

COMPARATIVE ASSESSMENT OF ENVIRONMENTAL AND SOCIAL SAFEGUARDS IN INDONESIA'S COUNTRY SYSTEM AND MULTILATERAL DEVELOPMENT BANKS

AN ASSESSMENT ON THE EVALUATION OF THE
INDONESIAN COUNTRY SYSTEM BY
ASIAN DEVELOPMENT BANK CONSULTANTS

JAKARTA, 2017

STATEMENT

This paper is a living document that will be updated and refined according to development and analysis. Due to the fact that the ADB failed to implement meaningful consultation on the draft CSS assessment for Indonesia and failed to fully disclose appropriate documents in a timely manner, this writing is not final and still in the drafting and development and translation process.

This is because only some (about 250 pages) of documents from ADB consultants on "Indonesian Country Systems" finalized on March 19, 2017 (according to the timestamp properties of pdf documents) but were only notified to the public on invitations sent with 3 business days and 6 working days before two meetings called "public consultations" and some (about 100 pages) were published on April 3, 2017, after "consultation" and after the we raised objections. And online "public comment" time is only given 27 working days from 20 March to / by 30 April for the first part of the document and 19 working days for the second part of Appendix 8-11.

For this reason, this paper is called the "30 April 2017 version." It was submitted to the ADB Resident Mission in April 2017. There has been no meaningful response.

[Note from co-authors: This English translation of the paper includes the update of additional inputs including in the comparative matrices on Environment (beginning page 35) and Resettlement (beginning page 62) consisting primarily of additional citations from the ADB's own findings. These matrices form the heart of the proof of lack of equivalence. The ADB's March 2017 CSS Appendices 8 - 11, which contained proof of the lack of implementation of the most basic safeguard requirements (including the lack consideration of, consultation with, or monitoring of impacts on project-affected people, the vulnerable, and women, who make up 50% of those impacted) were not disclosed prior to the "consultation" were only made public after NGO protests and after the so-called "consultation." The updated matrices document in even further detail – using the ADB's own findings - the lack of equivalence/acceptability of Indonesia's CSS with ADB's mandatory Environmental and Involuntary Resettlement Safeguard requirements. Clearly, with 3 or 6 days to analyse 250 pages of materials and with the suppression of all of the field reports assessing Indonesia's track record of implementation prior to the meetings, the meetings in March 2017 were not meaningful public consultations.]

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COMPARATIVE ASSESSMENT
ON ENVIRONMENTAL AND SOCIAL PROTECTION
BETWEEN THE INDONESIAN PROTECTION SYSTEM AND THAT
OF MULTILATERAL DEVELOPMENT BANK
(AN ASSESSMENT ON THE EVALUATION OF INDONESIAN PROTECTION
SYSTEM BY ASIAN DEVELOPMENT BANK CONSULTANTS)

EXECUTIVE SUMMARY

1. **Assessment and evaluation process of CSS Indonesia have violated ADB Safeguards,** with the lack of meaningful public consultation since its formulation process in 2013-2017;
2. **The “public consultation” process held on March 30, 2017 has violated the meaningful consultation requirement of ADB.** The CSS seminar held on Thursday, March 30, 2017 was labelled as a public consultation for NGOs and academia, but it was not a meaningful one. The process and meetings with other parties, for instance the government or private sector, also cannot be viewed as meaningful consultations. As seen from:
 - 1) Hundreds of new “consultation” documents which had just been uploaded starting from March 19, 2017;
 - 2) The fact that no complete documents were ever presented to the public prior to the so-called “consultation”, which consisted of all field study results, where annex 8-11 (of more than 100 pages) cannot be found;
 - 3) There are significant differences of meaning between the uploaded English and Indonesian versions, until now;
 - 4) Prior to the so-called “consultation” seminar, CSS implementation assessment remained confidential (annex 8-11), while it is supposedly an integral part of equivalence assessment as required by ADB;
 - 5) ADB findings and analysis on CSS Indonesia are supposed to be presented for consultation. However, ADB claims to have no responsibility on the contents (accuracy, reliability, etc.) of the uploaded items on CSS assessment. Thus, there have been no ADB analysis that can be commented upon as of yet;
 - 6) The invitation and link to the materials were sent 3 working days before the “public consultation” in Makassar (South Sulawesi) and only 6 working days before the “public consultation” in Jakarta;
 - 7) “Public Consultation(s)” were only held in two cities;
 - 8) Public consultations did not involve victims or NGOs that provided legal aid for victims of environmental issue and forced displacement;
 - 9) No gender analysis on policy or CSS assessment;
 - 10) CSS assessment and “equivalence” matrix do not describe the actual situation and facts on environmental destruction and pollution as well as eviction that happened in Indonesia. (For instance: in Energy and Water Sectors);
 - 11) No analysis on the involvement of security apparatus that play a big role in eviction.

3. **120 consultation days.** ADB's meaningful consultation process requires a project with "significant" impact to give 120 days for the public to comment. Decision on CSS will bring a much bigger impact than any single project, since it will apply to all projects. ADB has drafted hundreds of pages of materials since 2013 without any public consultation. Due to its tremendous impact and hundreds of pages of materials, it will require at least 120 days for the public to comment before meaningful consultation is held. The argument that "this is just a Technical Assistance project which does not need a long time for public comment" is implausible.

Due diligence on SPS ADB requirement and obligation requires that there should be public comment and meaningful consultations on the draft of CSS assessment which can only be given upon:

- a. **Official ADB materials and ADB** assessment result and not upon materials drafted by consultants with a very poor quality which causes ADB to refuse to "*endorse its accuracy, reliability, or timeliness of the materials and therefore will not be liable in any capacity for damages or losses that may result from the use of the materials*". Public consultations on CSS should be upon ADB assessment itself where *ADB could guarantee and take responsibility* on its "accuracy, reliability and potential impact";
- b. **Presented materials should be given in a form and language(s) understood by the local community.** In this regard, the materials should be translated into Bahasa Indonesia with good quality translation, unlike these materials where translation process causes many reverse and different meanings.
- c. **High quality and rigorous analysis that give careful and meaningful response to the implementation track record of environmental and social protection as an integral part of equivalence assessment.**

It is obvious from this draft that the materials should be presented on time. Whereas for a project that has significant impact, for instance impact due to the SPS ADB replacement with CSS, should at least allocate 120 days for public comment before reaching any decision.

Based on the aforementioned reasons, one could conclude that the activities that have been organized up until now cannot be considered as meaningful public consultation, since ADB Safeguards itself requires a CSS evaluation process to be conducted in a participatory manner through meaningful consultation and information disclosure.

The process and substance of CSS "assessment and appraisal" up to now have violated ADB requirement.

From detailed assessment and appraisal result, we could see that CSS Indonesia is not consistent with ADB safeguard, and thus, unacceptable within the context of SPS ADB. Therefore, we hereby convey our objection and rejection upon the CSS assessment conducted by ADB consultants and **WE DEMAND THE REJECTION OF CSS INDONESIA IMPLEMENTATION** for any ADB projects, and to comply with the mandatory ADB Safeguards that should be consequently applied in a consistent manner.

I. INTRODUCTION

International Financial Institutions (IFIs) are international organizations, with members from state governments, that provide loans for developing countries or active private corporations in a developing country. The most prominent international financial institutions are the World Bank, the International Monetary Funds (IMF), the Asian Development Bank (ADB) and now also the Asian Infrastructure Investment Bank (AIIB). These institutions, except for AIIB, are known as Multilateral Development Banks.

At the beginning, when providing loans for receiving countries, MDBs have no environmental and social requirements (safeguard) in assessing the loan request, terms and conditions, delivery and evaluation of projects financed from such loans. MDBs just provide the funds and the receiving countries implement their projects based on its legislation. As a consequence, many mega-projects cause ecological damage and social impact for the community where such project was conducted. Examples of development impact from the 80s are as follow:

1) Polonoroeste Infrastructure Development in Brazil

Polonoroeste Project is a road and housing development project for plantation workers that went through the protected forest in Amazon. This project has caused wide forest destruction in Amazon, displacement of indigenous people and the spread of life-threatening communicable diseases.

2) Sardar Sardovar large dam in India

Sardar Sarovar dam of Narmada river, India, displaced more than 250 hundreds thousands indigenous people, ruin the ecosystem and forest for development that went against the people's interest.

3) Transmigration Project in Indonesia

Transmigration project in Indonesia has a simple goal, to relocate millions of poor people from high density areas -- Java, Lombok, Bali, and Madura—to other islands, for instance Kalimantan, Papua, and Sumatera, which are the location of 10 percent of the world's rain forest. Besides, those areas have customary lands and forest inhabited by various indigenous and non-Javanese tribes. This transmigration program has caused the destruction of tropical forest, triggered conflict with indigenous people, for the sake of maintaining Soeharto's power, as well as changed the population demography.

These gigantic projects have triggered reaction and resistance in many countries. People's movement joined by activists from MDBs funder countries, including the US, Europe, Japan and Australia. This resistance movement encourage the adoption of Safeguards amongst MDBs, which is a mandatory requirement on process and substance of environmental

assessment, information disclosure, public consultation process and protection of the environment, forest, biodiversity and rights of the affected community for projects financed by MDBs. In general, safeguards aimed to require borrowing countries to guarantee and provide protection towards the environment and the community, since even when several protection systems already exist, yet those are still insufficient and incomplete. From experience in implementing large project financed by MDBs, it is known that national protection quite often cannot guarantee protection or often is enforced in ways that cannot guarantee no disadvantages for the people especially vulnerable groups or women, and not enforced in ways that protect the environment.

MDBs Safeguards are important because, among others, MDBs funds have expanded the project compared to the size of the project without MDBs funds. Automatically, bigger projects will give more impact to the environment and the community and in particular to the vulnerable groups, including the poor, indigenous people, women and persons with disability. In addition, MDBs acknowledge an imbalance in the relationship within the client/borrower country between affected citizen and the State as well as between citizen and project implementer (either the government or a private entity). This imbalance in the relationship could instigate human rights violations, for instance curtailed freedom of opinion/expression, not-independent justice system and high level of corruption. Moreover, the rights of vulnerable people can be ignored within this context.

Safeguards were initially drafted by the World Bank and then followed by other International Financial Institutions that provide financing support for development projects in various countries. The World Bank has social and environment security policies – including OP 4.01 on Environmental Assessment, OP 4.04 on Natural Habitat, OP 4.09 on Pest Management, OP 4.10 on Indigenous People, OP 4.11 on Physical Cultural Resources, OP 4.12 on Forced Displacement, OP 4.36 on Forest, OP 4.37 on Dam Security – and OP 4.00. on the Trial Policy on the Use of Borrower System for Social and Environmental Security ("Country Safeguard System") and the safeguards will be replaced with Environmental and Social Framework (ESF) system as per 2018 but will still be applicable in all projects planned before the approval of ESF. The IFC recognizes eight Performance Standard (PS) which are (PS 1: Environmental and Social Environment Assessment and Management System; PS 2: Worker and Working Environment Condition; PS 3: Pollution Prevention and Mitigation; PS 4: Health, Safety and Security of the Community; PS 5: Land Acquisition and Resettlement; PS 6: Biodiversity Conservation and Sustainable Natural Resources Management; PS 7: Indigenous Peoples; and PS 8: Cultural Heritage). While, in 2009, the ADB combined all protection requirements into one policy **“Safeguards Policy Statement (SPS)”** which consist of three parts of Involuntary Resettlement, Indigenous Peoples, and Environment.

From the perspective of civil society, there has been many people's movement since the 80s, either at donor countries or borrowing countries, to defend people's rights when facing MDBs, including by using MDBs Safeguards – by disseminating, monitoring, and raising the issue of violations, or filing a demand --. However, quite often the existing safeguards are not implemented or implemented only at the surface. Yet, the presence of safeguards and its handling mechanism, e.g. CAO of the IFC, Inspection Panel of the World Bank, can be used to terminate any projects that threaten community's life, destroying the forest or threaten the sustainability of ecosystem. Safeguards and its mechanism can also be used to transform the project so it will not damage the community and minimize

environmental destruction. The provision on safeguards has encouraged MDBs and borrowers to avoid its use. Thus, the term “country systems” was devised for MDBs financing that reinstate the system of the 80s, of using the legal system of the borrowing country (CSS/Country Safeguard Systems).

Efforts to push forward the use of CSS have been performed by the World Bank since 2005, through its Pilot Program for Use of Country Systems, and by approving the Environmental and Social Framework (ESF) which will replace the safeguards in 2018. Thus, the effort will make it possible for the World Bank-financed projects to use CSS. ADB also pushes forward the use of CSS in its projects. But before ADB use CSS, the safeguard systems in a borrowing country should be proven to have ***equivalent level of protection with ADB safeguards system including in good implementation track record***.

Therefore, the Civil Society Coalition for the Monitoring of Infrastructure views the importance of analysing how CSS Indonesia provides environmental and social protection in development projects – in particular in infrastructure development. This writing is going to discuss CSS Indonesia and its relation to the ADB safeguards, in order to answer the following questions: whether the CSS Indonesia assessment process as conducted by ADB consultants has complied with the ADB Safeguards provision? And whether CSS Indonesia has the same level of protection with the ADB Safeguards System? From the comparative analysis between CSS and ADB Safeguards Policy, we could recommend to either retain the ADB Safeguards Policy or use CSS Indonesia.

II. ADB EVALUATION PROCESS ON CSS INDONESIA

Activists from many countries – India, Indonesia, Brazil, African countries, South and South East America, Asia, and MDBs shareholders like the US, Europe, and Japan, have united in the issue of the use of CSS and underlined that all of them support the strengthening of the “national system”, and demand MDBs not to weaken its own safeguards by using a weaker country protection.

The issue of the use of CSS by MDBs is getting more controversial because it implies that there is an interest to give loans for clients – beyond the safeguards mechanism – regardless of whether or not it violates the mandatory safeguards requirement of MDBs, causes environmental destruction, and negatively affects the community, particularly the vulnerable groups and women. The World Bank defines a “country system” as “a country's legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules, and procedures.”¹ In principle, CSS is a legal and institutional framework and an “*implementation track record*” of a country, from the national, regional, or sectoral level, including the prevailing laws, regulations, and procedures in a country related to environmental and social protection. In the meantime, there were changes in ADB safeguards policy since 2006 to 2009, and there was a

¹The World Bank, OP 4.00 - Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects, footnote 3, March 2005 at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20403230~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

debate on a proposal to put the use of CSS in ADB safeguards requirement. ADB² defines CSS as follows:

“[Country Safeguard System] CSS refers to a country’s legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures that pertain to the safeguard policy areas.”³

Based on various analyses and debates amongst civil society actors on the use of CSS compared to MDBs safeguards, the civil society demands as follows:

- (1) The use of CSS should not be performed in countries led by military government or with human rights or corruption track record. And **SHOULD NOT** be used to transfer MDBs responsibility to authoritarian regime.
- (2) Important preconditions for the use of CSS are the following:
 - a. The country should have a functioning independent judicial system;
 - b. The country should adhere to the prevailing legislation that protects the rights of vulnerable communities and the environment.

It can be interpreted in a way that, a country with a weak legal system or a poor law enforcement on transparency, corruption, environmental protection, or social welfare, will face difficulties in ensuring protection for the life and livelihood of community affected by a project. In countries with high level of corruption, there is a concern that the use of CSS would lessen IFI’s due diligence, consultation, supervision and reporting requirement which eventually could contribute to the rise of corruption and possess significant dangers for the community and the environment.

2.1 The Use of CSS in ADB Project

ADB Safeguards, when implemented consistently and consequently, are an example of a relatively strong safeguard. An ADB safeguard has been reviewed after a long deliberation process (2005 – 2010) and now becomes the “strongest” of its kind compared to other MDBs, including the one by AIIB that is also based in Asia. However, these strong ADB safeguards are not well implemented. ADB safeguards application is still far behind from the policy itself, and as a result, still generate victims from development project financed by ADB. Yet, safeguards provide us with the means to correct and control matters that will be damaging to the community and the environment.

ADB has 3 (three) categories of safeguards: (1) Environment; (2) Displacement and (3) Indigenous People. **ADB clients may obtain approval to use the “country system”** for ADB-financed projects, as long as the country fulfills the following conditions and procedures:

²ADB Safeguards Policy Statement Bahasa Indonesia version, <https://www.adb.org/sites/default/files/institutional-document/32699/files/safeguard-policy-statement-id.pdf>

³ ADB, Safeguard Policy Statement, 2009, pg 29

1. ADB clients should select which ADB safeguards out of the (three) categories will be compared to a country system. Clients could also choose whether it would like to be assessed for its “country systems” for the overall projects performed in the respective country or respective region (province, etc.) or for one particular sector.
2. Before ADB approves the use of the “country system”, ADB should perform 2 (two) types of evaluation, which the result shall be used as a basis for approval or rejection on the use of a country system, those are:
 - a. **Demonstrate** that the requirements under “a country system” is equivalent with ADB requirements in terms of power/size, which are:⁴

*“(ii) Criteria [Original version: “prerequisites” not “criteria”]⁵ for the use of CSS – review on its equivalence and acceptance. The application of CSS in ADB-financed projects is **not automatic or mandatory**. ADB may consider to apply borrowing country system for protection, in order to identify and to manage social and environmental risks related to ADB-financed projects at the national, sub-national, sectoral, or institutional with notes [Original version: “provided that”] ⁶(a) borrowing country’s protection system is **equivalent with ADB protection** (equivalence assessment), which means the protection system is designed to achieve the objectives and adhere to the **scope, triggers, and applicable principles**⁷ set out in this ADB protection policy statement (SPS) (pages 16-18)”*[Notes: Odd translation is found in this paragraph; see footnotes-authors.]

