to Forest Peoples Programme, which has provided support for the research and its associated activities; to Aliansi Masyarakat Adat Nusantara and Yayasan Masyarakat Kehutanan Lestari, which have cooperatively shared what has happened on the ground to enrich the Report; and to all that have contributed to the Report. Hopefully, the Report could be of considerable use to all the stakeholders for the formulation of decisions and mechanism for implementing recognition and protection of indigenous peoples, in particular during the pandemic.

Jakarta, 9 February 2021
Rukka Sombolinggi, Secretary General of AMAN

Summary

This paper highlights the ways that the COVID-19 pandemic has affected and disenfranchised indigenous peoples and forest communities in Indonesia. The lack of adequate protection of the rights of indigenous peoples and their territories before the pandemic has been made worse by a lack of protection during the pandemic. The challenges faced by forest communities during the pandemic show that access to land and natural resources is crucial for the survival of communities whose livelihoods depend on the forest. Moreover, evidence from areas where indigenous peoples do have control over their land holds important lessons on how indigenous peoples build resilience when managing their own land and natural resources.

The paper highlights how state impunity for increasing land grabs and reduced state capacity to monitor forests during the pandemic seriously threaten indigenous peoples' land rights, health, and well-being. This paper also calls particular attention to how the Omnibus Law on Job Creation was rushed through the Indonesian legislature during lockdown without due process or respect for indigenous peoples' rights. The Omnibus Law changed and amended several existing laws including sectoral laws on environmental protection, land use, and public consultation. The government justified pushing through this new law as a response to the economic recession triggered by the pandemic, with the aim of creating a larger (formal) workforce and speeding up extractive and natural resource-based industries. However, this Omnibus Law is projected to negatively affect the ways in which indigenous peoples living in and around forests can access their land and puts them at a disadvantage in relation to corporations with commercial interests. With historical and ongoing human rights violations already rampant in conflicts between indigenous peoples and commercial entities, there is widespread concern that the Omnibus Law will further side-line indigenous peoples' rights and paint them as obstacles to economic growth. Moreover, the report includes several anecdotal stories of the state responding to indigenous activism during the pandemic with increased criminalisation.

This paper concludes with several recommendations. Critically, the report appeals for immediate approval of the long-delayed Indigenous Peoples Bill in order to finally have the rights of indigenous peoples recognized and protected by the state, thereby also securing better protection for forests.

COVID-19 and Impacts on Indigenous Peoples

Indonesia has been one of the hardest-hit countries in Southeast Asia during the global COVID-19 pandemic. The number of individuals testing positive for COVID-19 has reached 5,292 per day, bringing the total number of positive cases up to 586,842 as of December 9, 2020. With these numbers, Indonesia currently sits at the top of the list for the highest number of official coronavirus cases in Southeast Asia as of December 9, 2020¹ and ranks 20th worldwide as of December 9, 2020 in terms of the highest number of cumulative COVID-19 cases².

One serious concern for indigenous peoples in Indonesia during the COVID-19 pandemic is the lack of access to proper healthcare as one part of a continued lack of protection of their rights, an issue which has worsened during this health and security crisis.³ Another critical concern for indigenous communities has been inadequate food resources during the pandemic, especially for indigenous communities without formal land title to customary land where they would be able to engage in farming and food cultivation. Lockdowns and quarantines have prevented members of many indigenous communities from venturing far from their homes to find alternative foods in the forest. Christian Ari, director of Perkumpulan Silva Papua Lestari (PSPL), a local NGO in Papua, stated that the authorities should help communities that have chosen to have their villages closed off, including those accustomed to foraging in the forests, by providing food supplies. Food insecurity could force members of these communities “to leave their villages in search of food, thereby running the risk of encountering other people and possibly becoming infected.”⁴

According to Rukka Sombolinggi, the Secretary General of the Indigenous Peoples' Alliance of the Archipelago (AMAN), there are three statuses of indigenous peoples when it comes to food security and access to land for food cultivation during the COVID-19 pandemic⁵:

- Communities under the most threat. These communities are most in need of food aid supplies, such as the Tobelo peoples who are under the threat of smelter construction in their area in Halmahera of the Islands of Moluccas or the Orang Rimba of Sumatra who are unable to access a neighbouring forest as it is now a national park.
- Communities that are at-risk. These are communities not able to garden or farm because the land has been claimed and taken over by oil palm plantations. Many indigenous people in these communities have become palm oil workers.
- Communities that are safe. Indigenous peoples that are still in control of their customary territory and are able to live off their own forest and land.⁶

Food insecurity is an issue that highlights how forest and land ownership is crucial for indigenous peoples and local communities. The most resilient communities are those where people can garden and farm their own lands. But there are many cases where communities are not able to access their customary lands or forests to supply their basic needs.

