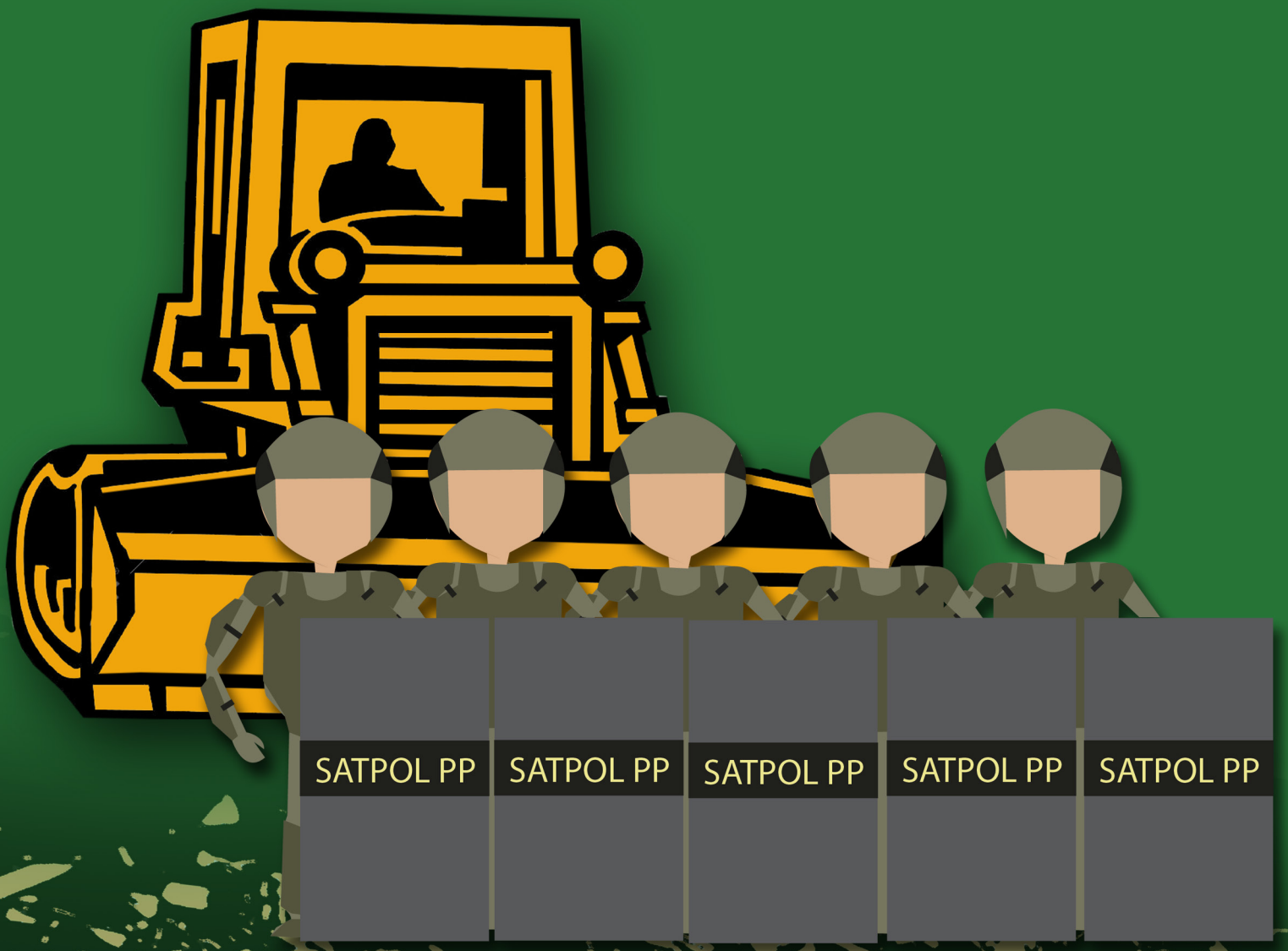
Policy Briefer
The World Bank – Asian Infrastructure Investment Bank's Indonesia National "Slum Upgrading" Project
Safeguard Violations and Weak Country Systems Analysis



November 2016

ilrc THE INDONESIAN LEGAL RESOURCES CENTER
ELSAM LEMBAGA STUDI & ADVOKASI MASYARAKAT
WALHI Wahana Lingkungan Hidup Indonesia
WALHI Sulawesi Selatan
THE ECOLOGICAL JUSTICE
TuK INDONESIA
INDIES THE INSTITUTE FOR NATIONAL AND DEMOCRATIC STUDIES
ULU FOUNDATION

Indonesian Legal Resource Center (ILRC), Institute for Policy Research and Advocacy (ELSAM, Indonesia), Wahana Lingkungan Hidup Indonesia (WALHI), WALHI South Sulawesi, Ecological Justice, Transformasi untuk Keadilan (TuK) Indonesia, The Institute for National Democratic Studies (INDIES), Ulu Foundation

Please note: The World Bank – AIIB National Urban "Slum Upgrading" Project has not yet been implemented. These photos are indicative of the common approach to evictions in Indonesia. The photos are meant to illustrate concerns about risks to local communities from the proposed project.

Two Faces of jakarta (Source: TirtoAndrey Gromico)

World Bank/AIIB Indonesian National "Slum Upgrading" Project: Safeguard Violations and Weak Country System Analysis

Indonesia's President Jokowi has launched the ambitious "100-0-100 Program" with a laudable goal of 100 per cent access to potable water, 0 slums, and 100 per cent access to sanitation for urban inhabitants by 2019. The Cities Without Slums Program (KOTAKU) is a national platform funded by various sources, including central and local governments, the private sector, and various financial institutions. The KOTAKU program has been budgeted as a high priority program in the draft 2017 National Budget (Draft Budget) and in the National Medium Term Development Plan (RPJMN) from 2015 to 2019.

Unfortunately, however, "slum"-related projects in Indonesia have often been plagued with a history of violence, impoverishment and forced resettlement and, for this reason, the official designation of an area as a "slum" may be seen by residents as a preliminary step prior to the violent forced eviction of the inhabitants of the area.[1]

Research has shown that resettlement poses risks to vulnerable urban populations including economic hardships and disruption of the social fabric.[2] In Indonesia, amongst the urban poor, many evicted women use their homes, or shops connected to their homes, as part of

their income generating activities prior to eviction.[3] Women evictees face particularly adverse consequences from evictions, most notably interruptions to income-generating activities they run out of their homes as well as heightened risk of sexual and gender-based violence.[4] As the principal targets of sexual and gender-based violence, women and girls are particularly exposed to such abuse by forced evictions.[5] The chaos during an eviction, and the disruption of community structures and the change to less secure living circumstances in the aftermath of an eviction, may all increase the risk of such violence.[6]

On July 12, 2016, Board of Directors of the World Bank approved increasing Indonesia's government debt by $216.5 million for the KOTAKU project, equivalent to 2,814 trillion rupiah, under the title "National Slum Upgrading Project" or NSUP. The Asian Infrastructure Investment Bank (AIIB) Board also voted to approve co-finance of debt for the project of the same amount, namely $ 216.5 million or equivalent with 2,814 trillion rupiah to support the NSUP. Thus the financing by the World Bank and AIIB totals $433 million, equivalent to 5.628 trillion (1 USD = Rp. 13,000). This joint WB-AIIB project will utilize World Bank Safeguards for implementation.

This five-year long project is of remarkable importance since not only is it the first project ever approved by the newly-created AIIB, but it also represents the first project co-financed jointly by the AIIB and the World Bank. It is also the first AIIB project in Indonesia, which is the AIIB's eighth largest shareholder and which hopes to become the largest borrower from the AIIB. The outcome of this project, including its environmental and social impacts as well as the manner in which the borrower, the World Bank and the AIIB respond to civil society input will set the benchmark for the predicted future stream of large scale high impact AIIB, World Bank Group and other projects. The fact that Indonesian civil society members have already found themselves on the receiving end of threats and intimidation for bringing up concerns with this project raises substantial alarms.

The World Bank loan has an "effectiveness date" of October 11, 2016 but as of November 21, 2016, the latest document posted on the World Bank's website indicates that no World Bank funds have yet been disbursed for this project.[7] It is unclear when disbursement will start.

---

1) Jakarta Post, Forced evictions getting harsher, March 17, 2016. http://www.thejakartapost.com/news/2016/03/17/forced-evictions-getting-harsher.htmll Reuters News: Indonesian Slum Dwellers Challenge Eviction Law in Landmark Case, "According to the Jakarta Legal Aid Institute, which has been helping evicted families, there were 113 forced evictions last year, with each round typically involving many dwellings. A total of 8,145 families and 6,283 small businesses were affected in 2015, the group said. Another 325 evictions were set to take place this year, the institute said, citing the government's planning documents." http://www.reuters.com/article/us-indonesia-landrights-slums-idUSKCN1201QK, Sep 30, 2016; Rima News, Penggusuran dan Penggusuran di Era Ahok Jadi Gubernur Jakarta, 28 September 2016, http://rimanews.com/nasional/peristiwa/read/20160928/305143/Penggusuran-dan-Penggusuran-di-Era-Ahok-Jadi-Gubernur-Jakarta;