- b. **Demonstrate that implementation track record** for the safeguard system in the country is acceptable:

“(b) the borrower has the acceptable implementation practice, track record, and capacity (acceptability assessment), and commitment to implement the applicable laws, regulations, rules, and procedures in the country, specific sector, or agency concerned.”⁸

The evaluation process should be conducted in a participatory manner through a “meaningful consultation” and information disclosure as explained below. The result of both evaluations will be used to consider whether it will be appropriate to use a “country system” to replace the formal ADB Safeguards requirements. The use of a “country system” is prohibited unless ADB could “ensure that the implementation of country systems in ADB projects will not compromise the goal and policy principles of ADB.”

Disclosure and consultation. Any recommendation to strengthen and use CSS and

4 The following is the official translation of ADB Safeguard Policy Statement, Bahasa Indonesia version, page 31. However, there are many mistranslations and unclear translations. The English version is the standard used by ADB in the case of different interpretation. The English version can be found here: <https://www.adb.org/documents/safeguard-policy-statement?ref=site/safeguards/main>]

⁵ Original version, in English: “Prerequisites for the use of country safeguard systems” where “prerequisite” = should be translated into “*prasyarat*” in Bahasa Indonesia), not “criteria”.

⁶ Different translation with the English version: “provided that” which generally translated as “*asal*” and not “*dengan catatan*” (with notes) – which means that there should be equivalent between SPS & Country System.

⁷ The English version: “the CSS is designed to achieve the objectives and adhere to the policy scope, triggers, and applicable principles set out in this SPS.” Page 24 of English version.

⁸ ADB, Safeguard Policy Statement, para 68(ii)b.

its justification should as far as possible presented in the State partnership strategy document or its progressive report. Documents relevant to the State partnership strategy should be disclosed in line with requirements as stated in ADB's Public Communication Policy (2005). After completion, equivalence and acceptability assessment at the national, sub-national, sectoral or institutional level should be documented and disclosed at ADB website to gather public comments. ADB shall organize consultation workshops at the domestic level in order to gain input and feedback from stakeholders, including the government and NGOs. Final report on equivalence and acceptability assessment shall be revealed at ADB website once drafted. The updated assessment should reflect changes in CSS issue, if any, which will also be uploaded in ADB website after completion. Other issues related to the acceptability assessment is one of the normal elements of disclosure and consultation process that should be conducted for project preparations.⁹”(SPS Bahasa Indonesia version, page 95)

2.2 What happened in the Evaluation Process on CSS Indonesia by ADB?

According to a document that has just been uploaded to the ADB website, Indonesian National Development Planning Agency (Bappenas) has, since 2013, asked ADB to perform CSS assessment for two types of safeguards: **(1) Environment and (2) Resettlement**, but did not ask assessment for the third type on (3) Indigenous People protection. This request is made with the expectation that **all ADB projects in Indonesia** will be using the country systems for environmental protection and resettlement, and will no longer have to use ADB safeguards.

From the CSS evaluation process, we have encountered the following:

(1) The evaluation and assessment process on CSS Indonesia has violated ADB Safeguards, in the sense that the process which has been ongoing since 2013 has yet to have meaningful consultations.

We received information concerning CSS Evaluation by ADB from NGO Network. of the Philippine at the end of October 2016. Such information was then followed up by several NGOs in Indonesia by sending a written request for information, e.g. request sent by ILRC.

⁹ The English version: “the borrower has the acceptable implementation practice, track record, and capacity (acceptability assessment), and commitment to implement the applicable laws, regulations, rules, and procedures in the country, specific sector, or agency concerned.



It indicates that there was no public notification to the public from 2013 to 2016 that ADB was conducting evaluation on CSS Indonesia. After drafting its analysis for three years, on March 21, 2017, several civil society organizations received an electronic invitation from Bappenas via email, dated March 16, for a meeting on March 30 in Jakarta and March 27 in Makassar. It shows a significant discrepancy, where ADB had three years to draft its materials, yet civil society was only given 3 and 6 working days to analyze the materials (the materials shared to civil society was incomplete).

(2) The Bahasa Indonesia Version Eliminated Information Stating that there had been NO CONSULTATION

Although, there is a requirement to have public consultation and despite the fact that NGOs sent a letter on this issue to ADB on November 2016 requesting the draft/information about this process, according to Annex 1 (para 24, original version, in English) of ADB assessment document ADB admits that there is **no “disclosure”**

[information sharing with the public] or “public consultation including with NGOs” during years of process to prepare for this “Final Report Draft”.

Strangely, the word “NO” has been removed from the sentence on public consultation or information disclosure in the Bahasa Indonesia version (see Annex 1, page 9, para 24), to be interpreted as if public consultation *did take place*.

English Version	Bahasa Indonesia Version
“Disclosure and public consultations with various stakeholders including nongovernment organizations were not carried out during the preparation of this draft final report. However, consultations conducted through workshops or focus group discussions were designed as an integral part of the equivalence and acceptability assessments.”.	“Pengungkapan dan publik konsultasi dengan berbagai pemangku kepentingan dilakukan selama penyusunan Laporan ini. Konsultasi yang diadakan melalui lokakarya atau diskusi kelompok terfokus (FGD) dirancang sebagai bagian integral dari kajian kesetaraan dan akseptabilitas. ” (“Disclosure and public consultation with various stakeholders were carried out during the preparation of this draft final report. Consultation conducted through workshops or focus group discussions were designed as an integral part of the equivalence and acceptability assessments.”

The table above shows the difference between the evaluation report in English and Bahasa Indonesia. We believe that this is not merely a translation error, but an ill-faith to manipulate information for the public. If consultation had really been performed, information about time and date, participant and minutes of the consultancy meeting should be enclosed as part of this report.

In addition to translation manipulation concerning the consultancy status and process, there are other examples of equal importance. For instance, there is a removal of the term explaining that special attention should be given to the protection of resettled communities because it is an ADB-financed project and that compensation should be given to a community that has no legal proof of land ownership but are being resettled.

Indeed, according to analysis made by ADB consultants, “Indonesian Legal Framework do not give assistance/compensation to people who are being resettled while has no legal ownership over the land.”¹⁰

This analysis poses an appalling threat for Indonesian people since according to government analysis, 55% of total land in Indonesia are not certified, which means majority of Indonesian community have no land certificates.¹¹ According to IFAD from the UN, only about 25% of

¹⁰ ADB, Country Safeguards Review: Consultation Draft, March 2017, p.10, para 28

¹¹ Jakarta Post, Government Eyes Corporate Money to Promote Land Reform, March 21, 2017; Tempo, Only 45 Percent of Land in Indonesia has Certificates: BPN Head, 16 August, 2016; According to the UN’s International Fund for Agricultural

the total agricultural lands are certified and other research shows that majority of vulnerable people (which could reach to 97% in several regions), including the poor, women, and indigenous people, have no land certificates.¹²

Yet, ADB requires protection for community who has no legal land ownership or land certificates and ADB also requires that people with no certificates, when being resettled or evicted, still need to have their livelihoods restored, or if they are considered poor, they should have better income after resettlement. Another ADB requirement stated that for any resettlement/eviction, compensation should be provided immediately before resettlement. Thus, one of ADB mandatory requirements is:

ADB Safeguard Policy Statement, Principle 3, Involuntary Resettlement:

*“3. Improve, or at least restore, the livelihoods of **all displaced persons** through (i) **land-based resettlement strategies** when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) **prompt replacement of assets with access to assets of equal or higher value**, (iii) **prompt compensation at full replacement cost** for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.*

ADB consultants directly changed the meaning of this important principal through their process of translation. In several parts of the “CSS assessment”, ADB consultants completely revised and weakened this key principle – one that is usually violated under CSS in Indonesia - by omitting the word “all” (“all” displaced persons – i.e. including those without title to land), by omitting the word “prompt” (“prompt” replacement of assets; “prompt” compensation) and replacing the term for those evicted by a project (“displaced” in Principle 3) with a weaker and passive word which means “people who accidentally were moved” [“terpindahkan”], as if those who are evicted by a project proponent, are unintentionally “moved”.¹³

After being weakened by ADB consultants through translation, this watered-down version of Principle 3 was then used as the yardstick by which to measure CSS Indonesia “equivalence” with ADB SPS requirements. ADB consultants then expressed their opinion that Indonesia CSS is “equivalent” with the aforementioned ADB requirement, even though it has been proven that there is a massive violation of ADB requirements where community who have no land certificates are not given compensation for their loss of non-land assets, further, the

Development, IFAD, “Only about 25 per cent of the traditional agricultural land parcels have been formalized with land certificates; According to the Central Bureau of Statistics, there are about 25.5 million farmer households which were considered very poor and 20 per cent were headed by women.” Small farmer poverty amidst Indonesia’s rising prosperity (Issue #26 - 2014); 97 *Persen Tanah Warga Prabumulih* tak Bersertifikat (97% of land belong to Prabumulih people are not certified)”, Sriwijaya Post, Palembang, Sumatra, 14 April 2003.

¹² Jakarta Post, Government Eyes Corporate Money to Promote Land Reform, March 21, 2017; Tempo, Only 45 Percent of Land in Indonesia has Certificates: BPN Head, 16 August, 2016. According to the UN’s International Fund for Agricultural Development, IFAD, “Only about 25 per cent of the traditional agricultural land parcels have been formalized with land certificates. According to the Central Bureau of Statistics, there are about 25.5 million farmer households which were considered very poor and 20 per cent were headed by women.” Small farmer poverty amidst Indonesia’s rising prosperity (Issue #26 - 2014); 97 *Persen Tanah Warga Prabumulih* tak Bersertifikat” (97% of land belong to Prabumulih people are not certified), Sriwijaya Post, Palembang, Sumatra, 14 April 2003.

¹³ This is the translation of Principle 3 of the ADB SPS by ADB consultants *SPS ADB, Prinsip 3: “Meningkatkan atau setidaknya memulihkan, mata pencarian [istilah “semua”/“all” dihabus] orang yang terpindahkan dengan [istilah “segera” / prompt dihabus] memberikan ganti rugi atas aset dengan akses atas aset yang bernilai setara atau lebih tinggi...”*

assessment by ADB Consultants on cases in the field also found that compensation is not determined based on market price and those evicted are not being paid “promptly”, and eviction happened.

These are just few examples on the poor translation quality and ill-faith to manipulate information for the public through translated materials.

It means that the **CSS Indonesia “assessment” that has been published at the ADB website in Bahasa Indonesia should be retracted** and its original version **should be professionally translated** so its original meaning *will not be changed because of translation*.

(3) INCOMPLETE DOCUMENTS (Annex 8 to 11 on Field Assessment on CSS Implementation were not shared)

Written request for information regarding CSS evaluation draft document has been submitted on November 1, 2016, yet a couple of documents have just been uploaded on March 19, 2017. The document titled “Country Safeguards Review: Consultation Draft” mentions that the document has 11 annexes, as listed below:

ANNEX

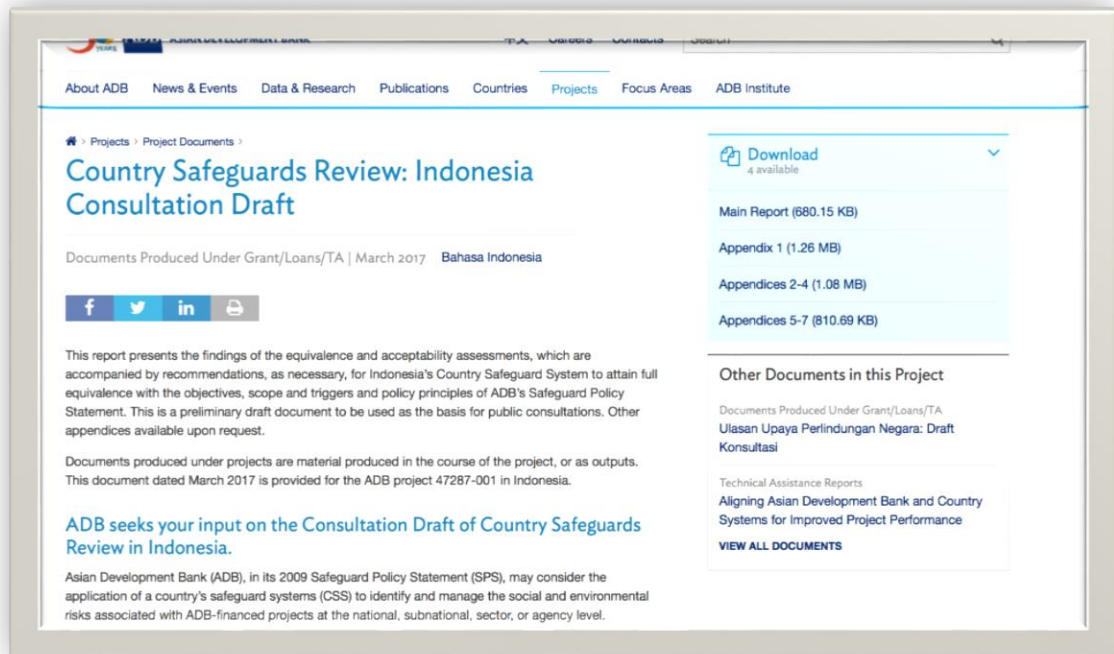
1. Methodology
2. Indonesian Legal framework for Environment
3. Equivalence Assessment for Environmental Safeguards
4. Equivalence Assessment Matrix on Environmental Safeguards
5. Indonesian Legal Framework for Involuntary Resettlement
6. Equivalence Assessment for Involuntary Resettlement Safeguards
7. Equivalence Assessment Matrix for Involuntary Resettlement Safeguards
8. Acceptability Assessment for Environmental Safeguards
9. Acceptability Assessment for Environmental Safeguards by Sector
10. Equivalence Assessment for Involuntary Resettlement
11. Acceptability Assessment for Involuntary Resettlement by Sector

LAMPIRAN

1. Metodologi
2. Kerangka Hukum tentang Lingkungan Hidup Indonesia
3. Pengkajian Kesetaraan Upaya Perlindungan Lingkungan Hidup
4. Pengkajian Kesetaraan Matriks Upaya Perlindungan Lingkungan Hidup
5. Kerangka Hukum Indonesia tentang Pemukiman Kembali Tidak Secara Sukarela
6. Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela
7. Pengkajian Kesetaraan Matriks Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela
8. Pengkajian Akseptabilitas Tentang Upaya Perlindungan Lingkungan Hidup
9. Pengkajian Akseptabilitas Tentang Upaya Perlindungan Lingkungan Hidup Per Sektor
10. Pengkajian Kesetaraan Pemukiman Kembali Tidak Secara Sukarela
11. Pengkajian Akseptabilitas Pemukiman Kembali Tidak Secara Sukarela per Sektor

Informal translation & update from Bahasa Indonesia version - updates are still in process .

However, when we checked the available print out document, we could only find Annex 1 to 7.



Questions remain why Annex 8 to 11 that are all related to “acceptability assessment” – which involves analysis on implementation “track record” of the country system in Indonesia were not uploaded simultaneously with the other Annexes? And whether those annexes are deliberately not uploaded to maintain its confidentiality from the public? It is obvious, that without this information consultation process cannot take place and this information was not published before ADB organized the so-called “public consultation” meetings.

After civil society organizations express their objection on the missing Annex 8-11 from uploaded document during the CSS Seminar organized by ADB and Bappenas on March 30, 2017, a couple of days later those Annexes 8-11 were uploaded at ADB website. It becomes obvious that there was no good-faith to provide complete information for the public and any public inputs or comments received beforehand at the first stage was not informed completely.