In a pandemic that is affecting the country as a whole, indigenous women are among the most impacted despite being the ones who are supporting the country the most when it comes to the problems of food security. Rukka Sombolinggi, the Secretary General of AMAN articulated that: “Unable to access the forest, affected by the destruction of forests, forced to bear the burden of the effects of disasters such as this epidemic, and experience crop failure. Indigenous peoples are the ones who feel the impact first especially women due to the roles that they have in the domestic realm.”⁷

Background on Forest Tenure Conflicts in Indonesia

To fully paint the picture of indigenous peoples' land insecurity in Indonesia during the COVID-19 pandemic, it is important to briefly overview the history of land tenure conflicts in Indonesia. Land in Indonesia is classified into two categories. The first category is the forest zone (*kawasan hutan*), which encompasses an area of about 124 million hectares and makes up around two-thirds of Indonesia's total landmass. The forest zone is under the administrative purview of the Ministry of Environment and Forestry (MOEF). Forestry Law No. 41/1999, which replaced Basic Forestry Law No. 5/1967, divides this forested land into state forests (*hutan negara*) and private forests (*hutan hak*). The law declares that all Indonesian forestlands that are not subject to private entitlements are state forestlands. The MOEF has, however, granted concessionaire licenses to both State-owned and private companies in some State-owned forestlands that have been zoned for production (for example, for logging and industrial timber plantations). Currently, 35 million hectares of the State forests are managed by 537 companies, of which the majority are private companies.⁸

Large portions of the statutorily designated forest zone have been homes to indigenous peoples and local communities for several generations. There are numerous indigenous and other local villages located both within and around the designated forest zone, accounting for approximately 40% of the total villages in Indonesia.⁹ These indigenous communities have often come into conflict with the companies managing these State forests.

After years of advocacy by indigenous rights groups, the Constitutional Court of the Republic of Indonesia ruled on May 16th, 2013 that customary forests (*hutan adat*) should be designated as a separate category from state forests (*hutan negara*). The Court ruled that the word "state" should be deleted from Article 1.6 of Forestry Law No. 41/1999, which now reads that "customary forests are forests located in the territory (*wilayah*) of customary law communities (*masyarakat hukum adat*)." This ruling significantly bolstered the status of customary forests in Indonesia, moving them from category of state forest to *hutan hak* (titled or private forest) and at the same time affirmed the recognition of indigenous peoples' customary territories.¹⁰ However, the Indonesian government has also failed to fully comply with this ruling and failed to recognize certain portions of land that communities claim is customary land, leading to continuing land conflicts.¹¹

Forest-related conflicts in Indonesia have reached such a severe level that this impacts the livelihoods and security of millions of people. The World Bank reported in 2014 that nearly 25 million hectares of forest lands are in dispute, comprising more than 20% of the total area, and involving 20,000 villages.¹²

The second category of land in Indonesia is known as *areal penggunaan lain* (APL), or "area for other land uses." Land in this category covers about 64 million hectares and makes up the remaining third of Indonesia's total land mass. APL land is under the administrative purview of the National Land Agency (BPN). APL land is made up of both private landholdings and State land, with approximately 30% of APL land designated as private. A large proportion of State land, legally designated as APL, is also occupied by indigenous peoples and local communities. The State has allowed several extractive activities such as mining and large-scale agricultural plantation to take place on APL land, including on indigenous peoples' customary territories, which has also led to several land conflicts.¹³

In November 2012, the Indigenous Peoples Alliance of the Archipelago (AMAN) submitted a draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples (the Indigenous Peoples Bill, *RUU Masyarakat Adat*) to the national parliament in order to more fully protect indigenous peoples' rights in these conflicts. However, the Indigenous Peoples Bill has experienced many setbacks and has yet to be approved by the House of Representatives (DPR), despite numerous Presidential pledges to get it enacted.¹⁴

Importance of Indigenous Peoples' Land Security During the Pandemic

As the forest is a source of subsistence and culture for indigenous peoples, being unable to access forest resources can be a disaster for indigenous communities. Restrictions and conflict in accessing their own land was already a major crisis for indigenous communities before the pandemic, and the problems have only gotten worse during the pandemic. Now, with the addition of quarantine measures that make it difficult for communities to access the forest and a lack of government help, the government has put indigenous peoples in an extremely difficult position.

By contrast, Apai Janggut, an indigenous leader of Sungai Utik longhouse in the District of Kapuas Hulu in West Kalimantan – one of the few villages in Indonesia whose land rights have been recognised - asserts that in a crisis situation such as this one, indigenous people with land security still have a forest that functions similar to a “supermarket.” The forests provide food crops and medicinal plants that have been known to indigenous peoples for generations. He explained that the forest is “a warehouse containing everything that one might need for indigenous peoples. Finding food crops, medicine, even all ... paraphernalia needed for cultural rituals, everything is in the forest.”¹⁵

“Indigenous women are the important foundation in carrying out the roles of guardians of the sovereignty and food security of their family and their indigenous community. ”

— Devi Anggraini, the Head of the Women's Indigenous Peoples' Alliance of the Archipelago (PEREMPUAN AMAN)

Devi Anggraini added that according to the calculations made by PEREMPUAN AMAN, 70 % of farming activities are conducted by indigenous women which contribute to the food security of at least 31 million people in Indonesia.¹⁶

Overall, the COVID-19 pandemic shows that indigenous peoples who have protected access to forests are able to stay secure during this health crisis. They have sources of food and medicine. Therefore, the experience of indigenous peoples during the pandemic is evidence that the government should enact the Indigenous Peoples Bill.¹⁷

State Impunity for Continuing Land Grabs

In addition to indigenous communities facing difficulties in accessing their land in order to live, land grabs and conflict with companies intending to take over the land for their own commercial purposes continue to occur even during the pandemic. The Orang Rimba people in Sumatra are among the many indigenous communities that have experienced friction with oil-palm plantations with regard to their land. They “have lost their traditional land to oil-palm plantation firms,” according to KKI Warsi, a Sumatra-based environmental non-profit “Some live on the fringes of plantations, while the poorest beg along the highway linking the east and west of the island.”¹⁸