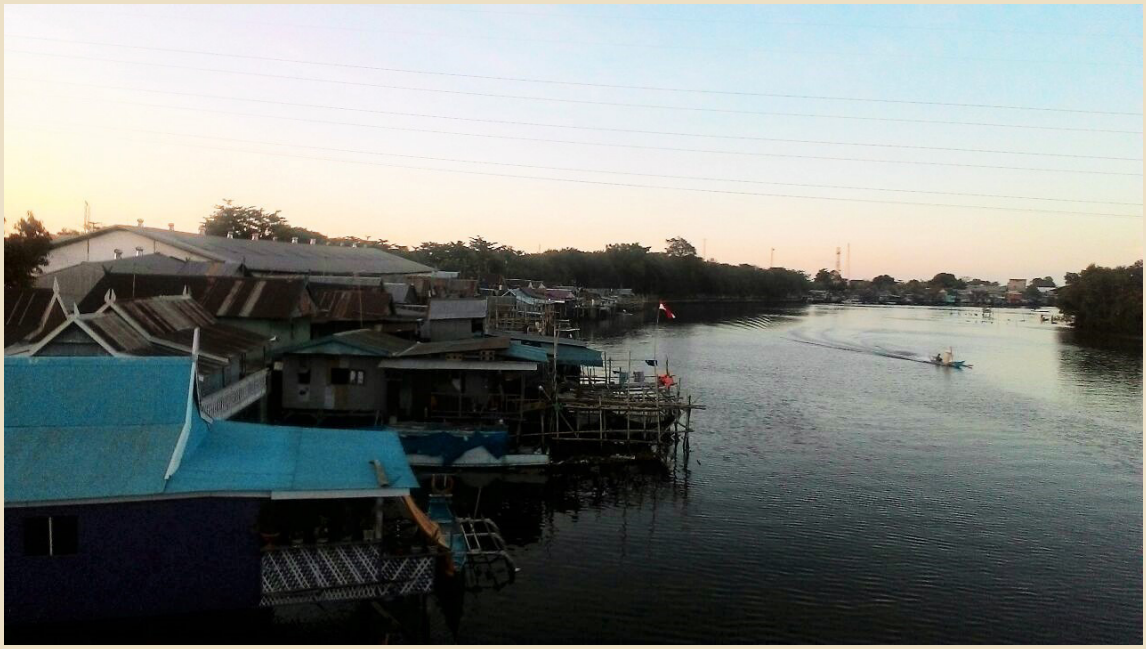
2) For example, Understanding the impact of involuntary slum resettlement on women's access to healthcare in Mumbai, India, Journal of Comparative Social Welfare, Volume 24, 2008; See also, Josh Kelaty, In pictures: housing, class, and mass evictions in Jakarta, https://jkelety.com/2015/01/03/in-pictures-housing-class-and-mass-evictions-in-jakarta/ and Human Rights Watch, Condemned Communities: Forced Evictions in Jakarta, 2006

3) ibid

4) ibid

5) *ibid*

6) *ibid*



Tallo village, Makassar (One of the area potentially evicted), (source: WALHI Sulawesi Selatan)

There is no information on the AIIB website pertaining to the NSUP regarding planned disbursement dates for AIIB funds for the project.

Unfortunately, even at this early stage, there have already been immediate problems with the design and implementation of this World Bank / AIIB project including which are especially troubling given the history of "slum" projects in Indonesia. These problems include:

- **A failure to carry out meaningful public consultations** (see "Anatomy of a Fake Consultation" fact sheet). The ESMF was not subjected to meaningful public consultation, merely a fake consultation in Jakarta at the Department of Public Works, with only one NGO mentioned in the "minutes" of the consultation", despite planned impacts in 156 cities. Initial project documents clearly identify 20 cities where the project will be implemented during the first year of operations yet no record of consultations in these locations is presented in the documentation.
- **Miscategorization / Recategorization:** The project was initially rated as a Category A project, likely to involve significant environmental and social impacts, resettlement impacts and impacts on Indigenous Peoples. Suddenly, in 2016, the project was "downgraded" to Category B (requiring far less environmental and social due diligence) and language was added forbidding Category A impacts and insisting that resettlement would be avoided and, where necessary, resettlement would be "voluntary." The project documents include a "voluntary resettlement" land "donation" document

7) World Bank, Indonesian NSUP, Implementation Status and Results Report, 1 November 2016, http://documents.worldbank.org/curated/en/799421477975331653/pdf/ISR-Disclosable-P154782-11-01-2016-1477975318285.pdf

8) ESMF, National Urban Slum Upgrading Project, SFG1777 REV, 2016

to be signed by project-affected peoples who "voluntarily" give up their land. In addition, it appears that some of high risk/high impact aspects of this project are being pushed to the government-funded portions of the project, perhaps in an effort to avoid linking the WB and AIIB to the damaging activities detailed in earlier project documents, which are predicted to have high negative impacts on impoverished affected communities? Is this an effort to avoid the application of WB safeguard to activities including forced resettlement and environmental destruction? Safeguards still apply to indirect, induced impacts of the WB/AIIB project. This is still a very high risk project and should be re-categorized as Category A.

- **Information disclosure:** The Indonesian KOTAKU website, a government-run website, provides translations of many of the World Bank documents but it is difficult to find a link from the KOTAKU website to the WB or AIIB sites which provide details about required WB / AIIB safeguards, accountability, or grievance mechanisms. It appears that only it is primarily, or solely, the **project level grievance mechanism and not the MDB accountability mechanisms** which are described in the documents in Bahasa Indonesia. In addition neither the websites of the WB or provide project materials in a language accessible to the local population. As of September 2016, all 13 documents – including Environmental Impact Assessment, Resettlement Plan, Indigenous Peoples' Plan (several of which seem to be copies of the same document), are still only available in English on World Bank website; some of these documents date back to June, 2015 and no translations have been provided on the WB website; As of November 2016, AIIB's website provided even less information: there are still only 2 short documents (3 pages, 16 pages), both of which are in English.

- **"Voluntary Land Donation" or Forced Resettlement?** The project documents for this "Category B" project now claim that most resettlement will be "voluntary" and not forced. However, given the insecurity of land tenure, the widespread use of armed forces including military, police and armed thugs ("preman") in impoverished urban areas of Indonesia, the fact that the majority of Indonesia's poor have no "land certificates" proving ownership, and the fact that communities slated by this program (i.e. Makassar) have already heard that there will be mass forced evictions, there are tremendous concerns about so-called claims of "voluntary" resettlement. The "Environmental and Social Management Framework" for the project provides a chilling example of the planned "voluntary" land acquisition process. Annex 17 (page 135) of the ESMF contains a "Voluntary Land Donation" form to be signed by local residents of areas targetted for the project. The description of the "Voluntary Land Donation" process sets forth requirements for participation in the "voluntary land donation program" including the requirement that:

  "The land donor is not characterized as poor.

  The land donor is the legitimate owner of such lands.

  ...Land owners have the right to refuse the land donation.... The right of refusal is specified in the donation document the donor will sign." [8]

- Questions arise: Which inhabitants (potential land "donors") in an area designated as a "slum" are not characterized as poor? To whom would this "voluntary land donation" program apply?

- Given that most of Indonesia's poor do not have any land certificates, the word "legimitate owner" seems to exclude the majority of the poor from this "voluntary land donation process". If their lands are "needed" for the peoject, will they be subject to forced eviction instead?
- The ESMF includes a copy of the "Voluntary Land Donation" Form which, according to the ESMF, is required, among other things to specify the "right of refusal" of the donation. However, this form:
    - o does not indicate anywhere that the project is funded by the World Bank and AIIB;
    - o does not inform the individual signing away their land rights that they have rights, including the right of refusal, the right to a meaningful consultation process, access to full project information in their language, access to WB accountability and grievance mechanisms; the right to participate in the planning process for resettlement; the rights of Indigenous Peoples to participate in the development of an IP plan, etc.
    - o appears only to recognize the rights of landowners with "land certificates" despite the fact that the majority of Indonesia's urban and rural poor have no access to land title certificates; appears to disenfranchise the large numbers of urban poor without land certificates, removing them from resettlement discussions, options, potentially subjecting them to forced resettlement;
    - o the forms will be counter-signed by powerful local officials, including District Head (Camat)/ PPAT, Local head (Lurah) and the "Community Board of Trustees".
- **Gender Impacts**: Given the known frequently devastating impacts of urban projects and resettlement on women, including the lack of recognition of female land rights, loss of home-based sources of income, and heightened exposure to gender-based violence, project documents show a startling lack of gender-differentiated data which should have already been obtained during initial consultations pertaining to the design of this project. While project documents mention "women" and "gender" they lack evidence of meaningful gender-sensitive consultation to date, including in the 20 planned sites for the first year's projects.

As a result, WB/AIIB- funded NSUP/Kotaku program has a high potential to initiate forced evictions whether by sponsoring them directly or by "offloading" them to the governent-sponsored (indirect and related) portions of the project, and to violate the basic rights of affected communities, causing the poorest people to become even poorer than before. The top-down approach is likely to violate the right to access to information, consultation, secure housing, land rights, the right to work and livelihood and the right to security. Given that the target program area is 154 cities and counties in 34 provinces in Indonesia, there is significant potential for wide-spread human rights violations, increased militarization and social conflict resulting from this project. Clearly, even at this early stage, there appear to be violations of the World Bank Safeguards.

Project Assessment of Country Systems, Gaps and "Gap-Filling" measures

9) ESMF Indonesian National Urban Slum Project, SFG1777 REV, Table 1: Gap Analysis for Environmental and Social Safeguards, pg. 22, www.worldbank.org

10) Please note that these are only a few examples, for the sake of brevity. Many more such examples could be provided.

The Project's Environmental and Social Management Framework, found on the World Bank website as well as at http://www.p2kp.org/, and http://www.kotatanpakumuh.id/, claims that the following Indonesian laws are equivalent to World Bank requirements or have easily-filled "gaps":

- Law 32/2009 on Management and Environmental Protection
- Government Regulation (PP) 27/2012 on Environmental Permit
- Minister of Environment Regulation 16/2012 on Guidelines for Environmental Document Preparation (EIA, UKL-UPL, and SPPL)
- Act 1 / 2011 on Housing
- Law 11/2010 on Cultural Resources
- Law 18/2008 on Waste Management
- Law 26/2007 on Spatial Planning
- Law 38/2008 concerning Roads,
- Environment Ministry Regulation 5/2012 on Types of Activities Requiring EIA
- Minister of Public Works Regulations 10 / PRT / M / 2008 on Nature of Business and / or activities of the project under the Public Works requiring Environmental Management effort (UKL) and Environmental Monitoring effort (UPL)
- Environmental Management Guidelines 08, 09, 10 and 11 in 2009 issued by the Directorate General of Highways, Ministry of Public Works and Housing.