(4) Track Record Assessment on 4 (four) Priority Sectors is Treated Confidentially

ADB performed assessment on national environmental and resettlement protection system in 4 (four) priority sectors as follow (1) **water resources**; (2) **road and transportation**; (3) **energy**; and (4) **urban/settlement planning**, by analysing

laws/government regulation, etc., analysing “key regulatory bodies” including the Ministry of Environment and Forestry (KLHK) and other units assigned for EIA, strategic environmental assessment and prevention as well as mitigation of pollution; the Ministry of Land & Spatial Planning/the National Land Agency (BPN); National Environmental Agency/Sub-national Environmental Agency (BLH/BLHD); Indonesian Society of Appraisers (MAPPI) and also analysing 4 (four) projects and relevant agencies (Table 1, page 6) below:

a. Sector: Water resources – **Karian Multipurpose Dam in Banten**

Agencies: Water Resources Directorate General (Dirjen SDA); Sub-national Technical Office of Cidanau-Ciujung-Ciduran Rivers Area (Balai Besar Wilayah Sungai Cidanau-Ciujung-Ciduran/BBWS-3C)

b. Sector: Road and Transportation – **Palembang-Indralaya Highway**

Agencies: Road Development Directorate General (Dirjen Bina Marga), Land Inventory and Acquisition Task Force (Satker Inventarisasi dan Pembebasan Tanah), land acquisition for Palembang-Indralaya highway/PT HKI, State-owned highway developer and operator.

c. Sector: Energy – **Electricity Transmission line SUTET GITET 500kV, Cilacap, Central Java**

Agencies: National Electricity Company (PLN) HQ, PLN UIP VII

d. Sector: Urban Planning and urban settlement sector – **Ciliwung River Normalization – Pesanggrahan, Rempoa Vertical Housing Development**

Agencies: Public Development Directorate General (Dirjen Cipta Karya), the Provincial Office of Public Work and Housing of Jakarta (PUPR, DKI Jakarta)

ADB performed two types of assessment of (1) “Equivalence Assessment” – to establish whether the Indonesian system is equivalent with ADB requirement for the Environment and Resettlement and (2) “Acceptability Assessment” – to establish that Indonesia has a good implementation “track record” on environmental protection and protection of the rights of the resettled community, according to the prevailing laws/government regulations and equivalent with ADB requirement.

However, as mentioned above, assessment and case analysis on these four sectors are not uploaded, particularly on implementation of environmental protection and protection of the rights of the resettled community.

After civil society organizations express their objection on the missing Annex 8-11 from uploaded documents during the CSS Seminar organized by ADB and Bappenas on March 30, 2017, a couple of days later those Annexes 8-11 were uploaded at ADB website. It became obvious that they lacked good-faith in providing complete information for the

public and any public inputs or comments received during the first stage were incomplete.

(5) ADB does not take responsibility over “ADB’s CSS assessment result”

According to ADB requirements, “**ADB needs to ensure** that the implementation of the country protection system in ADB projects does not neglect the objectives and policy principles of ADB” and “**ADB is responsible** to assess and determine country system equivalence concerning its safeguards and adequacy of practice and capacity of implementation of the borrowing country.”¹⁴

It means that ADB should be responsible over the overall “country system” assessment and should report its finding and analysis to the ADB Board of Directors on a “country system.” Nevertheless, the statement below can be found at the front page of “Country Safeguards Review: Consultation Draft, March 2017”:

“These materials are prepared by consultants; as such, ADB does not endorse the accuracy, reliability or timeliness of the Materials and therefore will not be liable in any capacity for damages or losses to the user that may result from the use of or reliance on the Materials. ADB shall not be responsible for any error, omission or inadvertent alterations that might occur in the disclosure of content on its website.”

It is unclear when ADB will issue its own assessment on the Indonesia country system where ADB could “guarantee the accuracy and reliability” of the materials and take responsibility over its contents. It is obvious that in order not to infringe on ADB SPS requirements, ADB needs to publish its CSS Indonesia analysis and take full responsibility over it. Furthermore, meaningful consultations should be conducted on that analysis. To date, both things have not happened. So, if these materials are presented to ADB Board of Directors to issue a resolution, it will be a major violation against ADB SPS requirement.

(6) Very Narrow Time Slot for Giving Input

The drafting process on CSS analysis began in 2013 through a project named “*Technical Assistance: Republic of Indonesia: Aligning ADB and Country Systems for Improved Project Performance*”, Project: 47287-001, December 2013. This project received USD 1.5 million from ADB – and it was unclear whether it was a grant or a loan. USD 500,000 of these funds were then allocated to hire foreign consultants; and USD 386,000 for “national consultants”. So, the CSS Team cost USD 1.5 million for work conducted for more than 3 years.

Hundreds of pages of analysis were presented during the ADB “consultation” on March 30, 2017, which consisted of:

Document Title		Number of page(s)
Country Safeguards Review		31
Annex 1	Methodology	24

¹⁴ADB, “Safeguards Policy Statement”, 2010. Para 68, p. 31.

Annex 2	Indonesian Legal Framework for Environment	5
Annex 3	Equivalence Assessment for Environmental Safeguards	28
Annex 4	Matrix of Equivalence Assessment Matrix for Environmental Safeguards	78
Annex 5	Indonesian Legal Framework for Involuntary Resettlement	3
Annex 6	Equivalence Assessment for Involuntary Resettlement Safeguards	17
Annex 7	Equivalence Assessment Matrix for Involuntary Resettlement Safeguards	75
Annex 8	Acceptability Assessment for Environmental Safeguards	No document
Annex 9	Acceptability Assessment for Environmental Safeguards by Sector	No document
Annex 10	Equivalence Assessment for Involuntary Resettlement	No document
Annex 11	Acceptability Assessment for Involuntary Resettlement by Sector	No document
TOTAL		261

If Annex 8 to 11 which were uploaded after the “consultation” were added to the number, the overall document could reach more than 350 pages. Of course, for a meaningful consultation to happen, all materials should have been published beforehand and participants should have been given sufficient time to read it before giving input. Considering that the drafting process on this CSS assessment took place from 2013 to 2017 without a single public consultation, it will take some time to go through the draft. As a comparison, there is an allocation of 120 days for public consultation on draft materials for a project with significant impact. Decision to use the Indonesia country system is a decision with gigantic impact for the environment and communities which are affected by ADB-financed projects. Since, the impact will be significantly larger than the impact of one single project, it is necessary that public consultation be carried out after the first issuance of CSS analysis draft under the responsibility of ADB (which has not happen as of yet), and be provided a minimum of 120 days, which is the compulsory time limit for a project. Yet, the invitation for “consultation from Bappenas dated March 16, was sent to civil society on March 21, which is 3 working days prior to the March 27 meeting in Makassar and 6 working days prior to March 30 meeting in Jakarta. This process is imitating the “country system” for invitation and consultation process and has violated the meaningful consultation requirement and information disclosure of ADB, which directly attest to the weaknesses of a country system, the lack of “meaningful consultation” and in equivalence between ADB requirements and a country system.

(7) Not Consultation but Dissemination Seminar on CSS

For a meeting to be established as a means for consultation, the agenda, methods, and invited participants have to be jointly determined. Public consultation invitation sent to us was not for a CONSULTATION, but for a SEMINAR. It is clear from the proposed

agenda. The meeting was designed to take place from 08:30 AM to 16:00 PM or approximately 7.5 hours, with the following time allocation:

Activities	Duration
Registration, opening, coffee break, lunch break, closing	2 hours 20 minutes
Introductory Presentation and Overview from the Government and ADB	55 minutes
Presentation on Resettlement <ul style="list-style-type: none"> ▪ Presentation on equivalence assessment; ▪ Presentation on analysis and acceptability ▪ Action Plan ▪ Discussion and Q & A 	2 hours for 3 presentations + 1 “discussion and Q & A”; If we divide the time evenly, it means “Discussion and Q & A” = 30 minutes; from that 30 minutes, half was used for “responses” from ADB/the Government; so only about 15 minutes was given to “ask questions” and “discussion”
Presentation on the Environment <ul style="list-style-type: none"> ▪ Presentation on equivalence assessment; ▪ Presentation on analysis and acceptability ▪ Action Plan ▪ Discussion and Q & A 	2 hours for 3 presentations + 1 “discussion and Q & A”; If we divide the time evenly, it means “Discussion and Q & A” = 30 minutes; from that 30 minutes, half was used for “responses” from ADB/the Government; so only about 15 minutes was given to “ask questions” and “discussion”
Summary	15 Minutes

So, these meetings are actually used by the government and ADB to disseminate information, and not for public consultation. Due diligence on the requirements and obligations of ADB SPS stated that meaningful public comment and public consultation should exist for the plan to use CSS and could only be carried out upon:

- a. **Official ADB materials and the result of ADB assessment** and not upon material prepared by a team of consultants with very poor quality that even ADB does not want to “*guarantee its accuracy, reliability or timeliness and therefore will not be liable in any capacity for damages or losses to the user that may result from the use of these materials*”. Public consultation on CSS should be based upon ADB assessment where *ADB would guarantee and take responsibility* over its “accuracy, reliability” and impact of its materials;
- b. **Materials should be presented in a form and language(s) that could be understood by local communities.** In this regard, the materials should be translated into Bahasa Indonesia with high quality translation, unlike these materials where many meanings and sentences are changed through translation.

c. High quality analysis which carefully captures and are meaningful in its track record over environmental and social protection are an integral part of the equivalence assessment.

It is obvious that the presentation of the materials should be mindful of its timeliness, since it will bring significant impact, for instance the impact of replacing ADB SPS with CSS, and it requires at least 120 days for public to comment before decision.

Besides, a “public consultation” on an analysis should be performed based on the actual materials, not based on PowerPoint presentations made by consultants, staff, or the government who have their own interests. It means that consultations should be carried out in detail, analysing each and every aspect of the materials as well as each chapter. Also, it does not make sense that consultation with NGOs/Academia should be separated from meetings with other parties. In addition, consultation agenda must be decided together, in an open manner, instead of one-sided decision by ADB and the government and treated like a “dissemination seminar” which is not a consultation process at all.

(8) Organized in two cities only (Makassar and Jakarta)

The two seminars claimed to be a consultation, were only held in two cities, Makassar on March 25, 2017 and Jakarta on March 30, 2017. Compared to the total number of islands and cities in Indonesia, these two places do not represent Indonesia. As a consequence, there were disproportionate number of inputs and the information was inaccessible for the rest of Indonesia.

(9) Did not involve legal aid foundations, environmental stakeholders and victims of violation of the right to environment or forced displacement

In the seminars mentioned above, 76 participants were invited from NGOs, Mass Media, Intermediary Financial Institutions, Universities as well as Donor agencies and the Government. However, the seminars DID NOT invite legal practitioners, particularly public lawyers who have been defending development victims. E.g. YLBHI, PBHI or PILNet. Consequently, an imbalance assessment result was produced by not taking into account real experiences in the implementation of the environmental and social protection in Indonesia.

(10) Poor quality of translation by ADB Consultants

According to ADB SPS requirements, information disclosure should be conducted in a language(s) easily understood by the community where development project is going to take place. In this context, information should be available at least in Bahasa Indonesia. However, the disseminated documents were prepared in English, and just translated into Bahasa Indonesia for the purpose of dissemination, with a disclaimer that should there be any difference in interpretation of these materials, the materials in English shall prevail. Poor quality of translation, and omitting some words, resulted in different interpretation and difficulties for the public to understand the document in Bahasa Indonesia version, therefore it was difficult to give any input. Moreover, during the ADB seminar/dissemination or Fake Consultation on March 30, 2017, when an NGO representative raise the issues to delete the

disclaimer and about the missing key words in Bahasa Indonesia version, ADB representative responded by saying that the English version (of approximately 350 pages) should be the point of reference. With poor quality of translation, there is no information provided in a language(s) that could be understood by the local community, this on itself is a serious violation to ADB SPS requirements and requirement on access to information.

With problems that arise at the seminar/dissemination meeting dubbed as “public consultation,” one could conclude that not only ADB has never done meaningful consultation for its assessment on CSS Indonesia but serious violations happened against ADB requirements on the consultation process and public disclosure (Public Communications Policy). Besides, it is obvious from this evaluation process that the ADB office in Indonesia **HAS NEITHER** system **NOR** mechanism to organize meaningful public consultation nor good-faith for organizing it.

(11) No gender analysis on studied policies and in the CSS assessment result.

ADB has a mandatory gender policy that is integrated into the overall ADB policies and ADB-financed projects. This assessment does not explore the issue of gender inequality due to environmental policy, including the Law No. 2 of 2012 concerning Land Acquisition for Public Interest, and projects that take over land and force women to be relocated from their life and livelihood by deploying security apparatus. Women represent 50% of the community affected by project, and also those who often do not have land certificates. Moreover, not only women lost their livelihood, housing, and housing area, they are also prone to suffer from violence, intimidation, sexual abuse, and oppression caused by projects that evict them on behalf of the increasing development, for example International Airport Development in West Java and Yogyakarta, Sulewana Hydro Power Plant Project – Central Sulawesi, etc.

(12) CSS assessment and “equivalence” matrix do not represent the actual situation and facts about environmental destruction and pollution as well as eviction in Indonesia.

For instance, the consultants assess Energy Sector as “robust” and suitable for CSS, based only on their assessment of a 14 km long “transmission line”, and not even based on the Energy Sector track record in general, for example in Steam Power Generator (PLTU). IT needs to be highlighted that: This sectoral assessment is found in Annex 8 to 11, which was hidden and unknown by the Public before the Seminar/Dissemination dubbed as “public consultation” on March 30.

The ADB “Assessment” on the Energy Sector, even though it was just over a “transmission line”, has committed many violations against ADB Safeguards requirements, including one of the most crucial requirements on giving special attention to vulnerable people and women, and the obligation to convince vulnerable communities that their income will increase after resettlement/eviction.

The assessment by the ADB consultants do not establish any evidence that the claimed meaningful “consultation” in the Energy Sector really took place. Most likely there were no meaningful consultation that happened in the cases studied. In fact, the authors admitted that project implementers do not focus on vulnerable groups and women as required by the ADB Safeguards. For example, the assessment by the ADB consultants on the Energy Sector found

that:

- Weak primary data on social economy;¹⁵
- EIA does not pay attention to community's concern on the "Risks of high and ultra-high voltage" conveyed by people who reside around the project during scoping assessment.¹⁶
- EIA document refers to socio-economy survey from respondents in the affected sub-district, but no information on damages suffered by affected households and persons. This document gives detail information about land and its owners; But, no separate socio-economic profile of the affected people.¹⁷
- During field visit interviews, it is clear that the government mainly focuses on the needed land acquisition for the project, and not enough attention is given to vulnerable groups during the planning stage.¹⁸
- Limited monitoring and evaluation on land acquisition process and do not include affected households.¹⁹
- In land acquisition planning documents, there were "no separate socio-economy data from affected people, and the documents do not mention whether assistance is given to restore their livelihoods and/or corporate social responsibility."²⁰
- no special attention is given to indigenous people, women, children, elderly, and other vulnerable groups that have to be protected from the damaging impact of development projects.²¹

Although a 14-Km long "transmission line" could be considered a relatively "simple" project in the Energy Sector compared to the Steam Power Generator, massive violations still happened. Furthermore, despite those major violations, that were supposedly unacceptable according to the ADB Safeguards, the ADB consultants concluded that the "institutional capacity," the "process and procedure" and the "result" are "robust" and suitable to use CSS for the overall Energy Sector. So, the conclusion on this Assessment has no correlation with their own findings.

A relatively small "transmission line" has been proven to violate ADB Safeguards requirements, and threaten the life of vulnerable communities which have been ignored by the project. The environment and social impact often found in the "energy sector" in addition to other common problems at the "transmission lines" are usually quite large. In general, the Energy Sector is viewed as a "dirty" sector which causes large adverse impacts to the community. There are many cases that could be analysed yet not touched upon, for example, Jeneponto Steam Power Generator (PLTU) has polluted and destroyed the environment due to its problematic EIA, and lack of meaningful consultation. Water pollution caused by this power plant has poisoned and caused the death of mostly women and children. There is also a

¹⁵ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, para 17(b)(ii).

¹⁶ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, para 17(b)(ii).

¹⁷ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 11, para 134.

¹⁸ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 11, para 135.

¹⁹ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 11, para 151.

²⁰ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 11, para 162.

²¹ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 11, para 167.

report of illegal workers hiring from China for the development of this PLTU.²² There are also many other cases that should be reviewed too.²³

(13) The Role of Armed Security Forces

In all sectors “assessed” by ADB consultants, the forced displacement involving security apparatus is rampant and it increasingly generates conflict, yet no analysis on this matter is found in the assessment. There have been at least 450 cases of land conflict, where 100 cases happened in the infrastructure sector.²⁴ CSS “assessment” shows the intention of the Government of Indonesia to impose laws and policies concerning the environment and forced displacement/problematic eviction. Looking at how they promote the Law concerning Land Acquisition for Public Interest, the law is as good and is equivalent to the ADB Safeguards. In reality, Indonesian civil society has rejected it since its formulation. The law is now submitted to the Constitutional Court for Judicial Review, because its implementation has caused massive evictions and land conflicts.

III. THE WEAKENING OF INDONESIA SAFEGUARD SYSTEMS

Support to the use of CSS should encourage many countries to improve their environmental and social protection to a better standard than MDBs safeguards. However, MDBs efforts to weaken its Safeguards actually encourage the government to make their national protection system more lenient. In Indonesia, this can be seen from the enforcement of laws that supposedly provide environmental and social protection in Indonesia.