Between March and May 2020, the Indonesian Legal Aid Foundation (YLBHI) recorded 16 cases of companies seizing community land, affecting more than 70 families in eight provinces. These seizures include instances of companies deploying security forces to intimidate community members. Women are often on the front lines of the struggle against these land grabs. The YLBHI described a notable acceleration in corporate land seizure compared to pre-pandemic records.¹⁹

Authorities often aid corporations to remove protesters and defenders. Corporations are equipped with obtained licenses and bring in the National Army along with the National Police. The Secretary General of the National Consortium for Agrarian Reform (KPA), Dewi Kartika, noted that there were 35 agrarian conflicts during the pandemic and during the implementation of large-scale social restrictions. Some conflicts have even claimed the lives of farmers.²⁰

In one egregious example of land-grabbing from September 2020, state-owned agribusiness company PT Perkebunan Nusantara II (PTPN II) started bulldozing indigenous peoples’ customary land of Rakyat Penunggu in Kampung Durian Selemak village in North Sumatra. They were met with protests by many indigenous women who attempted to block heavy machinery from entering their territory.²¹ PTPN II’s security forces proceeded to clash with the protestors, reportedly kicking and pushing many of the women, leading to at least one woman being hospitalized.²² Inun, one of the women involved in the protest, recounted a harrowing story to a Mongabay reporter.

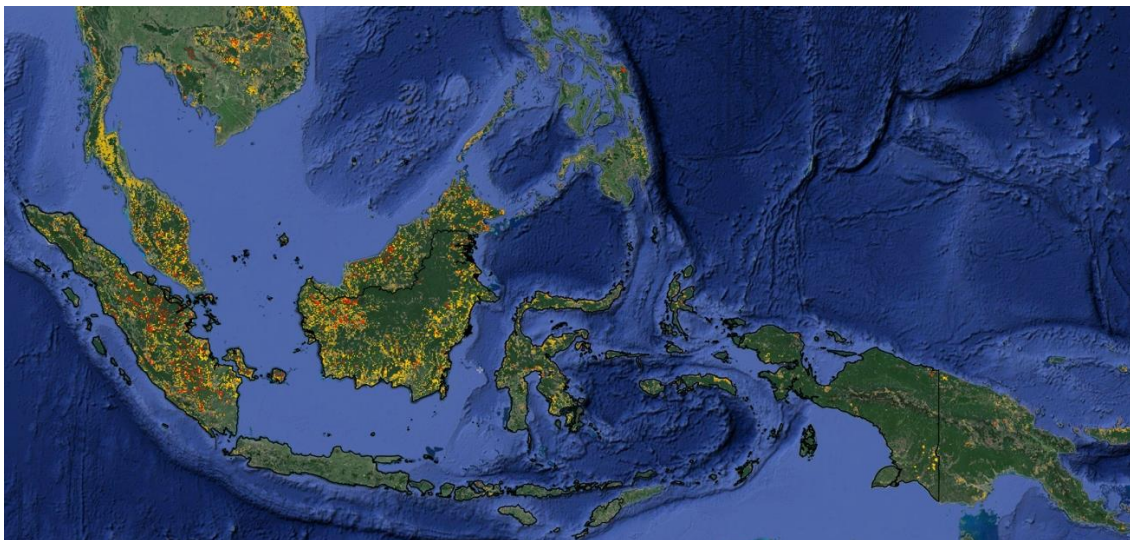
“We were pushed, our children were trampled on. These old women who were lifted were just thrown aside and into the ditch, into a puddle. We couldn’t keep them from entering. We were outnumbered. Where’s the government? Please help us, please help us return our customary land which was forcibly taken by PTPN II.”²³

Despite the pandemic affecting how NGOs are able to travel to certain regions due to travel restrictions in the effort to reduce infection, NGOs are still very much in touch with the communities they work with as evidenced by press releases and continued virtual assistance. NGOs have noted how these land grabs have continued throughout the pandemic and how the capacity of state forestry agencies to monitor customary lands and protected areas has been hampered by government constraints on movement and governmental capacity restrictions.²⁴

Continued Deforestation Threats during the Pandemic

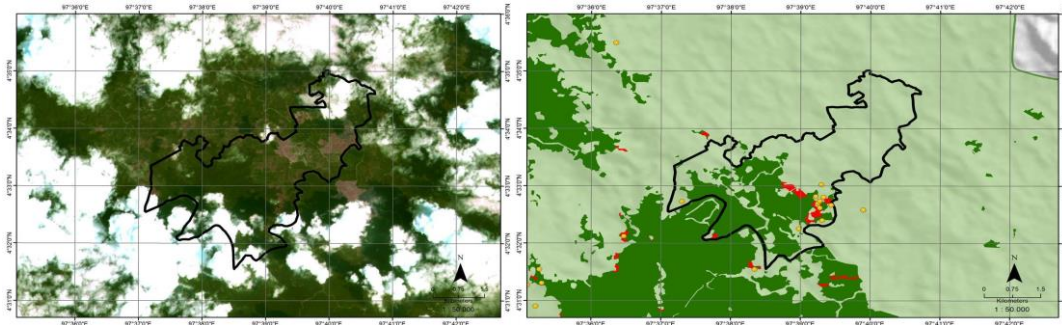
Deforestation in Indonesia has continued during the pandemic. Overall, using its satellite data, Global Forest Watch estimates that about 400,000 hectares of forests were cleared in the first 24 weeks of 2020, up from 300,000 hectares over the same timeframe in 2019. Global Forest Watch's "deforestation alerts" show that there may be an even greater rise in the loss of primary forest areas this year compared to previous years. These primary forests are areas that have been felled before and are home to the greatest diversity of species.²⁵