Unfortunately, these rules and legislation do not provide environmental and social protections at the level of the Safeguards of the World Bank, to the substantial harm of affected communities and broader society. Nor do they represent the most recent relevant laws and rules.

In addition, the so-called "gap analysis"[9] which attempts to compare World Bank and Indonesian safeguards and laws is deeply flawed. It fails to include key Indonesian legislation and regulations and cites several laws which have already been replaced by newer legislation without referencing the new laws (aturan hukum) in the ESMF. In addition, given that this project is implemented under the World Bank Safeguards, including the Country Systems Safeguard, it is required to provide a detailed analysis of equivalency between World Bank Safeguards and Indonesian legal/regulatory system. Under the Bank's Country System Safeguard, there is a clear and detailed checklist of requirements which must be part of this analysis (CSS Table 1A) and these requirements have not been met.

Some examples[10] of the deep flaws in the project's so-called "gap analysis" include:

Omission of Regulation of the Minister of Environment pertaining to Strategic Environmental Assessment (SEA). The project's Environmental and Social Management Framework fails to include the Regulation of the Minister of Environment No. 9 year 20011 on general guidelines for the Strategic Environmental Assessment (9/2011), as one of the sources of rules to assess activities relating to the environment. SEA is the mandate of the

*Eviction on Bukit Duri, Jakarta (example eviction pratice), (*source: Liputan6.com)

Law on Management and Environmental Protection, which is mandated by the national Government and Local Government in a development area (carrying capacity and environmental carrying capacity for development; estimates of the impact of environmental risks and living; performance / service ecosystem services; efficient utilization of natural resources; vulnerability and adaptive capacity to climate change; and the level of resilience and biodiversity potential). SEA and spatial planning then becomes a reference for the implementation of the EIA and Environmental Permit which later becomes the basis for project activities.

Indonesian EA / EIA Requirements Weaker Than OP 4.01. World Bank safeguards require a clearly defined Environmental Impact Assessment which covers in detail the impact not only on the environment but also on project-affected communities. There is a requirement that, for a project with significant impacts, the public has the right to full information about all the effects - direct impact, indirect, cumulative, etc. - and the right to provide public comment for approximately 120 days – (prior to appraisal) before the Board of the World Bank takes a decision whether to approve or reject a project. However, the EIA standard in Indonesia has the following substantial weaknesses:

a Completed **EIA is not a Requirement for Obtaining a Business Permit, Location Permit, or Land Acquisition Permit**. Indonesia's Government Regulation on Environmental Permit (Peraturan Pemerintah No.27 tahun 2012) states that an EIA is a study of the significant impacts of a company and / or planned activities on the environment which are necessary for the decision making process regarding a proposed business and / or activity. However, in practice, a business license is a license granted after completing several stages of the initiation of a company business. Clearly, to be of use, an EIA must inform decision-making about the location of a project with significant environmental and social impacts. Unfortunately, in Indonesia, there is no requirement for an EIA to be completed prior to the issuance of other licenses such as the location permit and land

acquisition permit, so an EIA is more of a formality designed to fulfil administrative requirements instead of a robust and meaningful tool designed to ensure the avoidance of environmental and social harm.

b. P**roject Implementation Often Begins Prior to Environmental Impact Assessment**. To obtain an Environmental Permit, the project proponent must carry out an assessment of the Terms of Reference, an EIA and RKL-RPL (Environmental Assessment for a project of moderate impact, less in-depth than a full EIA). Normally, an EIA should be based on the Strategic Environmental Assessment (SEA) and Spatial Planning (RTR). However, often the location permits and land acquisition are issued prior to the EIA, without input from the results of the EIA, and project implementation often begins prior to the issuance of an EIA which then serves merely as a procedural formality and is not a process that influences the development of a project or determines whether or not a project is implemented.

c. **Limited community participation**. In the process of EIA "consultation", affected people only act as a source for information collected by consultants. Decision-making on an EIA happens through the EIA Commission, The government chooses one person to "represent" the interests and voice all affected peoples on the EIA Commission. This government-chosen "community representative" is allowed 30 days to comment on the Terms of Reference document for the EIA and is allowed 75 days to comment on the actual EIA document, but there is no requirement for direct input, consultation or involvement of the affected communities.

Even worse is the decision-making on the Environmental Permit. For projects with significant impacts, the public is only given 10 working days to submit suggestions, opinions, and feedback. For projects with less than "significant" impacts, the public has 3 working days to provide comment. This advice can only be delivered through through the "representatives" of the affected communities and / or community organizations that are members of the Audit Commission of the EIA. So there is no meaningful opportunity for robust public comment on an Environmental Permit.

d. **Presidential Regulation on Environmental Permit reduces the role of the EIA**. Companies, projects, and/or activities that have an important impact on the environment are exempt from any obligation to carry out an EIA if the location of the business and / or activity is to take place in districts or cities that already have a District or City Detailed Spatial Plan (RDTR) and / or a Regency/City Strategic Area Plan. Clearly, a Spatial Plan

---

11) Environmental and Social Management Framework, SFG1777 REV, February 2016, pg 17. World Bank website:"4. In NSUP, identification of IPs follows the Bank's criteria : a) self-identification as members of a distinct indigenous cultural groups and recognition of this identity by others; b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and d) indigenous language, often different from the official language of the country or region. Identification of IPs will also meet the criteria of "Masyarakat Hukum Adat"-MHA- summarized from Indonesian Regulations and local values, as well as additional information gathered from respective cities. 5 One fundamental change is related to Indigenous Peoples is the issuance of Constitutional Court Decision No.35/PUU-X/2012 which changed Article 1 point 6 of Law No. 41/1999 on Forestry, which has now become "customary forest is a forest located within the area of an indigenous community". Before, there was a word of "state" in the article. With elimination of the word "state" from the definition, now it is understood that customary forests is now no longer a state forest."

17) *Ibid*, page 17.

has an entirely different function than an EIA and this is an extraordinary loophole.

Land Expropriation by privately owned companies on behalf of the State. Presidential Decree No. 148 2015 on land acquisition for public use now allows companies to act on behalf of the state and carry out land acquisition for the "public good." Prior to this law, this function was only reserved for the state, and now private companies may carry out land expropriation on behalf of the government.

Land Expropriation: Completely Insufficient Grievance Mechanism. Objections by landowners to the seizing of their lands must be made to the Governor who then has a maximum of three working days from the receipt of objections to consider the objections. If an objection is not acted upon by the Governor within three days or is rejected by the Governor during that period, the determination of the project location will be implemented by the Governor within seven work days. This is grossly inadequate and demonstrates the arbitrariness of the government's approach to citizen concerns about their land rights. A period of three days is completely inadequate to fully assess an objection to the seizure of lands by affected citizens. (NB. This period formerly was 14 days, also grossly inadequate, and was recently shortened to three days.)

Compensation. In Indonesia, compensation for seized lands may be provided in the form of: (A). money; (B). replacement land; (C). resettlement; (D). shareholding; or (E). other form agreed by both parties. However, in practice, because of the unequal power relationship between the State and project-affected communities, when there are conflicts over land, a company may simply deposit a sum of "compensation" in escrow with the District Court, even though the "compensation" is not necessarily agreed upon by the communities. Once these funds have been deposited with the Court, although no court decision has been made regarding community claims, the compensation is considered "paid", and the company moves ahead, seizes the land, evicts the landowners, and initiates the projet, despite the fact that the landowners have not necessarily agreed to the amount or type of compensation or received the compensation.

Indigenous Peoples

The Urban Slum ESMF mentions the development of an Indigenous Peoples Planning Framework (IPPF) and states that the confirmation of the presence of Indigenous Peoples will be implemented according to the requirements specified in the approved ESMF which cites the World Bank's OP 4.10 Indigenous Peoples' Screening Study (2010) and criteria for defining Indigenous People - "Masyrakat Hukum Adat" / MHA or "Customary Law Community" - summarized from various Indonesian regulations.[11]

Below is the summary of Laws and Regulations related to Indigenous Peoples presented in the ESMF for the project:

"i UUD 1945 (Amendment) Chapter 18, clause #2 and Chapter 281 clause # 3;

ii Law No. 41 on Forestry (plus Constitutional Court Decision No. 35/PUU-X/2012—see Footnote 4);

6) David Harvey, *"The Right to the City"* New Left Review 53 Sept-Oct. 2008, p. 23.4) *Ibid*., hlm. 89.

7) *Ibid*., hlm. 32.

iii MOHA Regulation No. 52/2014 on the Guidelines on the Recognition and Protection of MHA;

iv Ministerial Regulation of MOH No. P.62/2013 (adjustment of Ministerial Regulation No. P.44/2012) on the Establishment of Forest Area;

v Joint Regulation of MOHA, Ministry of Forest, Ministry of Public Works and Land Agency No. 79/2014 on Procedures to Settle Land Ownership Conflict in Forest Area;

vi Regulation of the Minister of Land Agency and Spatial development No. 9/2015 on the Procedures to Establish the Land Communal rights on the MHA Land and Community Living in the Special Area;

vii Law No. 6 / 2014 on Village; and

viii Law No. 18/2013 on Prevention and Alleviation of Deforestation (UUP3H)."[12]

We are concerned that, despite the fact that the ESMF states that the identification of Indigenous Peoples in the areas affected by the NSUP project will be based on Bank criteria (see previous footnote), the ESMF also states that it will use criteria based on national legislation, which could be detrimental to Indigenous Peoples. Many of Indonesia's laws still require the formal recognition by the local government of the Indigenous Peoples (referred to as Masyrakat Hukum Adat or " customary law community"), while very few local governments have issued decrees or local regulations on the recognition of Indigenous Peoples (customary law communities). In addition, despite the Constitutional Court Decision No. 35 / PUU-X / 2012 in support of Indigenous forest land rights in 2012 which is described in the ESMF, until now there has still been no Indigenous Forest set aside by the Ministry of Forestry and Environment, including by the 2015 Ministerial regulation P.32 / Menlhk-Secretariat / 2015 on Forest Rights.