Despite its legislative weaknesses, Indonesia has other laws aimed to provide environmental and social protection, i.e. (1) Law No. 32 of 2009 concerning Environmental Protection and Management; (2) Law No. 26 of 2007 concerning Spatial Planning; (3) Law No. 41 of 1999 concerning Forestry and (4) Law No. 5 of 1990 concerning Bio Resources and Ecosystem Conservation. These four laws ought to give environmental and social protection.

However, if we assess the EIA implementation process, it is clear that the community has limited involvement and it brings negative impact for protection. In a consultative assessment for EIA, for instance, the community is only treated as a source of information

²² Mongabay Indonesia, Pencemaran Udara PLTU Rum, Apa Reaksi DPRD dan Pemerintah Tidore? (Air Pollution caused by PLTU Rum, how will the local parliament and the local government of Tidore react?), March 9, 2017; Polusi, Warga Tuban ”Tuntut PLTU Ditutup” (Pollution, Tuban Residents “Demand for the PLTU to be closed”), <http://harianbhirawa.co.id/2016/11/polusi-warga-tuban-tuntut-pltu-ditutup/> 22/11/2016 ; Polusi Asap PLTU Nagan Raya, Sudah Saatnya Diperhatikan (Haze pollution caused by PLTU Nagan Raya, It is time to pay attention), September 25, 2016, Complete article: http://www.kompasiana.com/nasrul2025/polusi-asap-pltu-nagan-raya-sudah-saatnya-diperhatikan_57e7b2c10f977391108b456b ; Kompas.com, Polusi PLTU Batubara di Indonesia Sebabkan Kematian Dini (Pollution generated by Coal-Based PLTU in Indonesia causes premature death), August 12, 2015; WALHI Sulsel Desak KLHK Tangani Kasus Pencemaran Pesisir Bangkala Jeneponto (WALHI South Sulawesi urges KLHK to address pollution in the coastal area of Bangkala Jeneponto), <http://s Sulsel.pojoksatu.id/read/2016/12/21/walhi-sulsel-desak-klhk-tangani-kasus-pencemaran-pesisir-bangkala-jeneponto/> 21/12/16; <https://www.nahimunkar.com/warga-lokal-nganggur-pekerja-china-ilegal-justru-padati-proyek-pltu-jeneponto/>

²³ *Ibid.*

²⁴ Data from Land Reform Consortium, List of Land Conflict in 2016.

and can only provide feedback on the assessment result. The community has only one representative in the EIA Commission. The EIA Commission is structured in a way that it consists of (i) Head of Commission²⁵ served by an official responsible to control environmental impact at the national, provincial or district, (ii) Commission Secretary, served by the official in charge of the EIA and (iii) Members of Commission which consist of representatives of the technical agency related to the sector at hand, a sub-national representative, an environmental expert, an expert in the sector at hand, a community representative, an environmental organization representative, and other members deemed necessary. But the so-called “community representative” is decided by the government instead of the community. Community representatives in EIA Commissions may give his/her response to the EIA Terms of Reference document within 30 (thirty) days and EIA documents within 75 (seventy-five) days. But there is no arrangement for the community to be directly involved. Decision-making within the EIA Commission uses a one-man one-vote system and there is only one member (appointed by the government) who “represents the community.’

The Government Regulation on Environmental Permit is an enhancement of the Government Regulation on EIA. The GR states that the EIA is an assessment about the important impact of a planned business and/or activity over the environment, and as such it is necessary for the decision-making process on business and/or operation. In practice, however, a business permit is a permit granted to a company after it completes several stages of business preparation. The EIA is not related to other permits, for example: location permit and land acquisition permit, which in fact are the permits that deprive the community of their rights and roles. Looking at the implementation track record of the environmental and social protection through the EIA, we could conclude that this process has failed to prevent forest destruction and other environmental aspects as well as deprivation of community rights.

Nevertheless, the Government of Indonesia issued another policy in January 2015, which compromised the role of the EIA further, with the aim to restructure licensing mechanisms for investment in 4 (four) main sectors as planned by Bappenas, which are infrastructure, agriculture, maritime, and electricity. In September 2015, the government once again issued a new deregulation policy to revise regulations relevant to economic acceleration, including infrastructure development. Licensing restructurization and acceleration of development policies do not change the main text of the law, but hamper the fourth function of the Law and thus, increase the threats towards environmental protection and protection of the rights of vulnerable communities and women.

These policy changes are not independent from national development planning, aimed to fill the gap in financing infrastructure development through the Development Acceleration Program. This acceleration program aim to among others build 40 coal-based power generators with 20,000 MW capacity, 3,258 km railroad in Java, Sumatera, Sulawesi and Kalimantan, including the controversial railroad route dedicated to transporting coal through forest areas rich in biodiversity and inhabited by indigenous people in Kalimantan, Sumatra, West Papua and other location; 2,650 km new roads with thousands of kilometres of road

²⁵ The head of commission is served by the Deputy on National Level EIA Assessment Commission, or the head of BAPEDALDA or other official in charge to control environmental impact at the provincial level for Provincial EIA Assessment Commission, Head of BAPEDALDA or other official in charge to control environmental impact at the regency/district level.

improvements; 49 new dams, including large scale dams (mega-hydropower) and 33 hydro power generators; 1,000 Km highways, sea ports in 60 locations, BRT development in 29 cities, a 1 million Ha irrigation grid; a 3 million Ha Irrigation grid repairment, development of 15 new airports, development of 24 new shipping ports, development of 5,257 low cost twin-block vertical housing, stimulant subsidies for self-financed residential area for 5.5 million households, and “Revamping” 37,407 Ha slum areas, etc.²⁶ The revision and issuance of new regulations, in a form of Law or Act, Government Regulations, Presidential Decrees, and others are undertaken in order to accelerate licensing processes, land acquisitions, development administration systems and spatial planning changes, as follows:

3.1 Acceleration of Licensing Process

As instructed by President Jokowi in his Presidential Instruction No. 1 of 2016 on the Acceleration of National Strategic Projects Delivery, all Ministers in his cabinet, Attorney General, Chief of the Indonesian National Police, Cabinet Secretary, Chief of Presidential Staff, Heads of Non-Ministerial Government Agencies, Governors and Regents/Mayors are expected to accelerate licensing processes. The point of concern from this Presidential Instruction is the “discretionary” right in order to “address concrete and urgent matters,” and to “enhance, revoke and/or replace unsupportive legislation or regulations that hinder the acceleration of national strategic projects (NSP) delivery” which can have potential adverse impacts for the environmental protection and the protection of the rights of the community. For instance, when an EIA document is considered to be unimportant for an infrastructure project in a region that already has its Spatial Planning, the document will be deemed irrelevant and the project could still obtain its environmental permit.

This practice belittles the important role the EIA plays as the principal requirement to obtain an Environmental Permit and a part of the implementation of the Government Regulation No. 27 of 2012 on the Environmental Permit. The EIA document no longer becomes a principal requirement to obtain an Environmental Permit, despite the fact that Law No. 32 of 2009 concerning Environmental Protection and Management clearly stipulates that an Environmental Permit is a prerequisite to obtaining a Business and/or Activity Permit.

Normally, 30 (thirty) days is given for the assessment of the EIA Terms of Reference document and 75 (seventy-five) days for the assessment of the EIA document (ADB requirement for public comment process on the environmental and social assessment of a project with significant impact is 120 days). *Formulation of the EIA is the task and responsibility of the initiator*, in accordance to the prevailing regulations and the result of the EIA Commission Meeting, which will decide whether the document is feasible or not. But, if the project is an NSP then it will receive a “discretionary” treatment that accelerates the assessment process, and the process would be parallel with the land acquisition process, so it will be completed within 31 working days or a maximum of 66 working days. As for the Environmental Permit, the community will be given time to submit their inputs, recommendations, or response within 10 working days for projects with significant impact and 3 working days for projects with less significant impact;

²⁶ The Ministry of National Development Planning/Bappenas, Infrastructure Connectivity between Region and between Area, Mataram, December 10, 2014, http://bappenas.go.id/files/6514/1826/9383/Paparan_Deputi_Sarpras.pdf.

3.2 Acceleration of Land Acquisition

The speed of the land acquisition process and the certainty on land status are important factors to ensure the success of an infrastructure development project in Indonesia. Law No. 2 of 2012 concerning the Land Acquisition for Development of Public Interest (PTPKU) is the primary regulation used to prepare and procure land for development projects. Implementation of this Law is elaborated in Government Regulation No. 71 of 2012 on Land Procurement for Development of Public Interest. This Government Regulation is transformed under Jokowi – Jusuf Kalla regime into a Presidential Regulation No. 148 of 2015.

This transformation was aimed to accelerate licensing processes and land acquisitions, particularly in land acquisition for national strategic projects. This transformation is supported by the Presidential Regulation No. 3 of 2016 on Acceleration of National Strategic Projects Delivery and the Presidential Decree No. 1 of 2016 that were simultaneously issued on January 8, 2016.

During the administration of President Susilo Bambang Yudhoyono through Presidential Regulation Number 71 of 2012, the land procurement process from deciding the location to handing over the land to project implementers required 131 working days (of which *certification process of 30 working days is under the government domain and is not calculated in the processing days mentioned here*), meanwhile the Presidential Regulation No. 148 of 2015 only requires 66 working days (*or 65 working days less*) and if the Government could move fast and avoid any transfer of authority, land acquisition process could be finished within 31 working days. So, 131 working days that was needed for land acquisition process is condensed into 31 working days, which poses a threat to the protection of the rights of evicted communities and the environment.

Eventhough the community opposes or disagrees with the eviction planning, and have yet to decide whether they are going to settle the case through legal measures, the government could still decide on the amount of compensation through compensation custody mechanisms through local district courts. Despite disagreement by the community on the amount of compensation or the eviction, and despite not yet having received the compensation, compensations can be considered paid, evictions can be done, and projects can be implemented. The ADB safeguards indicate that instead of monetary compensations, land replacement is a preferred form of compensation for a farmer community. ADB also requires that compensation should be received by people who will be resettled/evicted before eviction.

3.3 Easing Spatial Changes

According to Law No. 2 of 1992 concerning spatial management, the national government could only change national spatial management once every 25 years, the provincial government once every 15 years, and regency/district once every 10 years. However, according to Law No. 26 of 2007, spatial transformation at all levels can be performed more than one time every 5 years. It could immediately cause the loss of protection for forests, protected areas, and national parks.

Transformation of protected forests or national parks or conservation areas starts with damaging the area designated for a different function. Afterwards, investors and the government will come to an agreement to transform its function into, for example, oil palm plantations, industrial vegetation forests, or mineral mines or coal mines.

3.4 Committee for the Acceleration of Priority Infrastructure Procurement (KPPIP)

Committee for the Acceleration of Priority Infrastructure Procurement (KPPIP) is the last committee established by Susilo Bambang Yudhoyono's administration considered relevant by President Jokowi and is still in use. As regulated in the Presidential Regulation No. 75 of 2014 on Acceleration of Priority Infrastructure Procurement, KPPIP has a mandate to oversee the delivery of 255 National Strategic Projects, 1 National Strategic Program and 30 Priority Projects. The National Strategic Projects and 30 Priority Projects received many facilities in accordance to the Presidential Regulation No. 75 of 2014, Presidential Regulation No. 3 of 2016 and Presidential Decree No. 1 of 2016.²⁷

Therefore, the legislation aimed to protect the environment has been compromised by the Presidential Decree or the Presidential Regulation by reason of acceleration of development. At the same time, it ignores the environmental management principles and rights of the citizen. The Presidential Decree and the Presidential Regulation are preferred in order to evade people's control, since those two instruments do not need parliamentary approval from the House of Representatives of the Republic of Indonesia (DPR RI).

Unfortunately, the analysis made by the ADB consultants focus only on the laws and regulations that seem binding on paper, but failed to realize that many administrative and internal regulations (implementing regulations) cause at least 4 (four) Laws related to environmental and social protection to not function properly in Indonesia and are unable to provide protection for the environment and the people, including vulnerable communities and women.

²⁷<http://www.bappenas.go.id/id/berita-dan-siaran-pers/mengurangi-regulasi-upaya-mempercepat-pembangunan-infrastruktur/>.

IV. COMPARISON BETWEEN COUNTRY SAFEGUARD SYSTEMS (CSS) OF INDONESIA AND ADB SAFEGUARD POLICY STATEMENT (SPS)

Request for ADB assessment from the Government of Indonesia is for two categories in the ADB Safeguards, which are (1) the Environment; and (2) Involuntary Resettlement. This section will divide the focus on CSS Indonesia into the two issues and compare it with ADB Safeguards.

4.1 Environmental Protection

(I) ADB Environmental Protection Policy

The Special Evaluation Study/SES on environmental protection performed by Operations Evaluation Department/OED in 2006 concluded that safeguards in the ADB environmental policy are relevant and have been effective in avoiding damaging environmental impacts generated by ADB-financed projects, although the transaction cost has reduced the project processing efficiency.

In order to achieve environmental protection common objectives, the existing ADB policies related to safeguards require meaningful consultation. This requirement indirectly presents the need to have preliminary negotiations and consultation based on prior information with affected people (120 days before making any decision for project with significant impact) – with particular focus on vulnerable groups and women – as well as the community at large within the context of planning for safeguards and continuous consultation during project delivery to identify and assist in addressing potential issues related to safeguards. ADB should be clear in stating that they require the borrowers/clients to carry out meaningful consultation with affected people and communities in the implementation of three policies related to the safeguards. To implement the policies, meaningful consultation will refer to a process that:

- (i) Starts at an early stage of project preparations and continuously performed during the project cycle;
- (ii) Allocates adequate time slots for disclosing relevant information in a timely manner (120 days for project with significant impact) that can be understood and are directly accessible by affected people;
- (iii) Is performed in a condition that is free from intimidation or coercion;
- (iv) Is inclusive and gender sensitive and align with the needs of the less fortunate and vulnerable groups; and
- (v) Enables integration of relevant views from affected people and other stakeholders in decision-making, for instance project design, mitigation measures, benefit-sharing and development opportunities, and other delivery issues.

ADB environmental protection policy is aimed to ensure sustainable and environmentally-friendly projects and to support integration of considerations concerning the environment and vulnerable communities and women in decision-making. **Scope and triggers:** Environmental protection is triggered when a project is expected to cause environmental risks and impact. The 11 Principles on Environmental Protection below offer further elaboration:

Policy Principles:

1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.
2. Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issue), and physical cultural resources in the context of the project's area of influence. Assess potential transboundary and global impacts, including climate change. Use strategic environmental assessment where appropriate.
3. Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no project alternative.
4. Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.
5. Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women's participation in consultation. Involve stakeholders, including affected people and concerned non-government organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.
6. Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.
7. Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.
8. Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources.
9. Apply pollution prevention and control technologies and practices consistent with international

good practices as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling, and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.

10. Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.

11. Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of "chance find" procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.

(2) Comparison of Equivalence Assessment on the Environment

The result of equivalence assessment on the environment carried out by ADB consultants, stated:

"The assessment for environment showed that CSS Indonesia is fully equivalent with 10 out of 11 Policy Principles (91%) and 40 out of 41 key element (98%) of ADB SPS."
Page 23, para 60, Consultation Draft, March 2017

However, according to detailed analysis, not only CSS Indonesia for environmental management **NOT EQUIVALENT** with ADB SPS, it has never been implemented well to be considered equivalent with Objectives or Mandatory Principles. Analysis 8 on environmental policy principles, including about the contents of consultation, implementation contents and process, social and environmental impact assessment, environmental and community protection, CSS Indonesia – neither the regulations nor the implementations are equivalent with any ADB principles. As seen in the explanation below:

No.	Objectives and Principles	Equivalence Level		Remarks
		According to ADB	Reality	
	Objectives			
	To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process.	Equivalent	Not Equivalent	<p>EIA standard and practice in Indonesia is substantially weaker than ADB SPS requirements.</p> <p>ADB SPS requires a thorough and detail Environmental Impact Assessment that covers not only environmental impact of a project, but also its impact for the affected</p>

				<p>community.</p> <p>One of the requirements for a project with significant impact is that, the community and the public have the right to receive complete information (EIA draft) on all impacts – direct, indirect, cumulative, etc. - and entitle to provide comments within 120 days before decision is made on a project.</p> <p>There is a requirement to carry out “meaningful public consultation” that is clearly defined in ADB SPS and there is a requirement that impact assessment, should have special focus on vulnerable groups and gender issue.</p> <p>“Meaningful” consultation and focus on vulnerable groups and gender are not part of EIA Indonesia requirements and materials; one could establish that the information studied by ADB consultants, as found in Annex 8 to 11, do not meet this requirement.</p> <p>According to ADB Assessment, EIA analysis requirement “is not applicable” to project with financial intermediary.²⁸ ADB actually requires impact assessment for project with financial intermediary.</p> <p>Indonesian EIA standard is weak. In practice, EIA is not the principal requirement for business permit. Government regulation on Environmental Permit is an enhancement over Government Regulation on EIA, which stipulated that EIA is an assessment on important environmental impact of a planned Business and/or Activity necessary for decision-making process on Business and/or Activity operation.</p> <p>Yet, in reality, business permit is a permit granted to a company after it went through several business stages.²⁹ In order to</p>
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²⁸ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 7.