Below is a map showing both total tree-cover loss between 2015 and 2019 (in yellow) and all instances where the Global Land Analysis & Discovery (GLAD) system detected an alert in 2020 (overlayed in red). An alert occurs when an area has experienced a canopy loss in excess of 50 per cent cover.²⁶ This map shows that deforestation is a major ongoing issue facing Indonesia and is continuing during the COVID-19 crisis, where there is reduced state capacity to monitor forests, and despite an overall economic slowdown.



Although the use of fire to clear forests is against Indonesian law, the organization Yayasan Madani Berkelanjutan has pointed out that government data shows that forest fires have burned around 64,600 hectares between January and July 2020. Additionally, another 18,000 hectares burned between July and August alone, with a total of 84,000 hectares burned by the end of August 2020. With the onset of the rainy season in September, fires have started to abate at the end of 2020.²⁷

For example, Palm oil company PT Indo Alam is clearing and burning a critical wildlife habitat in a region known to provide palm oil to major brands on the global market.²⁸ Clearing forests using forest fires is a clear violation of the No Deforestation policies of major snack food companies, including Unilever, Nestlé, PepsiCo, Mondelez, General Mills, Kellogg's, Mars and Hershey's.²⁹ Below are images of forest clearing and fires inside PT Indo Alam's palm oil concessions as of March 2020.



Reduced State Forest Monitoring Capacity

Despite these ongoing land grabbing and deforestation threats, the central government has reduced capacity to monitor corporate activities including how corporations are managing natural resources in state lands during the pandemic.³⁰ A high officer of the Ministry of Environment and Forestry stated that “Indonesia has scaled back protection for some of the world's most important tropical forests ahead of the worst season for fires because of budget cuts due to the coronavirus.”³¹ He further mentioned that the “economic impact of the coronavirus in the Southeast Asian country meant there had been a 50 per cent budget cut for the team that finds fires and helps put them out.”³² According to Basar Manullang, Director of Forest Fire Control at the Indonesian Ministry and Forestry, “integrated patrol areas had to be cut by 34 per cent.” In articulating this statement, he refers to joint patrols by the forest fire brigade, army, police and civilian volunteers.³³

Agus Maksum, a firefighter from the Indonesian Forest Fire Control Brigade on Kalimantan island, an area particularly prone to fire risks, said:

“We are relying more on reports from the public because patrolling has reduced . . . We are also reaching out to the public via social media, on what to do if they detect a fire.”³⁴

Ruandha Agung Sugardiman, Director General of Climate Change Control in the Ministry of Environment and Forestry, told reporters that layoffs resulting from the impact of COVID-19 were leading more people to use fire to clear land for crops in order to make a living. Meanwhile, social distancing rules imposed in some areas were making it more difficult to tackle these fires:

“... [P]olice and army personnel have been being deployed in urban areas to enforce lockdowns or help build emergency health facilities to deal with the COVID-19 outbreak. Meanwhile, the capacity of plantations, environmentalists and state forestry agencies to both monitor forests and act if clearing happens is being hampered by constraints on movement imposed by authorities and organisations to stem the pandemic.”³⁵

Civil society organizations have also expressed their concern that companies and other actors that perform illegal activities may take advantage of the lockdown in order to clear the forests.³⁶ Other problems refer to the continuation or even more of extractive activities including land clearing, illegal logging, and the trade of wildlife. Moreover, a new mining law passed in May 2020 removes the limit

on the size of mining operations that can operate under a single mining permit. Additionally, the new law allows contract holders to automatically renew their permits two more times for 20 years. Mines under a single permit were previously capped at 15,000 hectares and the new mining law will allow these mines to expand without applying for a new mining permit, which will further contribute to deforestation.³⁷

Criminalisation of Land Rights Activists

At the same time, environmental activists and indigenous peoples' representatives continue to receive threats during the COVID-19 Pandemic. WALHI (the National Forum on Environment), an umbrella organization of more than 400 environmental organizations reported that more than 10 environmental activists and representatives of indigenous peoples and local communities from various places in Indonesia (East Kalimantan, Central Kalimantan, Jakarta, Yogyakarta, East Nusa Tenggara, South Sulawesi, East Java, Jambi, South Sumatra) have been arrested during the COVID-19 pandemic.³⁸

One case of criminalisation of indigenous leaders happened in Central Kalimantan. Authorities arrested Effendi Buhing, leader of the community of Laman Kinipan in Lamandau district, over a land dispute that has been going on for years between the palm oil company PT Sawit Mandiri Lestari (SML) and indigenous community members. The Laman Kinipan community was expelled from their land in Lamandau regency in 2018 as SML claimed to have obtained permits to manage around 19,000 hectares of the land.³⁹ In a statement to the Jakarta Post, the National Committee on Agrarian Reform (KNPA) said that at least six of the community members had faced arrest, including Effendi, and that tensions have recently escalated again in August 2020:

“Today we witness again the criminalisation of a Laman Kinipan public figure who has been struggling to defend and protect his customary land from eviction, [while company security forces have been deployed to] end the indigenous community's fight over their land.”⁴⁰

These instances of criminalisation during the pandemic are part of an ongoing threat to indigenous rights. According to a report of the National Human Rights Commission, agrarian conflicts in the last five years have escalated 80 percent and there have been 1,653 reported cases. The most complained about institutions are the police, followed by corporations, both state-owned/regional-owned enterprises and private sector, and local governments.⁴¹

Criminalisation of land rights activists in Sumatra, Indonesia



Maswan of the Sungai Landai Mandiri Farmer Group shows a photo of her farmland in the conflict area.
Photo: Elviza Diana / Mongabay

In September 2020, in the midst of the ongoing pandemic, conflicts reared up again between the pulp and paper company PT Wira Karya Sakti (WKS) and farmers who claim that the company is intruding upon customary land in Jambi, Sumatra, Indonesia. This dispute dates back to 2007 and resulted in WKS security officials killing a farmer protestor in 2015.

According to reports by the Consortium for Agrarian Reform (KPA) in Jambi, PT WKS has now started to bulldoze farmland and evict farmers again, despite an agreement between the farmers and the company that the company would suspend activity in conflict locations and respect previous delineations of farmland.

“PT WKS conducted the eviction of farmers’ huts and gardens. This was met with resistance from 45 mothers,” said Fran Dodi, the Regional Coordinator of the KPA.⁴² Dodi states that it is “clear that the company has violated the agreement,” since some of the evicted farmers have legal deeds to their lands.⁴³

The company has increased security of the area, and three farmers have already received police summonses that allege security disturbances, a worrying indication of the government’s determination to use criminal prosecution as a form of intimidation.

“The company uses village officials to suppress these farmers as well. They lure and scare farmers from farming on the site. But [the farmers] have no choice, it’s their land.”

— Martamis, Chairman of the Tebo Farmers Union, Jambi, Sumatra, Indonesia⁴⁴

The Omnibus Law on Job Creation: A Crisis for Indonesian Forests and Indigenous Peoples

“The exaggerated worship of large-scale investment all this time has proven to be very harmful to indigenous peoples. The result is that indigenous territories are grabbed and permission is granted for investment by the forestry, plantation/farming, mining, and other sectors.”

— Rukka Sombolinggi, AMAN, Indonesia

With the COVID-19 pandemic still heavily present in multiple regions of Indonesia and vulnerable communities bearing the brunt of its effects, the government should be giving utmost attention to slowing the spread of the virus. Instead, the reality is that despite the pandemic, the government is placing a lot of focus on boosting the economy, which has been damaged by the pandemic, through investment.

The government is seeking to achieve this through the Omnibus Law on Job Creation which was approved by the House of Representatives (DPR) and the government on October 5th, 2020. The Omnibus Law on Job Creation (often referred to as either the “Omnibus Law” or the “Job Creation Law,” hereafter the Job Creation Law) is a law that was drafted with the goal of making it easier for investors and corporations to conduct business in Indonesia. Government officers have argued that this Law will save the country’s economy, considering that it shrank by 5.32 percent in the second quarter this year, the worst since 1999, as all components of economic activity slowed.⁴⁵ The Head of the Fiscal Policy Agency within the Ministry of Finance, Febrio Kacaribu has stated that the Job Creation Law is an asset to push for economic recovery in the upcoming year of 2021:

“Indonesia’s economic growth is under a considerable pressure due to the COVID-19 pandemic . . . [T]he Job Creation Law can encourage investment to flow rapidly into the country. With this, more companies will be opened in Indonesia and this will encourage the creation of jobs.”⁴⁶

The Omnibus Law on Job Creation attempts to compile and integrate 76 laws, in order to overcome duplications and contradictions between them which were perceived to be hindering private sector permitting and investment.⁴⁷ The aim of the Omnibus Law is to streamline permitting and license-granting procedures to make it easier for businesses to get permission to operate and thereby facilitate citizens’ access to the workforce and contribute to economic growth.⁴⁸ Director of Wages of the Ministry of Workforce and Transmigration, Dinar Titus Jogaswitani, conveyed that there are several consequences if the Omnibus Law is not executed immediately. One of the consequences is that employers will move to another country that is more competitive.⁴⁹

Despite the noble-sounding goal of this law, there was considerable pushback against the discussion and approval of this law both in the DPR and the government due to the procedure and contested elements of the law containing several issues. One concern is that discussions continued to occur despite Indonesia still fighting against COVID-19.⁵⁰ An economist at the Institute for Development of Economics and Finance (INDEF) in Indonesia, Bhima Yudhistiara Adhinegara, said, “There will be investors, but they’ll be dirty investors. Investors who have higher environmental standards will not like investing in Indonesia because they will face pushback not just in Indonesia, but also in their home countries.”⁵¹ Executive Director of Walhi, Nur Hidayati, articulated that the Omnibus Law on Job Creation will intensify the environmental crisis, as it represents a picture of President Jokowi’s poor commitment towards environmental protections.⁵²

A member of the Democratic Party Faction, Irwan, questioned why the government and the DPR was in a rush to approve the Bill. “Why is this being rushed, chairman, the people are wondering?” he asked in the plenary session before the Bill was approved. The Bill was approved despite protests from many different groups.⁵³

The road to the approval of this Law was also criticized for not being transparent and threatening the integrity of democratic processes. It has also been criticized for taking advantage of the pandemic to rush the approval. The COVID-19 pandemic has reduced capacity of Indonesian civil society to monitor policy changes, especially the ones that happened rapidly and not transparently such as the Job Creation Bill. Indonesian civil society organizations were left out of discussions of the DPR. They were also ignored despite their protests receiving support from a wide range of different sectors and actors that stated their disapproval of the Bill continuously and loudly.