Forests and biodiversity. Presidential Decree No. 3 of 2016 on the Acceleration of the National Strategic Projects will increase deforestation and environmental destruction. Through this regulation, the licensing period is shortened:

1. The entire **Environmental Permiting process must now be completed within 60 (sixty) days**. This period of time is not plausible, given that, in order to obtain an Environmental Permit, an EIA must first be developed. This includes the development of the EIA terms of reference, the EIA itself and the RKL-RPL. For the EIA process, the time period is 30 working days to develop the Terms of Reference, 75 days for the EIA assessment, followed by the Environmental Permit application process which involves activities at the Ministerial level, or Governor or Regent / Mayor. Forcing this process into a 60 day limit will result in a massive degradation of the quality of assessment of impacts on the environment and society, and heightens the impact of the lack of meaningful public consultation necessary for development;

---

8) Lihat http://www.unmillenniumproject.org/goals/, diakses pada 10 Agustus 2016.

9) Lihat https://sustainabledevelopment.un.org/?menu=1300, diakses pada 10 Agustus 2016.

10) Stephen P. Marks dan Kathleen A Modrowski bersama dengan Walter Lichem, *Human Rights Cities Civic Engagement for Societal Development,* Beijing: UNHabitat and PDHRE, 2008, p. 45.

2. **Permit for Borrowing/ Using of Forest Are**as. The time period for this permit which allows potentially damaging activities in forest areas has now been shortened to 30 (thirty) days. According to Regulation 18 / Menhut-II / 2011 on Guidelines for the Borrowing and Use of Forest Areas (and various amendments to this regulation), it would normally take over two years to obtain a permit to allow the Borrowing and Use of Forest Areas. This is because the process of evaluation of the proposed business activity and the detailed assessment of environmental impacts and potential impacts on the surrounding communities require considerable time and consideration prior to any decision to utilize a forest area for other purposes or projects. Shortening this period to 30 days is grossly inadequate and the use of this system will vastly increase harm to Indonesia's forests and forest peoples.

3. **The expansion of the non-forestry activities in forested areas**. The permitted use of forest areas has now expanded to allow 15 (fifteen) types of non-forestry activities to be carried out in forests, an increase from the previous 12 (twelve) permitted activities. New permitted activities include (i) farming in the framework of food security; (ii) farming in the framework of energy security; or (iii) construction of airports and seaports. Although in theory, these activities may not exceed 30% of the forested area, an extension of this type of activity is likely to accelerate forest destruction, including damage to protected forests.

Deeply flawed "Gap Analysis for Environmental and Social Safeguards"

We note, also, the extremely poor quality of the project's so-called "gap analysis" in the ESMF, and the apparent lack of competent WB and AIIB review of this assessment, not to mention, the obvious lack of public input. The analysis is riddled with references obsolete laws and, at the same time, fails to include current legislation, Presidential proclamations and regulations of key importance to the project.

The project's "Gap Analysis of Environmental and Social Safeguards" is presented in a table with columns labelled "Bank Policy", "Government of Indonesia Regulations", "Gaps Identified" and " Addressed in the ESMF". The table not only fails to identify significant "gaps" but also appears to imply that all gaps will be somehow "Addressed in the ESMF". The "Addressed in the ESMF" column is filled out for every single "gap" identified and even for items where "no gap" is identified.

Despite the unsurmountable gaps between World Bank requirements for public consultation and Indonesian requirements and practices under Indonesia's EIA laws and other laws, some of which are detailed above, the project's analysis of "Public Consultation" (pg. 24) concludes that there are "No gaps identified" between WB Safeguard requirements and Indonesia's country system. This is blatantly and materially incorrect.

The assessment correctly identifies as a gap "Insufficient followup analysis, use of environmental monitoring data for evaluation and continual improvement. The environmental monitoring program is not sufficient or is not corresponding to the scale of the impact of the project" but then under the "Addressed in the ESMF" column, the assessment claims that "This is addressed in the EMP and UPL implementation reports and in the form of MIS

12) Pasal 18 ayat (1) dan (2) UUD 1945.

of the project as discussed in Section III." (pg. 23.)

The analysis also identifies as gaps "Lack of analysis about project area of influence, ancillary facilities, induced impacts and site selection analysis for activities require UKL-UPL" and "Environmental screening based on technical thresholds will only result in inappropriate extent and type of EA" and then claims that this is "Addressed in the ESMF" because "The subproject EMP and UKL-UPL when required will cover the project area of influence" and "will include the environmental impact screening and scooping [sic] as stipulated at Section III of the ESMF."

The "analysis" of "Public Disclosure" notes under the "Gaps Identified" column that "Public Disclosure is not covered in the Ministry of Environmental Regulations" but that "This is addressed in the Section III of this ESMF".

The "analysis" of resettlement impacts and impacts on Indigenous peoples contains many disturbing features, including the fact that WB Safeguards require resettlement assistence, livelihood restoration for those "without formal legal rights to lands" whereas GOI Regulations do "not cover squatters..., encroachers and renters on private land. Landless and laborers are not expected to be compensated and provide rehabilitation measured[sic]; it is the responsibility of the landowner to compensate them". Nothing is listed under the "Gaps Identified" column for this entry. However, in response to an apparent gap, the "Addressed in the ESMF" column states "The LARPF specified that licenced appraisers compensation criteria include among others, assistance and livelhood".

There are many other shocking and glaring problems in the resettlement section, beyond the scope of this briefing paper – including the identification of "gaps" including the lack of any GOI requirement to provide land for land, GOI reliance on cash compensation and yet no provision for providing full replacement cost for seized lands, the failure to include the budget for resettlement costs in project budget planning; the lack of access to World Bank (or AIIB) grievance mechanisms, the lack of livelihood restoration requirements; the lack of coverage of indirect impacts or impacts from related activities, followed by the claim that these enormous gaps are somehow "Addressed in the ESMF". In addition, the only grievance mechanims mentioned is the project-level grievance mechanism and not the WB or AIIB grievance mechanisms.

Regarding Indigenous peoples, according to the "gap analysis", under WB Safeguards "If land of IPs is to be taken, requires broad community support and free, prior, informed consultation" while under GOI regulation "Land of indigenous people is treated in the same way as other [sic], if land rights are recognized by relevant local government." Despite this massive gap (and incomplete analysis), the column under "Gaps Identified" is empty.

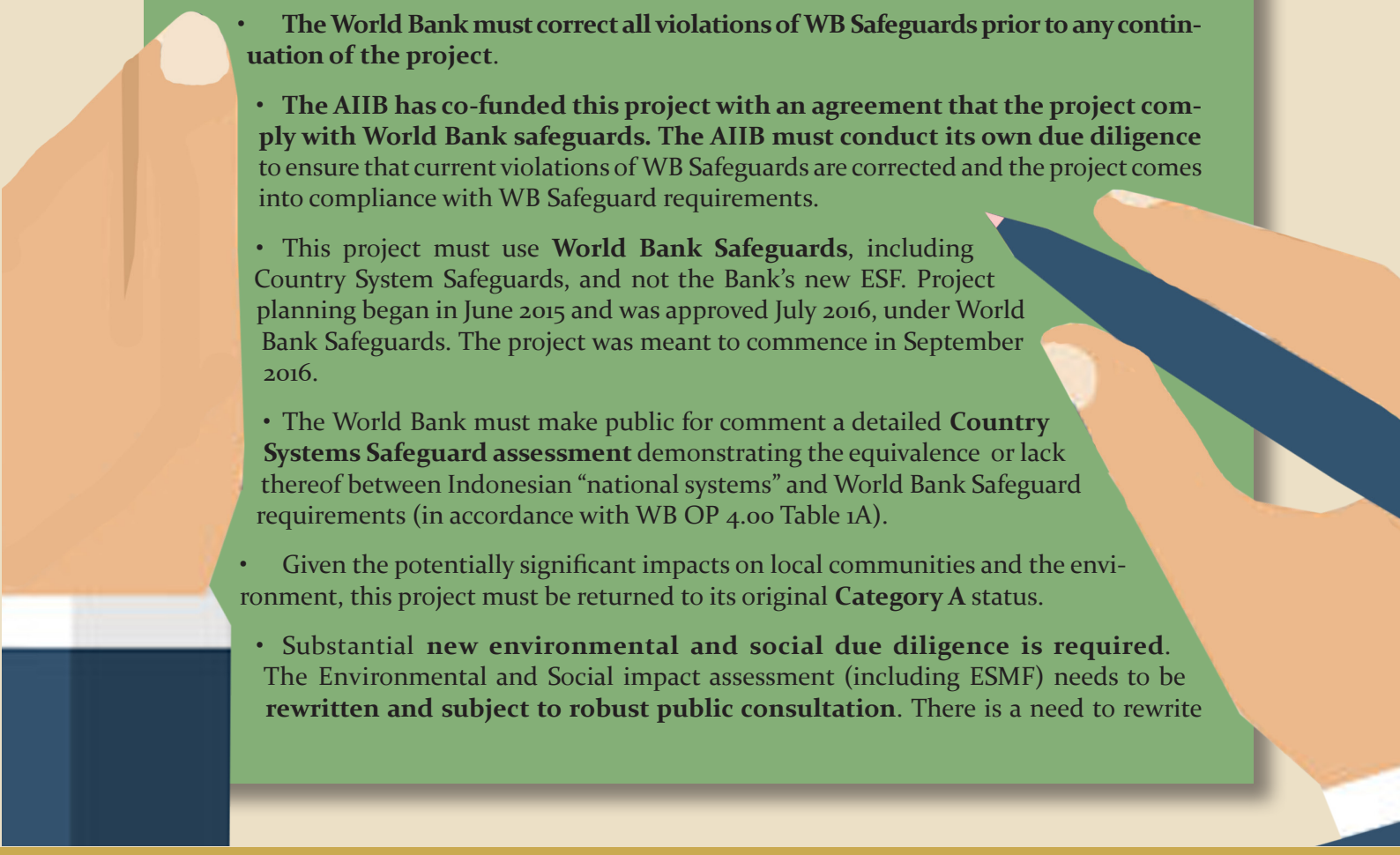
The Indonesian Supreme Court decision pertaining to recognition of Indigenous forested lands and the lack of implementation of this decision is not cited in this analysis. Yet, somehow, despite having identified no "gaps" (in the "Gaps Identified" column) these gaps are apparently "Addressed in the ESMF". See the "Addressed in ESMF" column which states "LARPF appplies of[sic] a subproject involve [sic] land acquisition and/or resettlement, regardless of who own [sic] the land. Consultation as specified in the LARPF and LARAP should be tailored to the local context and the characteristics of the affected persons."