²⁹For example, Human Rights National Commission (Komnas HAM), “In theory, location permit and EIA require consultation forum for dissemination of information concerning investment plan, land acquisition plan and plan to address land acquisition-related problems, for collection of social and environmental data, as well as for dissemination of the amount of compensation and its alternative. Officially, if one requirement has not been met, the subsequent permit cannot be issued.

				<p>“integrate environmental considerations in a decision-making process”, EIA should be able to influence “considerations...in decision-making process” on location of a project with significant impact.</p> <p>In practice, quite often EIA is not carried out before other premise are issued, e.g. location permit and land acquisition permit. Despite the fact that both permits actually deprive the community from their rights and roles, and influential in determining environmental impact.</p> <p>Not only EIA has a weak requirement, and lack of requirement on meaningful consultation and particular attention to vulnerable groups and gender, that is not equivalent with ADB requirements. Furthermore EIA is applied only as a formality, and has no leverage on the issuance of location permit, or other permits as well as on environmental and social protection.</p> <p>Therefore CSS “Objective” is not equivalent with ADB SPS.</p>
1	Policy Principle 1	Full	Not Eq.	
1.1	1. Use a screening process for each proposed project, as early as possible , to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks .	Full	No	<p>According to Indonesian National Commission on Human Rights (Komnas HAM) and other sources, the EIA process is not carried out before the issuance of key permits, such as the location permit and the land acquisition permit, therefore not equivalent.</p> <p>Because there is no requirement assess impacts on and risks to women and vulnerable groups before the issuance of the location permit and the land acquisition</p>

But the fact is that many companies that do not meet the requirement can still operate.” REPORT ON RESEARCH FINDINGS ON “CORRUPTION AND HUMAN RIGHTS IN FORESTRY SECTOR; A CASE STUDY ON PT. BULUNGAN HIJAU PERKASA OIL PALM PLANTATION,” Fauziah Rasad, S.H., M.Si. and Tito Febismanto, S.E., 2015, Page 6, [https://www.komnasham.go.id/files/1474872712\\$1\\$XFC8\\$.pdf](https://www.komnasham.go.id/files/1474872712$1$XFC8$.pdf); Izin Lokasi PLTA Asahan III Diberikan Tanpa Amdal (Location Permit for Asahan III Hydro Power Generator is granted without EIA), Kompas.com, March 24, 2010; Kerugian Negara dalam Proyek Hambalang Capai Rp 471 Miliar? (the State suffers IDR 471 billion loss in Hambalang Project?), Kompas.com – August 23, 2013; Tempo, Gubernur DIY Tak Tahu Amdal Harus Ada Sebelum Izin Proyek (the Governor of DIY did not know that EIA should be carried out before the issuance of project permit), May 31, 2016; Environmental Investigation Agency, Perizinan Bagi Tindak Kriminal: Betapa perluasan kelapa sawit mendorong penebangan liar di Indonesia (License to Crime: Oil palm expansion embolden illegal logging), December 17, 2014; Rachmat Yasin, Bupati Bogor yang "Akrab" di KPK...(Rachmat Yasin, Former Regent of Bogor, who is “familiar” with KPK...), Kompas.com, May 8, 2014.

				<p>permit, not equivalent.</p> <p>The issuance of location permit and land acquisition permit deprive the community from their rights and roles (consultation, information access, participation) and are influential in determining the environmental impact of a project</p> <p>Gender issues impact at least 50% of the affected community. ADB-financed projects are “development” projects therefore detailed attention to vulnerable groups is meant to be their primary objective. The failure to analyse and prevent negative impacts on vulnerable groups and women indicate a complete lack of equivalence to ADB SPS requirements and those of other MDBs.</p> <p>Due to the fact that attention to potential risks faced by vulnerable groups and gender issues are not mandatory and are not applied in EIA process, clearly CSS Indonesia is not equivalent with the first ADB Principle (Principle 1).</p> <p>According to ADB Assessment, Indonesia’s AMDAL EIA analysis requirement “is not applicable” to financial intermediary projects.³⁰ By contrast, ADB requires impact assessment for financial intermediary projects. Clearly CSS Indonesia is not equivalent to ADB requirements.</p>
2	Policy Principle 2	Partially	Not Eq.	<p>It is bizarre that ADB consultants decided, for the purposes of this CSS analysis, to divide Principle 2 (and other Principles) into several parts instead of considering each Principle in its entirety.</p> <p>This appears to be one way that the ADB Consultants attempt to falsely claim “equivalence” with small parts of the SPS while obscuring and attempting to ignore the clear and gross lack of equivalence.. For example Principle 2 requires an assessment of <i>all impacts on all parties, with special attention to vulnerable groups and gender issues</i>. Since there is no requirement in</p>

³⁰ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 7.

				<p>Indonesian CSS for specific impact assessment practice on vulnerable groups or gender issue (as already documented by ADB in detail in Annex 8 to 11), it is clear that the Indonesian country system <i>is not equivalent</i> with ADB SPS requirements.</p> <p>It seems that the consultants were splitting the principles in order to attempt to twist the language in order try to establish “equivalence”, for instance equivalence with the requirement of making an assessment on “direct” or “indirect impacts,”, ignoring the fact that there is no requirement (and certainly no meaningful track record or practice of assessment of direct/indirect impact, etc. <i>on vulnerable groups or gender issues</i>. , Thus while there may, indeed be various assessments, since there is no focus on assessing impacts on vulnerable groups or women, clearly CSS Indonesia is not equivalent whatsoever with ADB SPS requirement.</p> <p>Below are examples of ADB’s own findings of this fundamental lack of equivalence with the most basic Safeguards requirements, not only of the ADB, but also of other MDBs and bilateral institutions.</p> <p>ADB³¹:“ 28. This assessment found that examination of ANDAL and RKL-RPL frequently focuses more on administrative and substantive requirements rather than substantive environmental impacts.”</p> <p>Poor quality Indonesian EIA (ANDAL) lack of risk assessment, data, evidence. Problems include:</p> <p>“Late and poor quality of AMDAL preparation and/or document”...” Lack of specific/technical expertise”...³²</p> <p>“Existing AMDAL guidelines on social aspects assessment are NOT updated and detailed.”³³ (i.e. no requirements to assess vulnerable populations, gender issues.)</p> <p>“Public Consultation and Participation: Representation of women and vulnerable</p>
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³¹ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 11.

³² ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex Table A.6.2

³³ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex Table A.6.3

			<p>groups is not explicitly required in planning and decision making.”³⁴</p> <p>Accountability/Grievance mechanism: “Procedure for complaint management has not been included in the RKL-RPL document”³⁵</p> <p>“Critical Issue: Protection Area and Biodiversity Conservation: Operational and practical guidance for analyzing biodiversity in AMDAL process”³⁶</p> <p>ADB states that obviously there is a need to “Include environmental consideration in planning, design, decision making, and project implementation”³⁷</p> <p>According to the ADB’s case study results:</p> <p>“The ANDAL was found to lack depth with respect to the following indicators:</p> <ul style="list-style-type: none"> (i) dam safety and other potential risks are neglected or inadequately assessed; (ii) scoping tended to focus on generic impacts as common to all infrastructure, rather than those particular to construction and operation of multi-purpose dams; and (iii) many conclusions lack adequate supporting data and proper scientific evidence (or even convincing argumentation) suggesting an over-reliance on subjective “professional judgment.”³⁸ <p>ADB: Appendix 9:”in terms of transparency, the AMDAL study has not made specific efforts to encourage participation of women and vulnerable groups. Similarly, due to the poor scoping the study, did not cover all items to be included including post-operational impacts of the dam.</p> <p>Nonetheless, despite these egregious failings and failed assessment process that completely violates ADB and other MDB requirements – no inclusion of women, vulnerable groups, poor scoping, no environmental or social assessment of post operational impacts of the dam - ADB’s consultants rated this assessment as “moderate”³⁹</p>
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³⁴ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.3

³⁵ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.3

³⁶ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.3

³⁷ DB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.4

³⁸ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex 9, page 6, para 6c.

³⁹ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex 9, page 6, para 6c.

				<p>in terms of compliance, consistence, depth and relevance!</p> <p>These sorts of false and misleading conclusions are found throughout the ADB “assessment”– ie. documentation (much of it hidden in appendices) of egregious failures and violations – hidden and covered up by the use of a skewed rating system or false “summaries” or “conclusions” bearing little relationship to data and evidence (i.e. in this case, claiming “moderate” compliance and relevance despite no attention to the vulnerable, women (50% of those impacted!) or environmental or social impacts once the dam is operational. It is in this manner, after three years of labor on these “assessments” that the ADB is attempting to certify the Energy and Water (and other) Sectors in full compliance with ADB Safeguard requirements despite their own evidence to the contrary.</p> <p>In addition, there are many studies and analyses, including those carried out by Indonesia’s National Human Rights Commission as well as by the ADB, itself, which demonstrate a track record of substantial conflicts of interest in the development of environmental and social assessments (AMDAL), ensuring a lack of compliance with ADB safeguard requirements. For example, see Appendices 8-11 of this CSS Assessment – <i>the appendices not initially released prior to the ADB’s fake consultations in Jakarta and Makassar in 2017</i>).</p> <p>ADB: “Authority for Approval of AMDAL: Authority for reviewing KAANDAL and AMDAL based on project location creates problems (e.g., vested interest pronounced in projects whose permits are issued by [local officials] Bupati/Walikota)”⁴⁰</p> <p>The ADB identified “general weaknesses in the Indonesian AMDAL system” which included “Basing authority for reviewing KA-ANDAL and ANDAL on project location can subject approvals to local vested interests such as tax revenue and investment flows.”⁴¹</p> <p>ADB: Appendix 9; : “there are no special dedicated units to handle these safeguard activities on a permanent basis. By default, the Program and General Planning Division of the BBWS 3C retains the function of ensuring environmental safeguards. Concurrently, they act as a proponent for projects or activities, including preparation and implementation of AMDAL or UKLUPL, as required. Since this creates a potential conflict of interest, in practice, the</p>
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⁴⁰ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, Table A6.3.

⁴¹ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 7, para 24.

				<p>AMDAL review process in BBWS 3C is commonly outsourced to consultants or contractors. The limited budget for consultants has implications for the quality of AMDAL outputs.”⁴²</p> <p>According to the ADB, the governmental body which carries out the majority of the AMDAL is “structurally, institutionally, and functionally ... weak,”⁴³</p> <p>Case assessment by ADB “With regard to transparency of EIA study, it does not carry out explicit measures to encourage participation of women and vulnerable groups. Due to poor scoping, the assessment does not cover all matters comprehensively (partial scoping).”⁴⁴</p> <p>ADB, on Transmission Line case of PLTU 2 Central Java: “The methodology has not been optimally applied in a consistent manner with regard to types of impact assessed. Baseline data on social and economy is weak. Environmental Impact Statement (AMDAL) does not cover concern about “the risks of extra-high and ultra-high voltage” voiced out by people who reside around the project location during the scoping study”⁴⁵</p>
2.1	Conduct an environmental assessment for each proposed project.	Full	Not Equivalent	<p>All the points mentioned in Principle 2 above.</p> <p>There is no requirement to carry out impact analysis on vulnerable groups or gender issue, and not carried out in each project assessed by ADB as seen in Annex 8 to 11.</p> <p>Article 4 of Indonesian PP AMDAL requirements states that, if a business and/or activity will be established in an area where there already is an environmental impact analysis, it IS NOT REQUIRED to have another EIA.</p> <p>Article 13 of Indonesian PP on Environmental Permit provides exemptions for three types of business/activity that do not require EIA.</p>

⁴²ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, Assessment on Water Resources Sector: Karian Multipurpose Dam Project, page 4, para 3.

⁴³“10. As the decentralization of AMDAL, MOEF [Ministry of Environment and Forestry] is only mandated for strategic and central level AMDAL (which location crossing over more than one province, and/or crossing over to other countries/ trans-boundary), while provincial district level AMDAL are mandated to province and district environmental agencies. The Provincial environmental agency (Badan Lingkungan Hidup, BLH) is responsible for provincial level AMDAL (crossing over more than one districts), while district BLH is responsible for AMDAL in the one district only. 11. Based on the above assessment, the institutional capacity of provincial or district BLHD can be considered “moderate.” This is because although they comply with the local and national regulations **structurally, institutionally, and functionally they are still weak.**” ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 4, para 10,11. NOTE: Yet another “mistranslation” to the benefit of the ADB/client can be found in this part. Original version: “although they comply with the local and national regulations structurally, institutionally, and functionally they are still weak.” Bahasa Indonesia version does not mention the term “institutionally and”, it only says: “structurally these agencies have complied to local and national regulations but functionally they are still weak.” ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 8, page 4, para 10-11.

⁴⁴ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, Assessment on Water Resources Sector: Karian Multipurpose Dam Project, page 4, para 5.

⁴⁵ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, Assessment on Energy Sector: Transmission line – Central Java, page 11, para 17b.

				In practice, business permit is a permit granted after a company completes several business stages of business. The AMDAL/ EIA has no relation with other permits, such as the location permit and the land acquisition permit.
2.2	Identify potential direct, indirect and induced impacts and risks.	Full	Not Equivalent	<p>Same like all the points above, including in Principle 2.</p> <p>Neither found in the Law concerning the Environment nor in the Government Regulation on EIA.</p> <p>There is no requirement to carry out impact analysis on vulnerable groups or gender issue, and not carried out in each project assessed by ADB as seen in Annex 8 to 11. In practice, and according to ADB analysis in Annex 8 to 11, the quality of analysis on physical and biological impact and risk is low.</p> <p>According to ADB analysis, Annex 9 on “indirect impact” and “associated facilities”:</p> <p>ADB: Water Sector “Due to the lack of integration with the main AMDAL, environmental assessment for associated facilities (access road and quarry) is inconsistent with prevailing processes and procedures.”⁴⁶</p> <p>ADB: “(i) Scoping has not included associated activities of river dredging and spatial impacts of “induced development” resulting from the toll road development. (ii) The document does not consider future activities linked with and affected by the toll road (including spatially triggered/induced development in the surrounding). (iii) The document does not clearly describe existing activities which utilize natural resources and affect the local environment, such as other non-road projects that may cause cumulative effects to the environment. (iv) Use of geo-membrane and geotextile technology and disposal of hazardous waste associated with these produces is not discussed in AMDAL.”⁴⁷</p>
2.3	Identification of cumulative impact	Full	Not Equivalent	<p>There is no requirement or cumulative impact analysis towards vulnerable groups and gender issue. In practice, as also confirmed by ADB analysis in Annex 8 to 11, quality of impact analysis is low and cumulative analysis is not analyzed.</p> <p>See all the points above, including in Principles 2, 2.1, 2.2;</p>

⁴⁶ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, Assessment on Water Resources Sector: Karian Multipurpose Dam Project, page 5, para 5.