As a response to this non-transparent process, a number of civil society group organizations refused to attend the invitation of the President's Staff Office (KSP) to discuss the Omnibus Law Bill on Job Creation. Dewi Kartika, Secretary General for the Consortium of Agrarian Reform (KPA), stated that the Job Creation Bill deviated from the promises of the government to conduct agrarian reform. Dewi also asserts that KPA rejects the entirety of the Omnibus Law.⁵⁴ Asfinawati, Head of the Indonesian Legal Aid Foundation (YLBHI), questions the manner in which the government invited civil society groups considering that the draft of the Job Creation Bill had already been submitted to the House of Representatives [DPR] on February 12th. Asfinawati also questioned the reason why the draft had been hidden before it was sent to the DPR.

Despite this initial invitation in March extended to civil society groups to participate in the discussions, when the DPR held an online meeting to discuss the Omnibus Law on Job Creation, it excluded several civil society groups that attempted to join.⁵⁵

Preventing indigenous peoples from participating in legislative decision-making processes



Omnibus law protests 2020 in Padang, Indonesia. Credit: Wikimedia Commons, Creative Commons

In one egregious illustration of the Indonesian government actively preventing indigenous peoples' contribution to decision-making processes during COVID-19, Tommy Indriadi from the Indigenous Peoples Alliance of the Archipelago (AMAN) reported that he was kicked out of an online deliberation process on the Omnibus Job Creation Law, which was hosted on Zoom in April 2020 by the Indonesian House of Representatives (DPR). Indriadi claims he was then deliberately blocked from re-joining the call, despite the DPR's promise that the Zoom call was open for public comment.⁵⁶

According to a recent submission by AMAN and other indigenous peoples organizations to the Committee on the Elimination of Racial Discrimination (CERD), this suppression of public participation violates the state's obligation to obtain free, prior, and informed consent from indigenous peoples, who will be directly impacted by many of the Law's provisions. This raises questions about the legality of the DPR's Omnibus Law drafting process.⁵⁷ Article 96, Clause 4 in Law No. 12/2011 states that bills must be easily accessed by the people⁵⁸.

"This means the people, in general, are expected not to participate in the draft bill's deliberation, which actually will heavily impact the public. This shows that public participation is merely a formality."

— Asep Komarudin, Greenpeace, Jakarta, Indonesia⁵⁹

The National Committee for Human Rights (Komnas HAM) also expressed its concerns regarding the Bill and, in August, advised President Jokowi and the DPR to postpone the discussion and approval of the Bill.⁶⁰ The Indonesian Constitution recognises the rights of indigenous peoples (*masyarakat hukum adat*) "so long as they still exist." In February 2020, Wahyubinartara Fernandez, Advocacy Manager of the Young Indonesian Foresters organization (RMI) said the following about the Bill:

*"The idea of this Bill is to create employment by opening the door for investment as widely as possible. What we've seen from reading it article by article, is that this Bill is actually eliminating traditional forms of work that are present in indigenous communities . . . Indigenous peoples to this day still experience difficulty when dealing with land claims. If this Bill is approved, it will become even more difficult for them."*⁶¹

Era Purnama Sari, Deputy Chair of Advocacy at the Indonesian Legal Aid Foundation (YLBHI), states that although there are forms of protection for indigenous peoples within individual laws, they are not synchronized when the laws are seen together:

"Within the Law on Forestry, for example, there is a provision that erases criminal reasons [alasan pidana] towards indigenous peoples. When the individuals who chop wood are

indigenous peoples, she said, they cannot be convicted of a crime. Unfortunately, this provision does not apply in the Law on Plantations [Perkebunan], the Law on Geothermal Energy, the Law on Mining. Therefore, recognition and protection of indigenous peoples is very partial with varying quality [from one law to another]. Hence, there needs to be one law that is binding, which is the Indigenous Peoples Law. A specific law that regulates indigenous peoples' [affairs] such that criminalisation can be minimized.”⁶²

The focus on investment and boosting the economy at the expense of indigenous peoples reflects the government’s ignorance of the contributions that indigenous communities make towards the national economy. M. Arman, Director of Legal Policy Advocacy and Human Rights of AMAN, refers to a study conducted by AMAN with Bogor Agricultural Institute (IPB), University of Indonesia, and University of Padjajaran to illustrate this important contribution:

“The 2018 research shows that the economic value of natural resource management in six customary territories produces Rp 159.21 billion per year, and environmental service value (nilai jasa lingkungan) as much as Rp 170.77 billion per year. This is evidence that indigenous peoples can drive the economy in their region.”⁶³

The “simplification” of licensing is deemed worrisome on several accounts. Mufti F. Barri, manager of Campaign & Advocacy FWI explained:

“One of the articles that we deem to be harmful is the one related to the environmental license or AMDAL. Previously, in Article 40 clause 1 of Law No. 32 of the year 2009 regarding Protection and Management of the Environment states that having an environmental permit is a requirement to obtain a permit to conduct business activities. But the fact is that in the Omnibus Law on Job Creation, Article 40 on environmental permits is erased and replaced with approval from the government. This is very dangerous, because it gives a red carpet to investors and allows the flow of investment to widen even further in Indonesia.”⁶⁴

This focus on increasing investment to help recover the economy that began to contract due to the pandemic feels a little misplaced, according to economists. Instead of placing heavy emphasis on investment for economic recovery, economists assess that focusing on handling the pandemic will provide better avenues for economic recovery.⁶⁵

The Law also introduces concepts similar to colonial assertions over untitled lands or “nobody’s land,” which facilitates the approval process for granting permits to extractive industries on these lands and, thus, undermines indigenous peoples’ customary land rights, which the government has delayed recognising.⁶⁶

A report written by ICEL (Indonesian Centre for Environmental Law) points out the carelessness that characterizes the manuscript of the law. According to ICEL texts have been carelessly edited for example with only the partial deletion of references to Environmental Approvals which in some places is deleted and in other parts of the law not so. The result is a lack of clarity about whether such approvals are still needed or not.⁶⁷

The Omnibus Law on Job Creation changed several previous laws and weakened pre-existing protections of the environment, forests, and the rights of local communities. Some of the key changes are summarized below:

Omnibus Law Provision	Changes to Environmental and Indigenous Rights Protections
Article 40 clause 1 of Law No. 32 of the year 2009 regarding Protection and Management of the Environment	Indonesian law previously stated that an environmental permit is a requirement to obtain permission to conduct business activities. In the Omnibus Law on Job Creation, Article 40 on environmental permits are erased and replaced with approval from the government. This is very dangerous, because it gives a red carpet to investors without clear criteria for oversight in Indonesia. ⁶⁸

<p>Article 24 of Law No. 32/2009 regarding Environmental Protection and Management or Environmental Approval</p>	<p>The original law states that the Environmental Impact Assessment (AMDAL) is the basis for determining the ruling of environmental feasibility.⁶⁹ In the Job Creation Law, this article is changed to be that the AMDAL is <i>no longer</i> the sole basis for determining that a business or an activity is approved through environmental feasibility. Rather, the AMDAL becomes the basis for an environmental feasibility <i>test</i> that will be conducted by a team comprising the Central Government, the Regional Government, and a certified expert. The final ruling on the environmental feasibility of a business or an activity will lie within the Central or Regional Government based on the results of this test. Additionally, there is no participation of local communities within the Central Government Feasibility Test Agency which was previously involved in the AMDAL Review Commission. This reduces the space for meaningful participation with local communities.⁷⁰ This change then places an emphasis on the heavy hand of the Central Government in making decisions regarding how land and forests are used.⁷¹</p>
<p>Article 69 of Law No 32/2009 regarding Protection and Management of the Environment</p>	<p>The original article, clause 1. h. stated that it is forbidden to clear land by burning and clause 2. states that clause 1.h. should be implemented by paying serious attention to local wisdom in respective regions. In the Job Creation Law, clause 2 is erased. The removal of clause 2 which excludes local practices from the prohibition of open land burning, has the potential to criminalise traditional farming. It also has the potential to shift the burden of legal responsibility from large corporations (that have legal teams to fight allegations of forest and land burning) to individual traditional farmers (who do not have such a team).⁷²</p>

Article 18 on forest integrity	The Job Creation Law erases the clause that forest regions must be maintained within at least 30% of the area of river basins and/or the edge of an island with a proportional distribution. ⁷³ The erasure of this 30% minimum area will open the potential for extractive industries to encroach further into forests as protected forest regions no longer have to be of a certain size.
Article 50A of Law No. 41/1999 regarding Forestry	This is a new article introduced in the Job Creation Law. It states that if there is a violation of Article 50, which outlines several prohibitions on environmental destruction and usage of the forest that are deemed to be “unlawful,” that is done by individuals or communities that live within or near the forest area for at least five years continuously, they are subject to administrative sanctions. However, if the individual or community is registered in the forest management policy or they have already received social or customary sanctions, then they are exempt from being subject to administrative sanctions. ⁷⁴ This article initially seems to protect indigenous communities from being subject to administrative sanctions. However, indigenous communities are diverse in their ways of living and not all of them are sedentary. The Orang Rimba, as mentioned earlier, who are responding to the pandemic by retreating deeper in the forest and who have a custom of moving whenever members of the community pass away, are a nomadic people. In an instance that a member of their community is deemed to have violated Article 50, they cannot show “proof” that they have been in the area for five years continuously.
Article 54 of Law No.18/2013 on the Prevention of the Destruction of Forests	The original article states that to implement the prevention and eradication of destruction of forests, the President needs to establish an institution/agency that is dedicated to these issues. This institution should be directly under the President and is the responsibility of the President. This Article is erased in the Job Creation Law. ⁷⁵