Regarding vulnerable groups, the World Bank requires "particular attention to the needs

of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women, children, Indigenous Peoples, ethnic minorities..." whereas under GOI, "PAPs are not differentiated by vulnerability or gender." The "response" in is "Addressed in the ESMF" that "The LARAP required information on the vulnerable groups (women, very poor, disable, etc.) is identified, particularly during the census survey." There is no evidence, however, of a gender-differentiated approach to the gathering of data to determine project priorities, impact analysis, or project implementation.

Again, these are but a few examples taken from the deeply flawed ESMF.

Above, we provided a few examples demonstrating that the standard of environmental and social protection in the "country system " of Indonesia is significantly weaker than World Bank Safeguards. Therefore, social and environmental impact assessments for World Bank-supported activities must be based on the safeguards of the World Bank and not provisions of the legislation or other aspects of the "country system" in Indonesia.



Demands:

- Given the flawed ESMF and violations of WB Safeguards, this project must be **completely reviewed by the World Bank and AIIB prior to proceeding any further**.
- **The World Bank must correct all violations of WB Safeguards prior to any continuation of the project**.
- **The AIIB has co-funded this project with an agreement that the project comply with World Bank safeguards. The AIIB must conduct its own due diligence** to ensure that current violations of WB Safeguards are corrected and the project comes into compliance with WB Safeguard requirements.
- This project must use **World Bank Safeguards**, including Country System Safeguards, and not the Bank's new ESF. Project planning began in June 2015 and was approved July 2016, under World Bank Safeguards. The project was meant to commence in September 2016.
- The World Bank must make public for comment a detailed **Country Systems Safeguard assessment** demonstrating the equivalence or lack thereof between Indonesian "national systems" and World Bank Safeguard requirements (in accordance with WB OP 4.00 Table 1A).
- Given the potentially significant impacts on local communities and the environment, this project must be returned to its original **Category A** status.
- Substantial **new environmental and social due diligence is required**. The Environmental and Social impact assessment (including ESMF) needs to be **rewritten and subject to robust public consultation**. There is a need to rewrite

assessments of/proposals for avoiding environmental and social impacts, including impacts on Indigenous Peoples, women and vulnerable populations.

- Given that the list of cities proposed for the project, including for the first stage of the project, are already known, there must be a **meaningful public consultation, including on the ESMF, in each area planned for initial project launch prior to any decision to implement this project**. If implementation goes ahead, it must be ensured that the affected communities participate and determine the process of the "improvement" of their areas, instead of the repeated pattern of fake consultations that are in violation of World Bank Safeguards.
- A **complete re-evaluation of the concept of "Voluntary Land Donation"** is required in the context of routine abuses by armed forces, including the military (TNI), police, satpol or armed thugs in areas designated as "slums" in Indonesia. In this context, the concept of "voluntary land donation" is not possible.
- **Gender-differentiated data and analyses** and a gender-sensitive approach to ensuring full participation and recognition of rights, including land rights, of women must be used.
- **Due diligence risk assessment is needed to assess Security Force Risk**, specifically the risk of violence from armed parties including military (TNI), police, satpol and armed thugs (preman) linked to the project.
- We note that, already, as of November 2016, civil society organizations which have voiced concerns about the NSUP project and World Bank and AIIB involvement have begun to experience terror and intimidation in Indonesia, including direct threats of personal harm. The World Bank and AIIB must send a clear public message to the public and to the Government of Indonesia that threats and intimidation against those raising concerns about the project must cease immediately and not occur again or the entire project will be called into question. Silence on this matter is unacceptable and implies complicity.
- There must be an explicit legally-binding ban on the use of armed security forces and violence against communities with a legally binding clause that any such use of violence against communities or civil society organizations will result in the cancellation of the project.
- Full information must be provided to all project-affected people regarding the **origin of the funds (WB/AIIB)** as well as information regarding **right of refusal to engage in "voluntary" land donation** as specified in the project documents, and the right of access to WB or AIIB **accountability mechanisms**.

Annex I: Anatomy of a Fake Consultation

Three Examples of the expanding "industry" of World Bank Group-related Fake Consultations in Indonesia

Example 1: On Thursday, December 17, 2015 a number of NGOs received an email from a consulting firm, PT. Hatfield Indonesia which included an invitation from the Indonesian Finance Ministry dated December 16 for a "public consultation" to be held on Monday, December 21, 2015 from 9:00 to 1:00, including lunch and an hour and 30 minutes of presentations. Recipients of the letter were given one day to RSVP regarding their attendance.

KEMENTERIAN KEUANGAN REPUBLIK INDONESIA
DIREKTORAT JENDERAL PENGELOLAAN PEMBIAYAAN DAN RISIKO
DIREKTORAT PENGELOLAAN DUKUNGAN PEMERINTAH DAN PEMBIAYAAN INFRASTRUKTUR
Gedung Frans Seda Lantai 1 Jalan Dr. Wahidin Raya Raya No. 1, Sawah Besar, Jakarta Pusat, Jakarta 10710
Telepon +62 21 3505052 (ext. 2215) Faksimili : +62 21 3447386 Laman: http://www.djppr.kemenkeu.go.id/

Nomor : UND- 169 /PR.6/2015 16 Desember 2015
Sifat : Sangat Segera
Lampiran : 1 (satu) berkas
Hal : Undangan Konsultasi Publik

Yth. (Daftar terlampir)

Sehubungan dengan rencana penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial (*Environmental and Social Management Framework – ESMF*) untuk Kemitraan Pemerintah Swasta (*Public Private Partnership – PPP*) dalam lingkungan Kementerian Keuangan Republik Indonesia, perlu dilaksanakan konsultasi publik atas rencana tersebut kepada para *stakeholder*.

Konsultasi publik ini dirancang sebagai proses partisipatif untuk mengidentifikasi potensi penerapan kerangka kerja *Safeguard for Environmental and Social (E&S)* sesuai standar *World Bank (WB)* dan kesenjangan yang terjadi sebagai akibat dari penerapan *E&S Safeguards* serta mengembangkan perencanaan kebijakan, prosedur dan sumber daya manusia yang diperlukan untuk mengatasi kesenjangan tersebut. Kerangka Kerja ini dirancang untuk dapat menerapkan *Safeguards* secara efektif pada seluruh proyek PPP dimasa yang akan datang.

Sehubungan dengan hal tersebut diatas, kami mengundang perwakilan dari instansi terkait untuk berpartisipasi dalam kegiatan "Konsultasi Publik Pembahasaan *Terms of Reference (TOR)* Pengembangan ESMF" yang akan diselenggarakan pada:

Hari/Tanggal : Senin, 21 Desember 2015
Waktu : 09.00 – 13.00 WIB
Tempat : Ruang Rapat Lobby, Gedung Frans Seda Lantai 1 Jalan Dr. Wahidin Raya Nomor 1, Jakarta Pusat
Agenda : Terlampir

Mengingat pentingnya acara tersebut, kami mengharapkan kehadirannya tepat waktu. Pendaftaran dan konfirmasi kehadiran dapat disampaikan langsung kepada: Sdri. Rima Mayasari alamat email: rima@hatfieldgroup.com atau Fax: 0251-8340414 paling lambat pada Hari Jumat, tanggal 18 Desember 2015 pukul 17.00.

Demikian undangan ini disampaikan, atas perhatian dan kehadirannya diucapkan terima kasih.

Direktur
u.b.
Kasubdit Persetujuan Dukungan Pemerintah

Sri Bagus Guritno
NIP 19670415 199203 1 001

Tembusan:
Direktur Pengelolaan Dukungan Pemerintah dan Pembiayaan Infrastruktur

The only information provided about the subject of the "consultation" was a vaguely worded Terms of Reference document, in English and Indonesian about a proposed ESMF. According to the Ministry of Finance letter:

> Konsultasi publik ini dirancang sebagai proses partisipatif untuk mengidentifikasi potensi penerapan kerangka kerja *Safeguard for Environmental and Social (E&S)* sesuai standar *World Bank (WB)* dan kesenjangan yang terjadi sebagai akibat dari penerapan *E&S Safeguards* serta mengembangkan perencanaan kebijakan, prosedur dan sumber daya manusia yang diperlukan untuk mengatasi kesenjangan tersebut. Kerangka Kerja ini dirancang untuk dapat menerapkan *Safeguards* secara efektif pada seluruh proyek PPP dimasa yang akan datang.

Translation: "This public consultation was designed as a participative process to identify the potential application of the framework Safeguards for Environmental and Social (E&S) according to World Bank standards, and gaps which occur as a result of the application of E&S Safeguards with the development of the planning of policy, procedure and human resources needed to overcome the aforementioned gap. This TOR is designed to be able to apply Safeguards effectively for all future PPP projects."

The vaguely worded Terms of Reference (TOR) included with the invitation:

The TOR was titled: "INDONESIA: Indonesia Infrastructure Finance Development Project. Terms of Reference: Preparation of Environmental and Social Management Framework". No further information was provided about the Indonesia Infrastructure Finance Development Project, nor about the "consultancy" nor the consultant.

INDONESIA

Indonesia Infrastructure Finance Development Project

Terms of Reference

Preparation of Environmental and Social Management Framework

A. Objectives of Consultancy

1. Objective of this consultancy is to develop the aforementioned RETF project related ESMF to reduce, mitigate and manage the risks and potential impacts and range of safeguards issues related to the Recipient Executed aspects of the project.

The civil society groups invited to the "consultation" could not understand what the "aforementioned RETF project" was or what the consultancy was.