⁴⁷ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, para 11(c)

2.4	Identification of physical and biological impact and risk	Full	Not Equivalent	Although it is mentioned in Law concerning the Environment and PP on EIA, but there is no mandatory requirement or practice about physical and biological impact analysis on vulnerable groups and gender issue. In practice, as also confirmed by ADB analysis in Annex 8 to 11, quality of physical and biological impact and risk analysis is low. Detail explanation is available above. See all the points above, including in Principles 2 to 2.3.
2.5	Identification of socio-economic impact (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issue)	Partial	Not Equivalent	Not available in Law concerning the Environment and GR on EIA; No requirement or practice of impact analysis towards vulnerable groups and gender issue. See all the points above, including in Principles 2 to 2.4.
2.6	Identification of physical cultural resources impact	Full	Not Equivalent	No requirement or practice of impact analysis towards vulnerable groups, including indigenous people, and gender issue. See all the points above, including in Principles 2 to 2.5.
2.7	Assess potential transboundary impacts	Full	Not Equivalent	Not available in Law concerning the Environment and PP on EIA. No requirement or practice of impact analysis towards vulnerable groups, including indigenous people, and gender issue. See all the points above, including in Principles 2 to 2.6.
2.8	Assess potential global impacts, including climate change	Full	Not Equivalent	Although it is mentioned in Article 16 e of Law concerning the Environment, but not available in PP on EIA and in practice/ implementation “track record” – for instance, There is no impact analysis on climate change or transboundary impact in EIA’s for oil palm plantations that causes forest/peatland fire with high impact to climate change and transboundary impacts. No requirement or practice of impact analysis towards vulnerable groups, including indigenous people, and gender issue. See all the points above, including in Principles 2 to 2.7.
2.9	Use strategic environmental assessment where appropriate	Full	Not Equivalent	Strategic Environmental Assessment (KLHS) is supposed to be a basis for policy, planning, and/or area program (Article 17 of Law concerning the Environment), yet in practice, for example in the cement case at Kendeng Mountains, KLHS was carried out after the issuance of business permit. Not equivalent in its implementation. See all the points above, including in Principles 2 to 2.7. No requirement or practice of impact analysis towards vulnerable groups, including indigenous people, and gender issue.
3	Policy Principle 3	Full	No	
3.1	Examine alternatives to the project’s location, design, technology, and components and their potential	Full	Not Equivalent	Despite the requirement to examine alternative location in GR on EIA, no requirement to analyze “components and potential environmental and social impacts” that particularly affect vulnerable groups, including indigenous people, and gender

	environmental and social impacts ; document the rationale for selecting the particular alternative proposed			issue is required in ADB SPS and not carried out in the implementation, including in cases assessed by ADB. See all the points above, including in Principle 2.
3.2	Consider the no project alternative	Full	Not Equivalent	See explanation in section 3.1 above.
4	Policy Principle 4	Full	Not Equivalent	
4.1	Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management	Full	Not Equivalent	Despite the requirement to avoid negative impact as stated in the Environmental Ministerial Decree No. 2 of 2000 on Guidelines for EIA Document Appraisal, there is no requirement to avoid impact specifically related to vulnerable groups, including indigenous people, and gender issue required in ADB SPS. Its implementation is not equivalent with ADB requirement. See all the points above, including in Principles 2 and 3.
4.2	Prepare an environmental management plan (EMP) that includes mitigation measures to mitigate potential adverse impacts to the level of no significant harm to third parties, and the “polluter pays principle”	Full	Not Equivalent	Mistranslation of the English version is found here (again): <i>“No significant harm to third parties”[original English]</i> does not mean <i>“Not endangering towards third parties,” [as per ADB consultant’s translation into Indonesian]</i> but <i>“no significant harm to third parties”</i> Although the Environmental Ministerial Decree No. 2 of 2000 on Guidelines for EIA Document Appraisal has a requirement to prepare an EMP,” there is no requirement that “no significant harm to third parties” and no requirement and practice of analysis to specifically reduce the impact towards vulnerable groups, including indigenous people, and gender issue. Project implementation track record quite often brings “harm to third parties”, in particular the low economic group and 50% of the population, which is women. See all the points above, including in Principles 2 and 3.
4.3	Incorporate environmental monitoring and reporting requirements in environmental management plan (EMP)	Full	Not Equivalent	See all the points above, including in Principles 2, 3 and 4. There is no requirement or practice of special monitoring and reporting on impact towards vulnerable groups, including indigenous

				people, and gender issue.
4.4	Incorporate implementation schedule, cost estimates, and performance indicators in environmental management plan (EMP)	Full	Not Equivalent	<p>See all the points above, including in Principles 2, 3 and 4.</p> <p>There is no requirement or practice of implementation schedule, cost estimates, and performance indicators in EMP that specifically dedicated to avoid impact towards vulnerable groups, including indigenous people, and gender issue.</p>
5	Policy Principle 5	Full	Not Equivalent	<p>There is no requirement or track record of “meaningful consultation” in accordance to definition and requirement of ADB SPS.</p> <p>The definition and requirements of “Meaningful Consultation” according to ADB are:</p> <p>“4. Consultation and Participation</p> <p>19. Borrower/client shall carry out meaningful consultation with affected people and other stakeholders, including civil society, and to facilitate their participation by providing prior information.</p> <p>Meaningful consultation is a process that (i) should start early at the preparation stage and should be carried out continuously in the project cycle;</p> <p>(ii) disclose relevant and appropriate information that can be understood and directly accessible by affected people;</p> <p>(iii) conducted in an environment that is free from intimidation or coercion;</p> <p>(iv) inclusive and gender sensitive, and adjusted to the needs of less fortunate and vulnerable groups; and</p> <p>(v) (v) Enable integration of relevant views from affected people and other stakeholders in decision-making process, for instance project design, mitigation measures, benefit-sharing and development opportunity, and other delivery issues.”</p> <p>According to ADB in its CSS assessment:</p> <p>“Existing AMDAL guidelines on social aspects assessment are NOT updated and detailed.”⁴⁸ (i.e. no requirements to assess vulnerable populations, gender issues.)</p> <p>ADB: “Public Consultation and Participation: Representation of women and vulnerable groups is not explicitly</p>

⁴⁸ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.3

				<p>required in planning and decision making.”⁴⁹</p> <p>ADB: Appendix 9:”in terms of transparency, the AMDAL study has not made specific efforts to encourage participation of women and vulnerable groups. Similarly, due to the poor scoping the study, did not cover all items to be included including post-operational impacts of the dam.⁵⁰</p> <p>ADB: “Key stakeholders and affected people and/or their representatives were invited and involved in several public consultations. However, more officials attended the meeting than affected people, including women and vulnerable groups.”⁵¹</p> <p>ADB case assessment has proven that community concern is not covered in EIS/EIA process. For example: ADB, the case of Transmission Line PLTU2, Central Java: “The methodology has not been optimally applied in a consistent manner with regard to types of impact assessed. Baseline data on social and economy is weak. EIS (ANDAL) does not address concern about "the risk of extra-high and ultra-high voltage" voiced out by people who reside around the project location during the scoping study”⁵²</p>
5.1	Carry out meaningful consultation with affected people and facilitate their informed participation	Full	Not Equivalent	<p>See all points above, including in Principles 2 to 5.</p> <p>In ADB SPS, “prior information disclosure” requires disclosure of environmental and social assessment <i>draft</i> to the community – and should focus on input from vulnerable groups and women -- and have the materials consulted and commented within 120 days before any decision made on the project. This does not happen in CSS.</p> <p>According to the ADB: “Public Consultation and Participation: Representation of women and vulnerable groups is not explicitly required in planning and decision making.”⁵³</p> <p>Although, “public consultation” is mentioned normatively in the Ministerial Decree of the Ministry of Environment (MLH) No. 17 of 2012 on Guidelines for Community Involvement in EIA and Environmental Permit process, but it is not</p>

⁴⁹ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex Table A.6.3

⁵⁰ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 5, para 6.

⁵¹ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 7, para 9b.

⁵²ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, Assessment on Energy Sector: Transmission line – Central Java, page 11, para 17b.

⁵³ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex Table A.6.3

				<p>conducted in practice.</p> <p>More often, the community just found out about an activity when project implementation has begun, for example a factory is developed or land clearing for PLTU or oil palm plantation or eviction for “urban” project.</p> <p>Information disclosure (announcement) should be conducted for 10 days by technical implementer and quite often it is just in a form of a “short news article” on company’s website, or in a government bulletin or in a newspaper (but many community, including vulnerable groups, do not subscribe to a newspaper).</p> <p>There is no requirement that environmental and social impact assessment draft analysis should be published in a form and language(s) accessible by affected community and the public. (a violation of ADB requirement).</p> <p>There is no requirement that the draft materials have to be published within 120 days prior to any decision on the project. (a violation of ADB requirement).</p> <p>In general, when EIA consultants conduct their study, the community only acts as resource persons; to give response over the assessment by consultants; and only have one representative in EIA commission.</p> <p>EIA Commission is structured in a way that it consist of (i) Head of Commission⁵⁴ served by official responsible to control environmental impact at the national, province or district, (ii) Commission Secretary, served by official in charge with EIA and (iii) Members of Commission consist of representative of technical agency related to the sector at hand, sub-national representative, environmental expert, expert in a sector at hand, community representative, environmental organization representative, and other members deemed necessary.</p> <p>“Community representative” is decided by the government instead of the community. Community representative in EIA Commission may give his/her response to the EIS/EIA (ANDAL/AMDAL) Terms of Reference document within 30 (thirty) days and EIA documents within 75 (seventy-five) days. ADB requires 120 days for meaningful public comment through “<i>meaningful consultation</i>” process, but CSS Indonesia has no arrangement for the community to participate directly. In EIA Commission decision-making, one man has one</p>
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⁵⁴The head of commission is served by the Deputy on National Level EIA Assessment Commission, or the head of BAPEDALDA or other official in charge to control environmental impact at the provincial level for Provincial EIA Assessment Commission, Head of BAPEDALDA or other official in charge to control environmental impact at the regency/district level.

				<p>vote.</p> <p>As for Environmental Permit, the regulation recognizes three community groups, of (i) those who are affected; (ii) environmental observers; and/or; (iii) those who are influenced by any decision in EIA process.</p> <p>Recommendation, opinion and response should be submitted within 10 (ten) days (Ministerial Decree No. 17 of 2012) for project with significant impact, and 3 (three) days for less significant impact.</p> <p>These recommendations can only be submitted through representative of affected community and/or community organization members of EIA Commission.</p> <p>According to Law on the Environment (Article 33 paragraph 3) there should be a time slot of 30 (thirty) working days since the first announcement for the community who are entitled and have interest to give their recommendation, opinion, and response on planned business and/or activity.</p> <p>Consultation is more than a mere dissemination of a business and/or activity, and not just how to obtain information on impact and development risk, and not equivalent with ADB requirement.</p> <p>From EIA Commission composition and time slot to submit our response, one could conclude:</p> <p>(1) The community cannot participate directly in EIA assessment, but have to go through their representative;</p> <p>(2) The community representative represents government interest, instead of the community, since he/she is appointed by the government and not elected by the community themselves; and</p> <p>(3) The community will never win any decision-making because its representative only has one vote compare to other members of the Commission.</p>
5.2	Ensure women's participation in consultation	Full	Not Equivalent	<p>Se all points above, including in Principles 2 to 5.</p> <p>ADB: "Public Consultation and Participation: Representation of women and vulnerable groups is not explicitly required in planning and decision making."⁵⁵</p>

⁵⁵ ADB, Country Safeguards Review (CSS: Draft Final Report Indonesia, March 2017, Annex Table A.6.3

				<p>As observed by the ADB's own assessment team in field studies:</p> <p>ADB: Appendix 9:"in terms of transparency, the AMDAL study has not made specific efforts to encourage participation of women and vulnerable groups."⁵⁶</p> <p>ADB: "Key stakeholders and affected people and/or their representatives were invited and involved in several public consultations. However, more officials attended the meeting than affected people, including women and vulnerable groups.."⁵⁷</p>
5.3	Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment	Full	No	<p>Look at all points above, including in Principles 2 to 5 for Explanation.</p> <p>"Meaningful consultation" is not a requirement or implemented (Track Record) according to ADB SPS definition and requirements.</p> <p>ADB: "Public Consultation and Participation: Representation of women and vulnerable groups is not explicitly required in planning and decision making."⁵⁸</p> <p>ADB: Appendix 9:"in terms of transparency, the AMDAL study has not made specific efforts to encourage participation of women and vulnerable groups. Similarly, due to the poor scoping the study, did not cover all items to be included including post-operational impacts of the dam."⁵⁹</p> <p>ADB: "Key stakeholders and affected people and/or their representatives were invited and involved in several public consultations. However, more officials attended the meeting than affected people, including women and vulnerable groups.."⁶⁰</p> <p>And also, according to Ministerial Decree No. 15 of 2012, "public consultation" (not equivalent to ADB requirement) is carried out prior, during or after business and/or activity plan announcement, simultaneously or after the announcement of business and/or activity plan (Ministerial Decree No. 17 of 2012).</p>

⁵⁶ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 5, para 6.

⁵⁷ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 7, para 9b.

⁵⁸ ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex Table A.6.3

⁵⁹ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 5, para 6.

⁶⁰ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 7, para 9b.

				Public consultation does not have to be carried out after business/activity operation.
5.4	Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances	Full	Not Equivalent	Available mechanism is by filing a lawsuit through the Administrative Court (PTUN). According to Transparency International, in 2016, Indonesia was at rank 37/100, where 100 means "clean" and where 37/100 means large scale corruption exist in public sector, "endemic corruption in a country's public sector". ⁶¹ It means the "rule of law" is not functioning.
6	Policy Principle 6	Full	Not Equivalent	
6.1	Disclose a draft environmental assessment (including the EMP) in a timely manner , before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders	Full	Not Equivalent	<p>According to ADB, disclose a <i>draft</i> environmental and social assessment in a "timely manner" means that for a project with significant impact, it should be published (in language(s) and location accessible by the public) 120 days before any decision is made on the project and there should be "meaningful consultation" on the draft materials.</p> <p>This requirement is not available in Indonesian legislation.</p> <p>In Law concerning the Environment there is a requirement that "community involvement should be based on transparent and complete disclosure of information prior to the commencement of the activity." (Article 26) and Article 68 "Any person who conduct a business and/or activity shall: provide relevant information related to environmental protection and management in a correct, open, and timely manner;"⁶²</p> <p>But the said articles do not require for <i>draft environmental and social assessment</i> to be released for the public to comment.</p> <p>From the track record/implementation, materials are quite often posted on the company's website, or in internal bulletin or the office of a government office, or in newspaper (but not in villages where the project is going to be implemented, for instance). And the definition of "timeliness" in CSS, is far different from ADB requirement (120 days for project with significant impact) and does not meet ADB requirement.</p> <p>There is a requirement to publish request for environmental permit, provision of Environmental Monitoring Report-Environmental Management Report (UKL-UPL) document and EIS (ANDAL) in the Ministerial Decree No. 17 of 2012</p>

⁶¹Transparency International, http://www.transparency.org/news/feature/corruption_perceptions_index_2016

⁶²"Environmental information as stated in this article can be in a form of data, explanation, or other information related to environmental protection and management, which by its nature and purpose is open for public, for instance EIA analysis and report, evaluation report on environmental monitoring, either monitoring of compliance or changes in environmental quality and spatial planning." ELUCIDATION ON LAW OF THE REPUBLIC OF INDONESIA NUMBER 32 OF 2009 CONCERNING ENVIRONMENTAL PROTECTION AND MANAGEMENT, Article 65, no. 2.

				<p>Duration of publication concerning environmental permit is 5 days only and any input (recommendation, opinion and response) should be submitted within 10 days after the publication.</p> <p>Duration of publication concerning Environmental Monitoring Report/Environmental Management Report (UKL/UPL) is 2 days only and any input (recommendation, opinion and response) should be submitted within 3 days after the publication.</p> <p>In practice, however, this relatively low requirement is still not enforced, and simply uploading the document on a website does not mean that it can be accessed by all people.</p>
6.2	Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders	Full	Not Equivalent	<p>Unclear, there is only a requirement to publish the environmental permit granted.</p> <p>Look at the points in Principle 6.1 – also applies for 6.2.</p>
7	Policy Principle 7	Full	Not Equivalent	<p>Social impact towards the community is not monitored. In order to monitor social and economic impact, a “baseline data on social economic” is needed and to monitor impact towards vulnerable community and gender issue, there should be a baseline data on vulnerable community and gender issue.</p> <p>Yet, since there is no requirement to assess impact towards vulnerable community or gender issue, there is no requirement to collect the baseline data. Without baseline data, one cannot monitor impact towards vulnerable community and gender issue.</p> <p>As seen in ADB assessment, for example: in a case study on Transmission Line PLTU2, Central Java: “The methodology has not been optimally applied in a consistent manner with regard to types of impact assessed. Baseline data on social and economy is weak.⁶³</p>
7.1	Implement the EMP and monitor its effectiveness	Full	Not Equivalent	<p>For details, see the points in Principle 7 above.</p> <p>Normatively, there is a requirement but not enforced. There is no special monitoring on vulnerable groups or gender issue.</p>
7.2	Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports	Full	Not Equivalent	<p>For details, see the points in Principle 7 above.</p> <p>Normatively, there is a requirement but not enforced. There is no special monitoring on vulnerable groups or gender issue.</p>
8	Policy Principle 8	Full	Not Equivalent	<p>Critical habitat in Indonesia is not protected. For example, look at: “Indonesia Now Has the Highest Rate of Deforestation in the World”; “Indonesia Overtakes Brazil for Worst Deforestation Title”; “Despite moratorium,</p>

⁶³ADB, Country Safeguards Review (CSS): Draft Final Report Indonesia, March 2017, Annex 9, page 10, para 17.