Criminalisation of Omnibus Law Protestors

The passage of the Omnibus Law has also been met with widespread protests, including by the AMAN, other Indonesian indigenous peoples' collectives, civil society organizations, student groups, and labour unions.⁷⁶ AMAN, in partnership with several other groups, has filed a request for urgent action with the United Nations Committee on the Elimination of Racial Discrimination (CERD), citing the Law's serious impact on indigenous peoples' land rights in Indonesia.⁷⁷

These protests have prompted a harsh response from the government, including acts of violence. The Commission for Missing Persons and Victims of Violence (Kontras) reported that it received more than 1,500 complaints alleging violence by security officials after only three days of protests over the Omnibus Bill in Jakarta in early October 2020.⁷⁸

Major Risks and Countering Action

There are two major risks to indigenous peoples in Indonesia from the environmental and social rollbacks during Covid-19 pandemic. First is the risk of losing their customary lands and territories as well as their traditional livelihood, which will bring problems of food security and other basic needs fulfilment. Second is the risk of facing more ecological disasters such as landslides, flood, and forest fire hazards. Indigenous women, children and elders are more vulnerable in facing these two risks.

The most important action needed to counter environmental and social rollbacks during the Covid-19 Pandemic is to strengthen the capabilities of indigenous people at grassroots, regional/district and national levels. At grassroots level, AMAN has been encouraging its members to protect their customary lands and territories, while addressing food insecurity problems by collectively managing those lands. Indigenous women and youth are key players in this effort. At the regional/district level, AMAN has been working with progressive members of district governments and legislatures to collaboratively develop strategic efforts to protect the rights of indigenous peoples. At the national level, AMAN continues its collaborative advocacy with other civil society organizations.

Recommendations

Recommendations for the National Government and Local Governments of Indonesia

- In addressing the COVID-19 pandemic, the national and local governments in Indonesia should pay more attention to indigenous peoples and local communities.
- National government should withdraw the Job Creation Law mainly as: a) the significant deregulation will have negative impacts on the environment, biodiversity, indigenous peoples and local communities; b) its enactment process was non-transparent and undemocratic and the rush to approve it has taken advantage of the COVID-19 pandemic.
- Considering that the recognition of the rights of indigenous peoples, including their rights to their lands and forest resources, is very critical for the livelihoods of women, men, youth, children, and all elements of indigenous peoples, the government must take urgent action to enact the Indigenous Peoples' Rights Bill.
- The national and local governments need to develop effective policy and program support for indigenous peoples and local communities, with particular attention to women, youth and children as well as vulnerable groups within indigenous communities.
- All processes of policy-making and program development by national and local governments of Indonesia during the COVID-19 pandemic must be implemented through adequate consultation with indigenous peoples to obtain their free, prior and informed consent.

Recommendations for National and Local Parliaments of Indonesia

- The National Parliament of Indonesia should take urgent action to enact the Indigenous Peoples' Rights Bill as part of the 2021 National Legislative Program.
- Local legislatures in Indonesia should develop local laws that support the recognition of the rights of indigenous peoples at the provincial and district levels.
- National and local parliaments of Indonesia should develop effective legislation that ensures the improvement of the quality of life of indigenous peoples and local communities, especially women, youth, children and vulnerable groups within these communities.
- All legislative processes carried out by national and local parliaments of Indonesia during the COVID-19 pandemic must be implemented through adequate consultation with indigenous peoples to obtain their free, prior and informed consent.

Recommendations for National and Local Civil Society Organizations of Indonesia

- Considering various limitations during the COVID-19 pandemic, national and local civil society organizations of Indonesia should find creative ways to continue and strengthen their supports for, and solidarity with, indigenous peoples, especially indigenous peoples and local communities whose lives depend on forest and land resources, during this difficult time.
- At the same time, national and local communities in Indonesia need to continue to strengthen their roles in monitoring policy-making processes and developing public awareness of these processes through various ways that apply health protocols to ensure that the policy-making process during the COVID-19 pandemic is conducted in transparent and democratic ways.

Recommendations for International Organisations

- International organisations should mobilize all possible support for indigenous peoples and local communities during the COVID-19 pandemic.

- International advocacy groups need to continue their roles in policy advocacy, especially ones that focus on resource-related policies in Indonesia, such as the Job Creation Law and the revised Mining Law, that have an international dimension through international investments.
- UN agencies and relevant international organizations should build critical dialogues with the national government of Indonesia on policies that significantly deregulate control of forces impacting lands, forest resources, the environment, and the rights and livelihoods of indigenous peoples and local communities, including women, youth, children and vulnerable groups within these communities.

Methodology

In this report we focused on indigenous rights violations perpetuated by government action and inaction, by private corporate actors, and by powerful armed groups. Through reviewing academic journals, white papers, and media reports, we explored developments on a comprehensive range of issues relevant to forest communities, including:

- processes for corporate consultation and for obtaining consent from communities for projects affecting their lands and lives
- procedures for land-use change; national macroeconomic policies that favour expansion of agriculture or mining into indigenous territories; state tolerance of illegal activities in relevant territories
- state-sanctioned impunity for those undertaking illegal activities and violence; states' use of arrest and criminal prosecution of indigenous persons and defenders
- the ability of civil society to advocate against rollback
- effects of rollbacks on individuals and communities, including on specific groups
- effects of private actors on the environment.

By noting the patterns of these recently increasing encroachments, we aim to shed light on the particularly difficult and continuing challenges that indigenous peoples face in the context of the COVID-19 pandemic.

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