They also did not know at the time, that PT Hatfield Indonesia, had just been awarded a contract for one of Indonesia's high profile infrastructure projects with Kereta Api Borneo, a subsidiary of Russian Railways, the Russian company designated to build the controversial coal railroad infrastructure project in Kalimantan. PT. Hatfield's responsibilities apparently include conducting environmental impact assessments for the project and "Securing environmental permits in accordance with relevant regulations, particularly Government Regulation No. 27/2012 concerning environmental permits.")[1]

Hatfield CONSULTANTS

Home About Sectors Services

News Releases

2016 | 2015 | 2014

Archives

2013 | 2012 | 2011 | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003

PT Hatfield Indonesia (PTHI) Awarded the Contract to Conduct AMDAL Study of PT Kereta Api Borneo Sea Coal Terminal

Oct 14, 2015

Phase 1 development of a coal terminal is planned by PT Kereta Api Borneo (KAB), an Indonesian subsidiary of Kalimantan Rail Pte. Ltd., within the Buluminung Industrial Zone. In accordance with a letter from the Governor of East Kalimantan Province (No. 551.6/5411/EK), this port project is considered a Strategic Infrastructure Project.

KAB appointed PTHI to complete all studies and reporting requirements related to the Environmental Impact Assessment (AMDAL) process. PTHI is responsible for:

- Ensuring compliance with all requirements and submission of AMDAL documentation;
- Completing applications for required Environmental Permits;
- Supporting public consultations and developing supporting documentation;
- Developing terms of reference for the ANDAL and AMDAL reports for evaluation and approval; and
- Securing environmental permits in accordance with relevant regulations, particularly Government Regulation No. 27/2012 concerning environmental permits.

For more information:
Bambang T. Sasongko Adi
President Director
PT. Hatfield Indonesia
Email: hatfindo@hatfieldgroup.com
Telephone: +62 (251) 832 4487

---

1) http://www.hatfieldgroup.com/news/news-releases/pt-hatfield-indonesia-pthi-awarded-the-contract-to-conduct-amdal-study-of-pt-kereta-api-borneo-sea-coal-terminal/; According to the PT Hatfield Indonesia webpage announcing the contract, Hatfield Consultants, was established in 1974 and headquartered in Vancouver, Canada; Jakarta Globe, Russian Transport Firm to Break Ground on E. Kalimantan Railway Next Month, "The East Kalimantan provincial government had said earlier that Russian investors would also be involved in the construction of bridges, ports and techno parks in the province, with a possibility to build a nuclear power plant. Russian Railways, Russia's largest railway and locomotive company, reportedly set aside about $2 billion for the East Kalimantan project." http://jakartaglobe.beritasatu.com/business/russian-transport-firm-break-ground-e-kalimantan-railway-next-month/

On the positive side, this was the first time that NGOs could recall ever receiving an invitation for a "consultation" of any sort, even a fake one, from the Indonesian Ministry of Finance.

However, given the lack of advance notice only two NGOs were able to attend, only one of which was an NGO focused on infrastructure finance. The meeting was structured as an information session ("sosialisasi") and could not remotely be construed as a public consultation. Much of the time was spent in powerpoint presented by PT. Hatfield which described the Indonesia Infrastructure Finance Development Trust Fund. Apparently, this Trust Fund was formed by the World Bank with $15 million in Trust Funds from the Canadian government over a five year period from 2016 to 2020.[2]

When the solitary NGO focused on infrastructure finance attempted to raise the issue of the necessity of ensuring the use of the highest international standards, including safeguards required by the World Bank and ADB, this suggestion was quickly rejected and **officials present made it clear that only Indonesia's national safeguard systems would be utilized and not those of the World Bank.**

This seems to be a significant contradiction to the stated purpose of the ESMF as described in the invitation letter from the Indonesian Ministry of Finance – i.e. to develop safeguards in accordance with World Bank standards. The mention, in the letter from the finance ministry of "gaps" may also imply that the purported purpose of the discussion was to develop "gap-filling" measures and that this project is being administered under Indonesia's Country System. It does not appear that the mandatory due diligence required under the World Bank's Country System Safeguard was implemented. WB requirements for consultation were clearly not met.

Example 2

On the evening of Monday, 18 January 2016, at 19:16h, NGOs which had signed a letter to the World Bank, IFC and ADB raising concerns about Indonesian Infrastructure Financial Intermediaries, received an email from the same consulting firm, PT. Hatfield Indonesia, which included a copy of an invitation from the Indonesian Finance Ministry (dated 15 January) to a four-hour long "public consultation" on Thursday, January 21 on the development of an ESMF in "accordance with World Bank standards."

2) According to a powerpoint presentation by PT. Hadfield titled, "KONSULTASI PUBLIK: Penyusunan Kerangka Kerja Pengelolaan Lingkungan dan Sosial *(Environmental and Social Management Framework - ESMF),* 12/21/15, Jakarta.

Tanggal: 18 Jan 2016 19.16
Subjek: Undangan Konsultasi Publik Pembahasan Pengembangan ESMF

Email addresses of recipients removed.

Yth Bapak/Ibu,

PT Hatfield Indonesia selaku penerima tugas dari unit KPBU (Kejasama Publik dan Badan Usaha), bersama ini mengundang Bapak/Ibu untuk hadir dalam acara **"Konsultasi Publik Pembahasan Pengembangan Environmental and Social Management Framework (ESMF)" yang akan diadakan Hari Kamis, 21 Januari 2016 pukul 09.00 – 13.00 WIB bertempat di Ruang Rapat Teknologi, Gedung Frans Seda Lt. 3, Jl. Dr. Wahidin Raya No. 1 Jakarta Pusat.**

Mohon konfirmasi kehadiran dapat disampaikan kepada Sdri. Rima, email: rima@hatfieldgroup.com / Telp.(0251)8324487, Fax. (0251)8340414 selambatnya pada **Hari Rabu, 20 Januari 2016 sebelum pukul 17.00 WIB.**

Note: Draft dokumen ESMF untuk bahan diskusi akan dikirimkan kepada seluruh peserta pada tanggal 20 Januari 2016.

Terimakasih atas perhatian bapak/ibu.

Hormat Kami,
PT Hatfield Indonesia

1 Attachments

KEMENTERIAN KEUANGAN REPUBLIK INDONESIA
DIREKTORAT JENDERAL PENGELOLAAN PEMBIAYAAN DAN RISIKO
DIREKTORAT PENGELOLAAN DUKUNGAN PEMERINTAH DAN PEMBIAYAAN INFRASTRUKTUR
Gedung Frans Seda Lantai 1 Jalan Dr. Wahidin Raya Raya No. 1, Sawah Besar, Jakarta Pusat, Jakarta 10710
Telepon +62 21 3505052 (ext. 2215) Faksimili : +62 21 3447386 Laman: http://www.djppr.kemenkeu.go.id/

Nomor : UND-10 /PR.6/2016
Lampiran : 1 (satu) halaman
Hal : *Public Consultation*

15 Januari 2016

Yth. (Daftar terlampir)

Sehubungan dengan rencana penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial *(Environmental and Social Management Framework - ESMF)* untuk Kemitraan Pemerintah Swasta *(Public Private Partnership - P3)*, atau dikenal dengan KPBU dalam lingkungan Kementrian Keuangan Republik Indonesia, perlu dilaksanakan konsultasi publik atas rencana tersebut kepada para *stakeholder*.

Konsultasi publik ini dirancang sebagai proses partisipatif untuk mengidentifikasi potensi penerapan *Safeguard for Environmental and Social* (E&S) sesuai standar World Bank (WB) dan kesenjangan yang terjadi sebagai akibat dari penerapan *E&S Safeguards* serta mengembangkan perencanaan kebijakan, prosedur dan sumber daya manusia yang diperlukan untuk mengatasi kesenjangan tersebut. ESMF ini dirancang untuk dapat menerapkan *Safeguards* secara efektif pada seluruh proyek KPBU dimasa yang akan datang.

Menindaklanjuti Konsultasi Publik Pembahasaan *Term of Reference (TOR)* Pengembangan ESMF yang telah diselenggarakan sebelumnya pada bulan Desember 2015 dan draft pertama ESMF telah disirkulasikan guna mendapatkan masukan dari pihak-pihak yang berkepentingan.

Sehubungan dengan hal tersebut diatas, kami mengundang perwakilan dari instansi terkait untuk berpartisipasi pada kegiatan **"Konsultasi Publik Pembahasaan Pengembangan ESMF"** yang akan diselenggarakan pada:

Hari/Tanggal	: Kamis, 21 Januari 2016
Waktu	: 09.00 – 13.00 WIB
Tempat	: Ruang Rapat Teknologi, Gedung Frans Seda Lantai 3 Jalan Dr. Wahidin Raya Nomor 1, Jakarta Pusat
Agenda	: Terlampir

This took place a week before the Bank's Safeguard Review Consultation in Jakarta on January 28 for which NGOs were preparing and which had been announced on January 7. Oddly, almost none of the NGOs active in monitoring WB infrastructure projects and which had been in communication and meetings with the Bank and IFC and were known to Jakarta-based Bank staff were invited to the Safeguards Review Consultation by Jakarta World Bank Staff. Unlike the "consultations" on infrastructure, which provided invitation lists containing the names of government agencies and NGOs that had been invited so that all participants could see which NGOs and government agencies were invited, the WB Safeguards Review team in Jakarta kept their Safeguards "Consultation" invitation lists secret so that no organizations were able to see which other organizations or agencies had been invited. It later turned out that WB Jakarta staff who sent out the invitations did not invite the Indonesian NGOs which were monitoring infrastructure projects, and which had been in correspondence and meetings with the Bank. These groups had to be informed by international NGO colleagues about the WB safeguard consultations in their own country.