				Indonesia now has world's highest deforestation rate". ⁶⁴
8.1	Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated	Full	Not Equivalent	Although there are few legal instruments with requirements for the protection of critical habitat, for example GR No. 6 of 2007 on Forest Governance and Formulation of Forest Management Plan and Forest Utilization, implementation track record clearly shows that forest area and critical habitat in Indonesia are continuously destroyed.
8.2	If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area	Full	Not Equivalent	Although there are few legal instruments with requirements for the protection of critical habitat, for example PPNo. 6 of 2007 on Forest Governance and Formulation of Forest Management Plan and Forest Utilization, implementation track record clearly shows that forest area and critical habitat in Indonesia are continuously destroyed.
8.3	In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources	Full	Not Equivalent	Although there are few legal instruments with requirements for the protection of critical habitat, for example GR No. 6 of 2007 on Forest Governance and Formulation of Forest Management Plan and Forest Utilization, implementation track record clearly shows that forest area and critical habitat in Indonesia are continuously destroyed.
8.4	Use a precautionary approach to the use, development, and management of renewable natural resources	Full	Not Equivalent	Implementation track record clearly shows that forest area and critical habitat in Indonesia are continuously destroyed.
9	Policy Principle 9	Full	-	NO TIME FOR ANALYSIS - Track Record of steam power generator (PLTU), pulp & paper industry, expansion plan for steam power generator, etc. show significant pollution problem throughout the country in wide range of sectors – including energy, water, etc.
9.1	Apply pollution prevention and control technologies and practices consistent with international good practices	Full	-	NO TIME FOR ANALYSIS - Track Record of steam power generator (PLTU), pulp & paper industry, expansion plan for steam power generator, etc. have very significant pollution problem
9.2	Adopt cleaner production processes and good energy efficiency practices	Full	-	-
9.3	Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges	Full	-	NO TIME FOR ANALYSIS - Track Record of steam power generator (PLTU), pulp & paper industry, expansion plan for steam power generator, etc. have very significant pollution problem
9.4	When avoidance is not possible, minimize or control direct and indirect greenhouse gases emissions	Full	-	NO TIME FOR ANALYSIS - Track Record of steam power generator (PLTU), pulp & paper industry, expansion plan for steam power generator, etc. have very significant pollution problem
9.5	When avoidance is not possible, minimize or control, waste	Full	-	NO TIME FOR ANALYSIS – this does not seem to be occurring – visit a cement factory, pulp mill,

⁶⁴Time Magazine, July 01, 2014; <http://mashable.com/2014/06/29/indonesia-worst-deforestation/#RI0UXy7r7mqB>; <https://news.mongabay.com/2014/06/despite-moratorium-indonesia-now-has-worlds-highest-deforestation-rate/>.

	generation			coal power plant;
	When avoidance is not possible, minimize or control, release of hazardous materials from their production, transportation, handling, and storage	Full	-	NO TIME FOR ANALYSIS
9.6	Avoid the use of hazardous materials subject to international bans or phaseouts	Full	-	NO TIME FOR ANALYSIS
9.7	Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides	Full	-	NO TIME FOR ANALYSIS
10	Policy Principle 10	Full	-	NO TIME FOR ANALYSIS
10.1	Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease	Full	-	NO TIME FOR ANALYSIS
10.2	Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities	Full	-	NO TIME FOR ANALYSIS
11	Policy Principle 11	Full	-	NO TIME FOR ANALYSIS but there are many problems related to cultural resources areas important to Indigenous People
11.1	Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys	Full	-	NO TIME FOR ANALYSIS but there is tremendous documentation of significant impact on cultural resources areas important to Indigenous People
11.2	Provide for the use of "chance find" procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.	Full	-	

Based on the comparison of with "Table A.3.1: Summary of Environmental Safeguard Equivalence Assessment", the CSS for Environmental Management and Protection at policy level IS NOT EQUIVALENT to the ADB environmental policies principles

(3) Forms of Environmental Protection Inequality in Indonesia

Some of the important aspects in the complexity of the *country system* in Indonesia is the relationship between AMDAL (Environmental Impact Assessment/EIA), licensing and the fulfillment of *free prior inform consent (FPIC) principles* in project implementations of various sectors of development. These three issues are examples for environmental protection inequality forms in Indonesia.

In the Government Regulation No. 27 of 1999 on EIA, it is stipulated that the EIA is the prerequisite for business license. However, in practice, business license is a license granted after a company has completed several stages of its business. The EIA has no correlation with other licenses such as location and land acquisition permits. Whereas these two permits that always deny the rights and roles of society.

The Government has issued Government Regulation No. 27 of 2012 on Environmental Permit, but then again, both location and land acquisition permits are not included in the regime of environmental permits.

There are several changes associated with the mechanism of the EIA, among others are the obligation to be based on Strategic Environmental Assessment/SEA (KLHS) and spatial planning. However, in terms of location and land acquisition permits, the function is not different with Government Regulation No. 27 of 1999. In forest management licensing for example, the process for location determination is carried out without taking into account the results of the EIA. In this case, the EIA remains a formality to meet the procedure and not part of a process that determine the feasibility of the forestry projects.

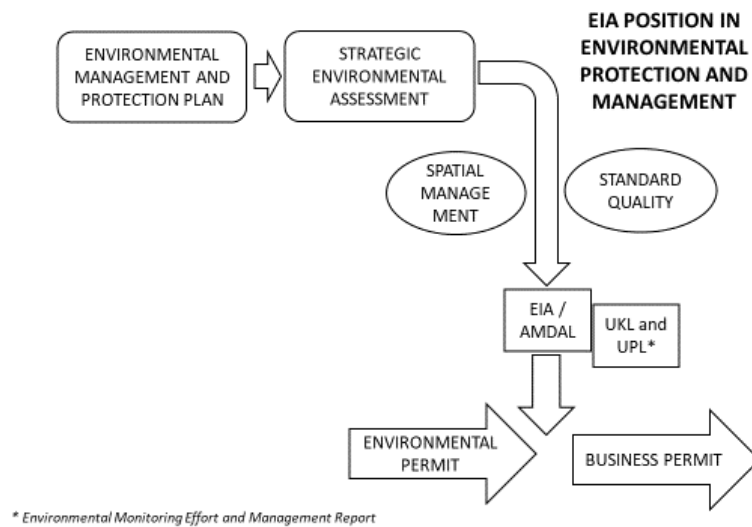
The role of society is even very limited, only as a source of information in the process of the EIA consultation study; providing responses; and having a representative in the EIA Commission whose members are appointed by the government. People representative in the EIA Commission may provide feedback to Environmental Impact Statement (ANDAL) Terms of Reference Document for 30 days and to ANDAL document for 75 days, however, there are no regulations on how the public may have direct involvement.

In addition to that, the public only has the right to provide suggestions, opinions and responses within 30 (thirty) working days after the announcement of the business plan and/or activities that impact the environment (see Article 33 paragraph 3 of Government Regulation No. 27 of 1999), however, this period has been shortened to 10 days for the EIA, 3 days for the UKL/UPL (Environmental Monitoring Effort Document/Environmental Management Report) through the Ministerial Decree No. 17 of 2012 on Guidelines for Public Involvement in the Process of Environmental Impact Assessment and Environmental Permits. And community groups that are acknowledged and invited to participate include those who are (i) affected; (ii) environmental observers; and/or (iii) affected by any decisions taken in the EIA process. There are no affirmative requirements for vulnerable groups like women, children, elderly, people with disabilities and indigenous communities.

The announcement is only delivered in the form of business plan announcement (for instance on the company website) and/or public "consultation" which, if it does exist, would be just a propagation. The public only has a limited period to submit their suggestions, opinions, and responses to business plan and/or activities in writing to project initiator and to Minister, Governor, or district head/Mayor. Each 10 (ten) work days for projects with significant impact and 3 days for activities with non-significant impact. The suggestions can only be conveyed through a representative of the community that is affected and appointed by the government and/or community organization who are members of the EIA Commission.

There is an Article, number 13, which reduced the role of the EIA. This Article says that business and/or activities that have significant impact on the environment are exempted from the responsibility to undertake the EIA if the location of business plan and/or activities lies on a district/city that already has a detailed spatial planning and/or strategic area spatial planning where the function of the spatial management is different with that of the EIA.

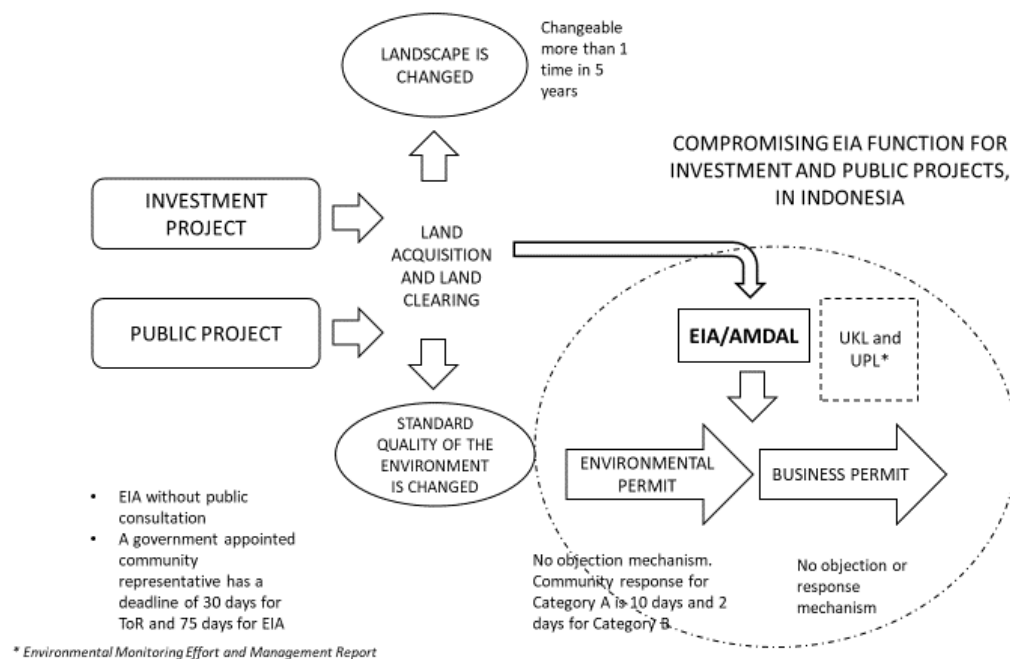
EIA position according to the environmental law:



The EIA is certainly a requirement to obtain environmental permits and business license, but is not a requirement to the changes of function of the spatial management and expropriation of protected areas or national parks or people's land in the favor of projects or investment, including if there are inhabitants in it.

In an investment project, under Indonesian laws, it is permissible for a company which already obtained investment approval to carry out *land clearing* without having to wait for an EIA.

EIA in land expropriation practices for projects



4.2 Involuntary Resettlement

(1) ADB Policies for Involuntary Resettlement

Involuntary Resettlement in this document is translated as “*Pemukiman Kembali Secara Tidak Sukarela*”. This translation is a euphemism for forced displacement or in everyday language known as eviction. However, in the document that is related to this forced displacement issue, the translation used is “*orang-orang yang terpindahkan*” [literally, people who accidentally got displaced], (see matrix) the use of prefix “*ter*” refers to the verb that means “accidentally”, like in the following sentence, “*Buku Ani terbawa oleh Amir*”, it means that Amir has accidentally brought Ani's book. In the context of this resettlement, this is not an accidental act committed by the state, it is a deliberate attempt and must be planned. The term “displaced” is more precise because as a passive verb, citizen/population becomes the object of displacement or resettlement by the state.

The ADB in its safeguard admitted that involuntary resettlement has serious impact on the rights of the displaced persons. Experiences shows that involuntary resettlement will create serious economic, social and environmental risks if it's not controlled: production system would collapse; people would face impoverishment because they lost their productive assets or income sources; involuntarily displaced to an environment where they are less likely able to use their productive skills, and have to deal with fierce competition for obtaining resources; social institution and social network may be weakened; kinship group spreads out; cultural identity, traditional authority and potential for mutual assistance would also be lessened or diminished, and the vulnerable group, women and people without land titles would suffer the most.

Therefore, the ADB makes a concerted effort to avoid involuntary resettlement; minimizes it by looking for alternative projects and plans; requires an improvement or at least rehabilitation of the livelihood for resettled persons in a real value to the level prior the project; specific focus to the vulnerable groups, women and people without land titles, set requirements that resettlement process should improve the living standard of the affected poor people, women and other vulnerable groups. These policies are set forth in the protection measures that provide broad outlines concerning requirements that shall be fulfilled by a debtor/client in implementing the safeguard for involuntary resettlement in the projects supported by the ADB.

These requirements discuss the objective, implementation scope, underline requirements to conduct social impact assessment and resettlement planning process, develop social impact assessment report and resettlement planning documents, review land acquisition negotiations, disclose information and involve in consultation, establish a mechanism for complaint handling, and monitoring – with specific focus on vulnerable groups and women – as well as reporting on resettlement.

Scope and triggers: The protection measures for involuntary resettlement

includes physical displacement (relocation, loss of lands or residences) and economic displacement (loss of lands, assets, access to assets, and source of income or livelihood) due to (i) involuntary land acquisition, or (ii) involuntary limitation to land use or access to protected parks and protected areas set by the laws. These measures cover *all* of those displacements without differentiating whether these involuntary lost and limitations are partial, permanent or temporary (or the displaced persons have or don't have any proof on land titles). Furthermore, these protection measures are set forth in the 12 Policies Principles as follows:

Policy Principles:

1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.⁶⁵ [N.B. Mistranslation?]
2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.
2. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.

⁶⁵Seems there is another mistranslation. English version: "including gender analysis, especially related to the risks and impact of eviction (*penggusuran*).” This safeguard is titled as “Involuntary Resettlement Safeguards”. The impacts and risks referred to are the risks and impacts of involuntary resettlement, i.e. *penggusuran*.

6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
8. Prepare a⁶⁶ resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule..
9. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

The findings of Equivalence Assessment carried out by ADB consultants for this forced displacement stated that:

“For resettlement, the equivalence level is quite strong. Indonesian CSS is fully equivalent with 31 out of 36 key elements (86%) and in 8 out of 12 ADB policy principles. The remaining gaps can be bridged through administrative measures without legislative process.” Page 23, para 60, Consultation Draft March 2017

However, according to detailed analysis, it is clear that the Indonesian CSS is not equivalent to the ADB SPS, both from a legal perspective or implementation perspectives. It is also based on the weaknesses in Land Procurement for Public Interests, which includes:

1. **Land expropriation by the State or Private Business Entity.** Presidential Decree No. 148 of 2015 on land acquisition for public interest, is the fourth amendment of Presidential Decree No. 71 of 2012 on Land Procurement Implementation for the Development in Public Interest. These provisions gradually allowed private business entities which require land to act on behalf of the state. Various amendments towards this Government Regulation (PP) are not in favor of legal certainty or respect to the land owners in reaching an agreement, but instead to facilitate the expropriation of land by the State, and it is also allowed the private parties that work on a joint project

⁶⁶ Translation? English version: “Prepare a resettlement plan”. It means “Menyusun sebuah rencana...(developing a plan)”

with the State to own similar right with that of the State through the process of transaction, trade, or other ways agreed between the entitled parties and the private business entities.

2. **“Grievance Mechanism” that is unacceptable.** For grievance towards the plan for determining the location of development which is handled by the governor will be conducted within three work days at the most (previously was 14 work days) after the grievance is accepted. Three-days are inadequate to assess public grievance against the location of development. Whereas the determination of location by the governor is carried out within seven work days at the most, (there was no time limit previously) since reaching the agreement with the community or since the refusal of grievance submitted by the objecting parties. It means that within maximum of ten days, determination for the location of development must be issued. This is also clearly stipulated in Article 41 paragraph (2) that *“If the period concerned has ended and location determination has not yet issued, then the location determination will be considered to have been approved.”* Although before the determination of location a “public consultation” would be held, it is nonetheless, showcasing an arbitrary form of the State against its citizen.
3. **Provision of Compensation.** In Indonesia, the provision of compensation can take form in: (a). money; (b). substituted land; (c). resettlement; (d). shareholding; or (e). other formats agreed by the two parties. Compares to ADB requirements, there are no priorities to replace land with land and in general, the people were not offered with lands. It is stipulated in the Presidential Decree (Perpres) that the provision of compensation shall be done within seven work days at the most (there was no time limit before) since the determination of compensation formats by the land procurement organizer. This *Perpres* also reiterates that land procurement for development undertaken by the private business entities will be directly conducted through transaction, trade, or other ways agreed between the entitled parties and the private business entity. For compensation in the form of money, it shall be done by the institution that requires land based on the validation from the implementing head of land procurement or the appointed officer. The validation shall take place in maximum of three work days (there was no time limit before) since the release of report on compensation format agreement. The appraisal is measured per parcel of land, but usually is not based on its substitute value, and it shall include: (a). land; (b). space above and below the ground; (c) buildings; (d) plants; and (e) objects related to the land; and/or (f) other losses that can be appraised. However, in the practice, due to imbalance relationship between the State and its citizen, force the citizen to accept the compensation as such, including if one disagrees. For instance, if land conflict occurs, the company is allowed to “entrust” an amount of “compensation” at the District Court, although the format and amount of that “compensation” has not been approved yet by the community. Once the fund is entrusted to the Court, despite for instance, the amount or form of compensation is not approved by the community (for example, farmers seek for substitute land instead of a sum of money that is insufficient to buy an equal value of the original land), despite the absent of community decision to bring the case to the court which usually is not in the favor of the poor, and although there are no ruling yet from the court concerning the public claim, “the compensation” would still be considered “paid” and, although the

community has not taking any compensation yet, the company has the right to take over the lands, evict the land owners and proceed their projects; despite the disagreement from the land owners concerning the amount or type of compensation and have not received any compensation as yet. After entrusting the compensation fund, the process of land expropriation has been legally conducted.