For the fake infrastructure "consultation", NGOs which received an invitation on 18 January 2016 and were requested to respond within 48 hours (by January 20). They were told that they would receive the draft ESMF that was the basis of the consultation on Wednesday, January 20, a day prior to the "consultation". There was no clear indication what the ESMP was for, or whether it was associated with an existing or planned World Bank project. A very brief Executive Summary of the ESMF in English and Indonesian was included with the email that stated:

EXECUTIVE SUMMARY

The Government-Private Collaborative Unit of the Ministry of Finance (MoF), herein after referred to as the PPP Centre, is the recipient of a World Bank (WB) administered trust fund entitled the Indonesia Infrastructure Finance Development Trust Fund (IIFDTF).

The PPP Centre makes available the IIFDTF funding support for 5 proposed PPP projects as pilots to support the development of the project Feasibility Study (FS) and enable the project to be brought to market for financing.

This Environment and Social Management Framework (ESMF) is to aid implementation of the 5 pilot projects selected to receive funding support from the IIFDTF.

This ESMF framework is applicable to all Government Contracting Agencies (GCA), that submit projects for consideration for funding support from the IIFDTF to the PPP Centre, in return the GCA receiving guidance and advice on how to package and present the proposed PPP project for financing.

The PPP Centre has been formed to support the promotion of PPP projects in Indonesia in support of government policy and to promote best practice in the implementation of Environment and Social (ES) safeguards.

The PPP Centre is partly supported by funds from the Government of Canada, and implemented through the Recipient Executed Trust Fund (RETF), the objectives of this project being:

- Help Indonesia in filling the infrastructure gap;
- Support the flow of private financing in to infrastructure;
- Develop institutional capacity for legal and regulatory frameworks; and
- Increase the use of the financing model of private, public partnerships to develop infrastructure.

This ESMF is to support GCA's who plan to submit PPP projects for funding from the IIDFTF to assure compliance with national regulations, and to effectively screen their proposed actions against the World Bank Safeguards' (WBS), to ensure that the ES components of the proposed PPP projects match with the expectations for funding support.

On January 20, the day before the "consultation", several NGOs received by email from PT. Hatfield Indonesia, a 161 page copy of a draft "Environmental and Social Management Framework for the Indonesia Infrastructure Finance Development Trust Fund" written solely in English.

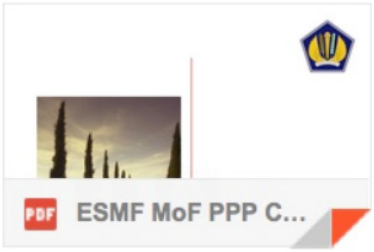
From: **Rima Mayasari** <rima@hatfieldgroup.com>
Date: 2016-01-20 9:02 GMT+07:00
Subject: Dokumen Draft ESMF
To: Email addresses of recipients removed.

Yth Bapak/Ibu,

Melanjutkan email undangan acara "Konsultasi Publik Pembahasan Pengembangan Environmental and Social Management Framework (ESMF)" terlampir draft dokumen ESMF untuk bahan diskusi.

Terimakasih atas perhatian bapak/ibu.

Hormat Kami,
PT Hatfield Indonesia



Environmental & Social Management Framework

For the Indonesia Infrastructure Finance Development Trust Fund

THE MINISTRY OF FINANCE
Directorate of Government Support and Infrastructure Financing Management

Obviously, these circumstances did not allow for anything resembling a meaningful consultation to occur. Those invited who did not attend were sent no follow-up information at what had transpired at the fake "consultation".

The Indonesian Legal Resource Center (ILRC), an NGO which had been engaged in monitoring infrastructure projects, responded with an email stating:

"We welcome the invitation...but we deeply regret that we only recently received the invitation on January 18, 2015 by email, and the ESMF document (Environmental and Social Management Framework *) was received January 20, 2016. Thus, we do not have enough time to study the content / substance of the ESMF document. We are not able to attend the event."*

A very small number of Indonesian NGOs were listed on the World Bank website in the World Bank's "Combined Project Information Documents/ Integrated Safeguards Data Sheet (PID/ ISDS), dated 10 March 2016 as having participated in "consultations." [3]

The Indonesian Finance Ministry even posted photos of the fake consultation on its website:

The World Bank posted on its website a "Combined Project Information Document / Integrated Safeguards Datasheet" for Indonesia's Infrastructure Finance Development Project dated March 16, 2016, indicating that the project would come before the Bank's Board for a vote on 25 April, 2016.

Public Disclosure Co

COMBINED PROJECT INFORMATION DOCUMENTS / INTEGRATED SAFEGUARDS DATA SHEET (PID/ISDS)
APPRAISAL STAGE

Report No.: PIDISDSA15866

Date Prepared/Updated: 10-Mar-2016

I. BASIC INFORMATION

A. Basic Project Data

Country:	Indonesia	**Project ID:**	P157490
		Parent Project ID (if any):	
Project Name:	Indonesia's Infrastructure Finance Development (IIFD) - RE (P157490)		
Region:	EAST ASIA AND PACIFIC		
Estimated Appraisal Date:	12-Mar-2016	**Estimated Board Date:**	25-Apr-2016
Practice Area (Lead):	Finance & Markets	**Lending Instrument:**	Investment Project Financing
Sector(s):	General energy sector (20%), General transportation sector (20%), Rural and Inter-Urban Roads and Highways (20%), General water, san itation and flood protection sector (20%), General finance sector (20%)		
Theme(s):	Infrastructure services for private sector development (50%), Other Financial Sector Development (50%)		
Borrower(s):	Ministry of Finance		
Implementing Agency:	Directorate General of Financing and Risk Management		

osure Copy

Which claimed that there was a consultation on this project on January 21, 2016 and that Indonesian NGOs, including ILRC and Pusaka participated.

5. Identify the key stakeholders and describe the mechanisms for consultation and disclosure on safeguard policies, with an emphasis on potentially affected people.
Consultation on the ESMF were carried out on January 21, 2016 and the document was disclosed on the GoI/MoF entities attended the consultations: Ministry of Finance, IIGF, Ministry of Public Works, Ministry of Transportation/ Indonesia Railway Corporation, PLN, Toll Road Authority

Page 10 of 14

ic Disclosure Copy

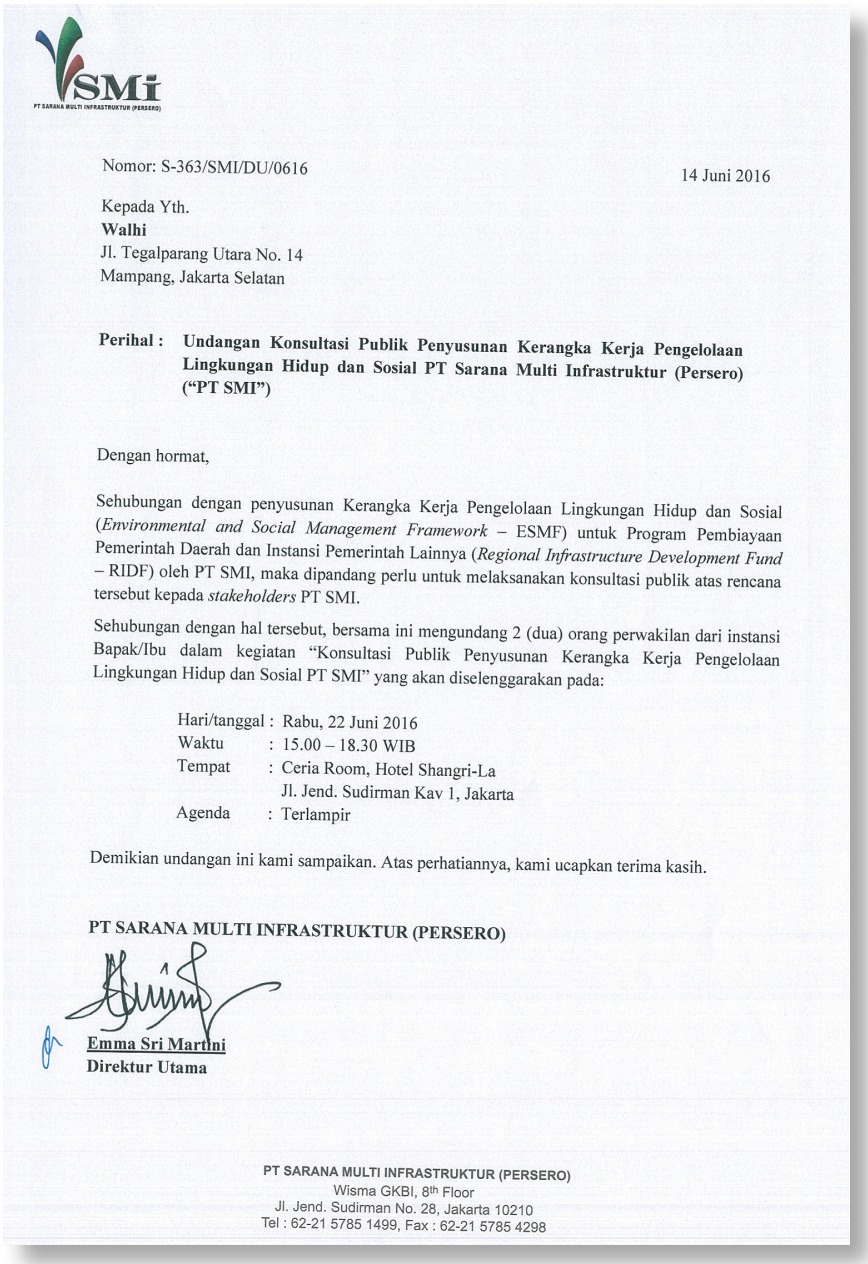
Body, Embassy of Canada, Academia, NGO (LPPSD – Social Research and Development Institution), Indonesia Legal Resources Center, PP Muslimat NU, Pusaka Foundation, Pertamina – Geothermal Energy. A summary of consultations is part of the ESMF (appendix 9)

There were no consultations, only two rapidly set up "socialization" meetings, which did not meet any standard of consultation. To the best of our knowledge, no copy of the draft ESMF has so far been provided in Indonesian language, a necessary step for any sort of public consultation in Indonesia. No actual consultations have been held.

Example 3: PT SMI's Fake Consultation

On June 14, 2016, PT SMI sent invitations for a "Public Consultation on the Preparation of an Environmental and Social Management Framework" on June 22, 2016. Learning from

3) Letter from ILRC.



PT SARANA MULTI INFRASTRUKTUR (PERSERO)

Nomor: S-363/SMI/DU/0616

14 Juni 2016

Kepada Yth.
Walhi
Jl. Tegalparang Utara No. 14
Mampang, Jakarta Selatan

Perihal : Undangan Konsultasi Publik Penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial PT Sarana Multi Infrastruktur (Persero) ("PT SMI")

Dengan hormat,

Sehubungan dengan penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial (*Environmental and Social Management Framework* – ESMF) untuk Program Pembiayaan Pemerintah Daerah dan Instansi Pemerintah Lainnya (*Regional Infrastructure Development Fund* – RIDF) oleh PT SMI, maka dipandang perlu untuk melaksanakan konsultasi publik atas rencana tersebut kepada *stakeholders* PT SMI.

Sehubungan dengan hal tersebut, bersama ini mengundang 2 (dua) orang perwakilan dari instansi Bapak/Ibu dalam kegiatan "Konsultasi Publik Penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial PT SMI" yang akan diselenggarakan pada:

Hari/tanggal : Rabu, 22 Juni 2016
Waktu : 15.00 – 18.30 WIB
Tempat : Ceria Room, Hotel Shangri-La
Jl. Jend. Sudirman Kav 1, Jakarta
Agenda : Terlampir

Demikian undangan ini kami sampaikan. Atas perhatiannya, kami ucapkan terima kasih.

PT SARANA MULTI INFRASTRUKTUR (PERSERO)

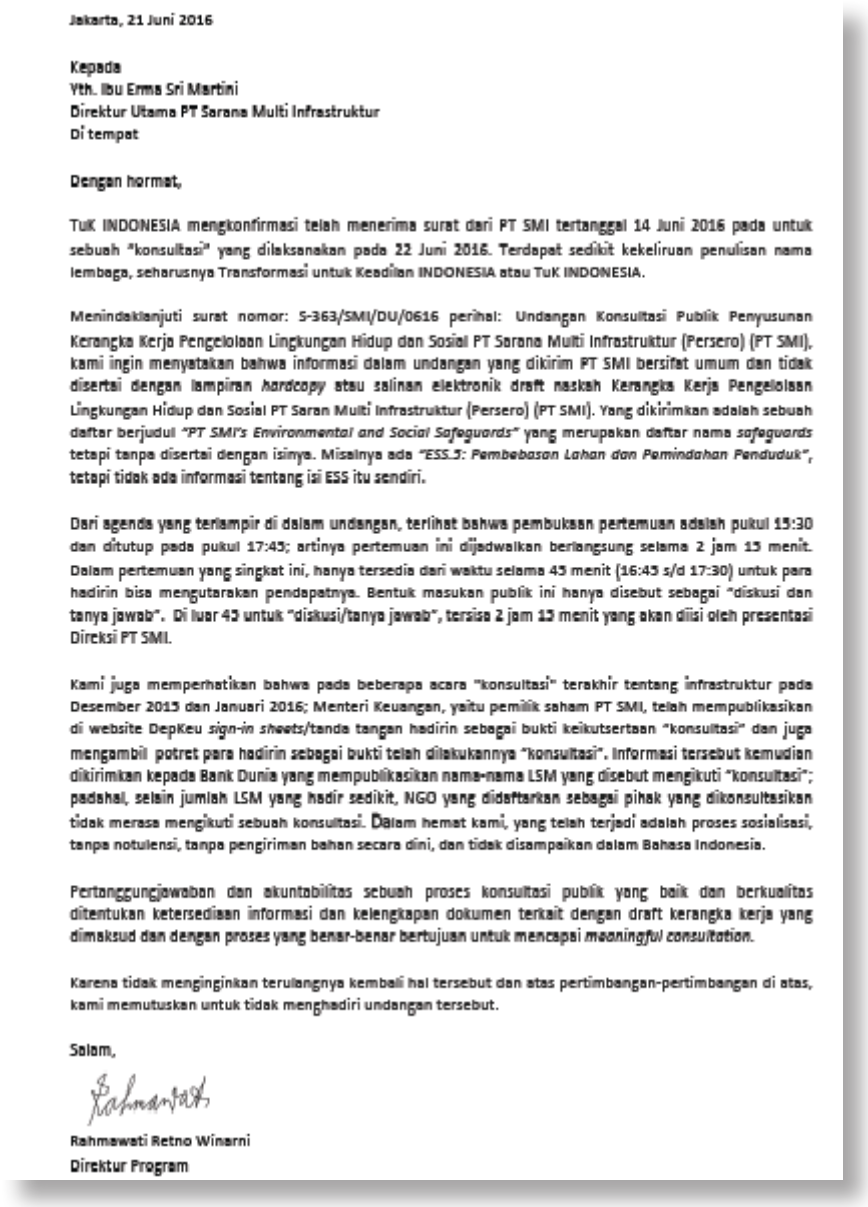
Emma Sri Martini
Direktur Utama

PT SARANA MULTI INFRASTRUKTUR (PERSERO)
Wisma GKBI, 8th Floor
Jl. Jend. Sudirman No. 28, Jakarta 10210
Tel : 62-21 5785 1499, Fax : 62-21 5785 4298

previous experiences, a number of CSOs which were invited decided not to attend the invitation in question.

For example the Director of Programs for the NGO TUK Indonesia, Rahmawati Retno Winarni, who received this invitation, replied to the invitation letter as follows:

"The information in the invitation sent by PT SMI is general in nature and is not accompanied by attached hard copy or electronic copy of the draft Environmental and Social Management Framework PT Saran Multi Infrastruktur (Persero) (PT SMI). What was sent is a list titled "PT SMI's Environmental and Social Safeguards" which is a list of names of safeguards but without information on the contents. For example there is "ESS.5: Land Acquisition and Transfer of Inhabitants", but there is no information about the contents of the ESS itself."



Jakarta, 21 Juni 2016

Kepada
Yth. Ibu Emma Sri Martini
Direktur Utama PT Sarana Multi Infrastruktur
Di tempat

Dengan hormat,

TuK INDONESIA mengkonfirmasi telah menerima surat dari PT SMI tertanggal 14 Juni 2016 pada untuk sebuah "konsultasi" yang dilaksanakan pada 22 Juni 2016. Terdapat sedikit kekeliruan penulisan nama lembaga, seharusnya Transformasi untuk Keadilan INDONESIA atau TuK INDONESIA.

Menindaklanjuti surat nomor: S-363/SMI/DU/0616 perihal: Undangan Konsultasi Publik Penyusunan Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial PT Sarana Multi Infrastruktur (Persero) (PT SMI), kami ingin menyatakan bahwa informasi dalam undangan yang dikirim PT SMI bersifat umum dan tidak disertai dengan lampiran *hardcopy* atau salinan elektronik draft naskah Kerangka Kerja Pengelolaan Lingkungan Hidup dan Sosial PT Saran Multi Infrastruktur (Persero) (PT SMI). Yang dikirimkan adalah sebuah daftar berjudul *"PT SMI's Environmental and Social Safeguards"* yang merupakan daftar nama *safeguards* tetapi tanpa disertai dengan isinya. Misalnya ada *"ESS.5: Pembebasan Lahan dan Pemindahan Penduduk"*, tetapi tidak ada informasi tentang isi ESS itu sendiri.

Dari agenda yang terlampir di dalam undangan, terlihat bahwa pembukaan pertemuan adalah pukul 15:30 dan ditutup pada pukul 17:45; artinya pertemuan ini dijadwalkan berlangsung selama 2 jam 15 menit. Dalam pertemuan yang singkat ini, hanya tersedia dari waktu selama 45 menit (16:45 s/d 17:30) untuk para hadirin bisa mengutarakan pendapatnya. Bentuk masukan publik ini hanya disebut sebagai "diskusi dan tanya jawab". Di luar 45 untuk "diskusi/tanya jawab", tersisa 2 jam 15 menit yang akan diisi oleh presentasi Direksi PT SMI.

Kami juga memperhatikan bahwa pada beberapa acara "konsultasi" terakhir tentang infrastruktur pada Desember 2015 dan Januari 2016; Menteri Keuangan, yaitu pemilik saham PT SMI, telah mempublikasikan di website DepKeu *sign-in sheets*/tanda tangan hadirin sebagai bukti keikutsertaan "konsultasi" dan juga mengambil potret para hadirin sebagai bukti telah dilakukannya "konsultasi". Informasi tersebut kemudian dikirimkan kepada Bank Dunia yang mempublikasikan nama-nama LSM yang disebut mengikuti "konsultasi"; padahal, selain jumlah LSM yang hadir sedikit, NGO yang didaftarkan sebagai pihak yang dikonsultasikan tidak merasa mengikuti sebuah konsultasi. Dalam hemat kami, yang telah terjadi adalah proses sosialisasi, tanpa notulensi, tanpa pengiriman bahan secara dini, dan tidak disampaikan dalam Bahasa Indonesia.

Pertanggungjawaban dan akuntabilitas sebuah proses konsultasi publik yang baik dan berkualitas ditentukan ketersediaan informasi dan kelengkapan dokumen terkait dengan draft kerangka kerja yang dimaksud dan dengan proses yang benar-benar bertujuan untuk mencapai *meaningful consultation*.

Karena tidak menginginkan terulangnya kembali hal tersebut dan atas pertimbangan-pertimbangan di atas, kami memutuskan untuk tidak menghadiri undangan tersebut.

Salam,

Rahmawati Retno Winarni
Direktur Program

The letter also described that the agenda for the scheduled meeting began at 15:30 and ended at 17:45, not what is meant by meaningful consultation, but merely a "socialization" process.

Whereas responsibility and accountability of a proper high quality public consultation process is determined by the availability of information and the completeness of documentation, adequate time for discussion, in order to achieve meaningful consultations.

The above patterns of fake consultations indicate a lack of good faith effort to achieve meaningful consultation and public participation in WB and IFC supported projects.