(2) Comparison of the Result of Equivalency Assessment for Forced Displacement / Eviction between ADB and Reality

4.2 Civil Society Analysis of the ADB Consultants' Equivalence and Acceptability Assessments for Involuntary Resettlement in Indonesia

A detailed analysis shows that clearly Indonesia's CSS for involuntary resettlement is NOT EQUIVALENT to ADB SPS requirements. This can be seen from the overview below:

No	Objectives, Scope and Triggers, and Policy Principles	Level of Equivalence		Comment / Explanation
		ADB	Reality	
	Objectives			
	Objectives: To avoid involuntary resettlement [pemukiman kembali tidak dengan sukarela⁵⁸] wherever possible ; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels ; and to improve the standards of living of the displaced poor and other vulnerable groups.	"Broadly aligned"	Not Equivalent	<p>Indonesian laws (Undang-Undang – UU), provide no mitigation hierarchy which begins with the primary point, that is "avoid involuntary resettlement wherever possible".</p> <p>According to the ADB's CSS analysis: ADB: "(iii) Policy Principle 7, Key Element 1. "Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets." The Indonesian legal framework does not provide for resettlement assistance for displaced persons."⁵⁹ [Indonesian version: "Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah."]</p> <p>[Editorial Note: This lack of equivalency with a core ADB safeguard represents an extraordinary threat to Indonesian citizens because the majority of Indonesian citizens, and the vast majority of the poor, do not possess land titles.]</p> <p>ADB: "28. With regard to the practice of "land clearing" (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants from a piece of land or area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. These persons without land rights are also called squatters.³⁴ The provisions of Law 2 of 2012 on land acquisition for development of public use do not apply to squatters, since the land is already owned by an entity that needs the land for a project. ... Article 4 of Law 51 of 1960 stipulates that illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings. Article 6 of Law 51 stipulates that illegal occupants could be charged with "criminal offense." As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance."⁶⁰</p> <p>ADB: "The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan." ⁶¹</p>

⁵⁸Kemungkinan lebih akurat bahwa "involuntary resettlement" diterjemahkan "penggusuran" dari pada "pemukiman kembali tidak dengan sukarela". Di "kajian" ini, para konsultan ADB rupanya merasa bebas merubah istilah2 yang dipakai secara resmi oleh di dokumen safeguards ADB resmi, yaitu "Pernyataan Kebijakan tentang Upaya Perlindungan" yaitu versi Bahasa Indonesia dari ADB Safeguards Policy Statement (SPS) yang resmi diterbitkan oleh ADB dan yang ditemukan di website ADB sejak 2009.

⁵⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

⁶⁰ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 28

				<p>“The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”⁶²</p> <p>“The Indonesian legal framework does not require monitoring of land acquisition / resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved..”⁶³</p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”⁶⁴</p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’⁶⁵</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”⁶⁶</p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”⁶⁷</p> <p>ADB: The following are issues identified with the LARPs: “</p> <ul style="list-style-type: none"> •Lack of differentiation of socioeconomic impacts among categories of affected people, in particular, with respect to vulnerable groups and gender; • Inconsistent criteria applied to land valuation; • Inadequate provision for source of funding for compensation; and • Lack of adequate details on assistance offered for livelihood restoration. ⁶⁸ <p>In addition, the ADB requires independent documentation of the proses of negotiation and agreement regarding land which must involve “external parties”, but in Indonesia the transaction is merely “agreed to”/overseen by a government employee/civil servant, a “Pejabat Pebuat Akta Tanah” [Land Deed Making Official] who cannot be considered to be an independent “external party”.</p>
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⁶¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

⁶² ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

⁶³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

⁶⁴ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 35

⁶⁵ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

⁶⁶ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

⁶⁷ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

⁶⁸ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 22, para 58

				ADB: “26. With respect to ADB’s specification that “the borrower/client will engage an independent external party to document the negotiation and settlement processes” (SPS Appendix 3, paragraph 25), Indonesia’s CSS require that every land transaction must be approved by a Land Deed Making Official (Pejabat Pembuat Akta Tanah), who fills the role of professional third party.” ⁶⁹
	Scope and Triggers			
	Upaya perlindungan pemukiman kembali tidak dengan sukarela mencakup pemindahan secara fisik (relokasi, hilangnya tanah lahan tempat tinggal atau hilangnya hunian) dan pemindahan yang bersifat ekonomi (hilangnya lahan, aset, akses atas aset, sumber penghasilan atau mata pencaharian) karena (i) pembebasan lahan tidak dengan sukarela, atau (ii) pembatasan tidak dengan sukarela terhadap penggunaan lahan atau akses ke taman-taman dan kawasan lindung yang ditetapkan secara hukum. Upaya ini mencakup semua pemindahan tersebut, tanpa membedakan apakah kehilangan dan pembatasan tidak dengan sukarela tersebut bersifat parsial, permanen atau sementara	Aligned	Not Equivalent	<p>According to ADB’s CSS analysis:</p> <p>“(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”⁵⁹ [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].⁷⁰</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”⁶⁶</p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”⁶⁷</p> <p>ADB: “14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.”⁷³</p> <p>All of the field study cases which were analysed in Appendices 8 – 11 in the ADB assessment also prove that there is a complete lack of any analysis regarding gender issues, impacts on women or monitoring of the fate of the women impacted by the projects in the four sectors that were analysed, including the Energy Sector and the Water Sector.</p>
1	Policy Principle 1		Not Equivalent	
1.1	Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks	Full	Not Equivalent	<p>Failure to identify impacts and risks for vulnerable groups, for those without proof of land ownership (land certificates) and gender issues.</p> <p>ADB “(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”⁵⁹ [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].”⁷⁴</p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulate on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”⁶⁴</p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the</p>

				livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” ⁷⁵
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⁶⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 26

⁷⁰ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁷¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 20, para 56

⁷² ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 20, para 56

⁷³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards,, para 14, hal 8

⁷⁴ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017hal 10, para 28

				ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.” ⁷⁶
1.2	Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks. Menentukan cakupan perencanaan pemukiman kembali melalui satu survei dan/atau sensus tentang orang-orang yang terpindahkan [tergusur], termasuk analisis gender, terutama yang berkaitan dengan dampak dan risiko pemukiman kembali. ⁷⁷	Full	Not Equivalent	Land Acquisition Planning is implemented merely on the basis of initial data collection regarding land and parties with proof (certificates) of land ownership. There is no requirement to conduct a survey/census specifically about vulnerable groups or a gender analysis. There is a failure to identify the impacts on and risks to vulnerable groups, to people without land certificates or to assess gender issues. ADB: “(iii) Policy Principle 7, Key Element 1. ‘Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.” ⁵⁹ [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”]. ⁷⁸ ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” ⁷⁹ ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.” ⁸⁰
2	Policy Principle 2	Full	Not Equivalent	Indonesian requirements for Public Consultation are not equivalent with the ADB SPS requirement for “meaningful consultation”, including the required 120 day public comment period required prior to decision-making regarding a project with significant impacts.
2.1	Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.	Full	Not Equivalent	The Indonesian Law on Land Acquisition only requires what is called “public consultation” with those individuals whose lands will be taken and not consultation with the local community, and this does not involve non-governmental organizations. The implementation of these “consultations” does not meet the standard of “meaningful consultation” and is usually merely a form of “socialization” about the fact that a decision has already been made that a project will be implemented and that the project is good for the community, which is then pressured to accept the project, which has already been decided upon. INSERT DEFINITION OF MEANINGFUL CONSULTATION HERE

⁷⁵ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁷⁶ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 14, hal 8

⁷⁷ Sekali lagi ada “masalah” dengan penerjemahan yang merubah makna istilah dalam dokumen “kajian” ini dari konsultan ADB. Di dokumen safeguards ADB resmi, yaitu “Pernyataan Kebijakan tentang Upaya Perlindungan” dari ADB dalam versi Bahasa Indonesia yang diterbitkan oleh ADB dan yang ditemukan di website ADB sejak 2009 di halaman 22, istilah “displaced persons” diterjemahkan “orang-orang yang tergusur”. Tetapi, rupanya “konsultan ADB” merasa bebas sekali lagi merubah istilah dengan cara yang jelas merubah artinya dan mengganti istilah “terpindahkan” untuk istilah “tergusur.” Versi original di dokumen asli adalah “1. Menyaring proyek sejak awal untuk mengidentifikasi dampak dan risiko terjadinya pemukiman kembali tidak dengan sukarela di masa lalu, saat ini dan di masa mendatang. Menentukan cakupan perencanaan pemukiman kembali melalui satu survei dan/atau sensus tentang orang-orang yang tergusur, termasuk analisis gender, terutama yang berkaitan dengan dampak dan risiko pemukiman kembali.”

⁷⁸ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁷⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁸⁰ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 14, hal 8

				INSERT DEFINITION IN INDONESIAN LAW HERE
2.2	Inform all displaced persons of their entitlements and resettlement options.	Full	Not Equivalent	<p>ADB “(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”⁵⁹ [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].”⁸¹</p> <p>Thus, “all displaced persons” -- including specifically those without land title (majority of the poor) -- likely will not have a right to entitlements and will not be informed. Given the failure to ensure a gender-sensitive approach, with gender-disaggregated data, 50% of affected persons (women) will likely neither be informed of nor receive entitlements or shape the determination of viable resettlement options that protect their livelihoods.</p> <p>No requirement for “meaningful consultation.”</p>
2.3	Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” ⁸²</p> <p>ADB: “Law of 2012 does not state specifically on consultation at planning stage... Article 19 of Law 2 of 2012 stipulates that public consultation of the planned development is carried out to obtain the agreement on the planned development location...The Law 2 of 2012 and its implementing regulations do not stipulate on participation of entitled parties in monitoring and evaluation of resettlement program.”⁸³</p> <p>Editorial note: The “consultation” mentioned is apparently meant to obtain “agreement” from affected communities on the already “planned development location”. This is not a meaningful consultation to seek public input to determine the location of a proposed project if the location is already planned.] There is no stipulation of any monitoring or evaluation of the resettlement program, nor any monitoring of the fate of those displaced from their lands and livelihoods.</p>

2.4	Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.	Full	Not Equivalent	<p>There is no requirement to “pay particular attention to the needs of vulnerable groups”.</p> <p>Those who may be involved are “those with rights” (“yang berhak”), in the sense that they have formal proof of land title (certificate). Those without land titles are usually considered illegal “squatters”, even though they may have occupied the land for decades and thus derived rights.</p> <p>This is no required by law, and field studies, including ADB’s own case studies in Appendices 8 – 11, find a very clear track record that this does not happen under Indonesia’s CSS.</p>
2.5	Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons’ concerns.	Full	Not Equivalent	<p>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.)</p>
2.6	Support the social and cultural institutions of displaced persons and their host population.	Full	Not Equivalent	<p>ADB: “The legal framework also does not require integration of resettled persons into their host communities and does not extend project benefits to host communities.”⁸⁴</p>
2.7	Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase	Full	Not Equivalent	<p>There is no “social preparation phase” mandated for highly complex and sensitive risks related to involuntary resettlement.</p>

⁸¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁸² ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

⁸³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 16.

⁸⁴ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

3	Policy Principle 3	Full	Not Equivalent	
3.1	<p>Improve, or at least restore, the livelihoods of all displaced persons through land-based resettlement strategies when affected livelihoods are land based where possible, or cash compensation at replacement value for land when the loss of land does not undermine livelihoods.</p> <p>NOTE: The Indonesian version of the CSS assessment features a translation “error” here which eliminates the word “all” so that the requirements appears to be to “restore the livelihoods of displaced persons” instead of “restore the livelihoods of all displaced persons”.</p> <p>This is of vital importance given the lack of requirements under CSS to restore livelihoods of displaced persons without land title.</p> <p>Meningkatkan, atau paling tidak memulihkan, kehidupan [SEMUA]⁸⁴ orang-orang yang terpindahkan [dipindahkan]⁸⁵ melalui strategi pemukiman kembali sedapat mungkin berbasis lahan jika mata pencaharian orang-orang yang terkenadampak berbasis lahan atau memberikan ganti rugi uang tunai sesuai dengan nilai penggantian jikakehilangan lahan</p>	Full	Not Equivalent	<p>The Indonesian legal system does not require that resettlement must be land based where possible when affected livelihoods are land-based.</p> <p>The types of compensation, by law are: (a). cash; (b) land; (c) replacement housing; (d). shareholding; or (e). other forms agreed upon by both parties.</p> <p>In general, land as compensation is not at all prioritized.</p> <p>The Indonesian legal system does not aim to “improve, or at least restore, the livelihoods of all displaced persons” and there is no requirement that vulnerable groups, women and those without formal title to their lands (normally the poor have no land titles) must be guaranteed livelihood improvement after resettlement/eviction.</p> <p>According to the field research conducted by the ADB (which was not made public at the time of the Fake Consultation in Jakarta and Makassar), “often” the budget for compensation was truly insufficient to pay compensation, the necessary data on property to be assessed is incomplete, the assessors are not competent, the vast majority of assessors are located in Jakarta and not in other regions, there are problems with compensation for people without land title. In addition, the ADB found that there is no monitoring of impacts of land acquisition on affected people and disclosure of monitoring reports on land acquisition is not required.</p> <p>ADB⁸⁶: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility • Incomplete data on land acquisition objects, including remaining land • Most appraisers’ lack of knowledge on land acquisition law and regulations • Limited number of appraisers and geographical concentration in Java [“hampir semua penilai berada di pulau Jawa”] • Budget allocation is often less than necessary to pay compensation • Inconsistency in providing compensation and assistance for non-land rights holders • Monitoring does not cover land acquisition impacts to the affected persons/entitled parties • Disclosure of land acquisition report is not required”

	tidak mengurangi penghidupan mereka			
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⁸⁴Versi Bahasa Indonesia ini menghilangkan kata “semua” dari prinsip2 kebijakan. Safeguards ADB mensyaratkan bahwa SEMUA ORANG-ORANG YANG DIPINDAHKAN” harus ada peningkatan atau pemulihan penghidupan. Versi asli (Bahasa Inggris) ADB Safeguards Policy Statement mewajibkan: “Improve, or at least restore, the livelihoods of **all displaced persons** through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.” Hal 17.ADB, Safeguard Policy Statement, 2009.

⁸⁵ Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan”. Versi asli: “Meningkatkan, atau paling tidak memulihkan, penghidupan orang-orang yang dipindahkan melalui
(i) strategi pemukiman kembali sedapat mungkin berbasis lahan jika mata pencaharian orang-orang yang terkena dampak berbasis lahan atau memberikan ganti rugi uang tunai sesuai dengan nilai penggantian jikakehilangan lahan tidak mengurangi penghidupan mereka, (ii) segera memberikan ganti rugi atas aset dengan akses atas aset yang bernilai setara atau lebih tinggi, (iii) segera memberikan penggantian secara penuh untuk aset-aset yang tidak bisa dipulihkan, dan (iv) tambahan penghasilan dan layanan melalui skema pembagian manfaat jika memungkinkan,ADB, Pernyataan Kebijakan tentang Upaya Perlindungan, 2009.

⁸⁶ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, Tabel A.10.2

			<p>ADB: “The problem in Indonesia is not only in terms of quantity of the appraisers, but also of the distribution of appraisers. More than 80% of appraisers are in Jakarta and surrounding cities (Jakarta-Bogor- Depok-Tangerang-Bekasi or Jabodetabek).”⁸⁸</p> <p>ADB⁸⁸: “the technical guidance and template for the identification of land acquisition objects for compensation needs to be improved to capture the loss of business, profession change, moving cost, and other relocation assistances.”</p> <p>ADB case studies document the the fact that, in the Water Sector case examined by the ADB, apparently the “Land Acquisition and Resettlement Plan” was implemented, except for the “compensation” part, with a lack of “special attention to vulnerable people” identified as a “weakness” with <i>no “Nominative List” of assets, buildings, plants or trees produced</i>”. All “substantive work on land acquisition and resettlement” was “outsourced to consultants” and the only indicator used by the official “Task Force for land acquisition” was the “percentage of land acquired for the project”. There are no indicators or monitoring regarding the welfare of project-affected people.</p> <p>Water Resource Sector: Karian Multipurpose Dam Project:⁸⁹</p> <p>“there is no legal mandate to establish a specific safeguard unit at Balai level. All substantive work on land acquisition and resettlement is outsourced to consultants..” ... “The indicator used for the outputs of the Task Force for land acquisition is the percentage of land that has been acquired for the project. To date, the LARP [Land Acquisition and Resettlement Plan]⁹⁰ for the quarry and its access roads has been implemented, but compensation is still pending.”</p> <p>“20. One weakness identified in the planning stage was the lack of special attention to vulnerable people.⁹¹”</p> <p>“29. To date, no nominative lists (Daftar Nominatif⁹) have been produced...”⁹²</p> <p>Footnote 9 for this sentence states:</p> <p>“9 Daftar Nominatif is the detailed information of the entitled parties which includes: location, area, and status of affected assets/land acquisition objects; area and type of buildings; type of use of affected assets; plants/trees and other objects related to the land. The assigned task force of the Land Acquisition Committee lead by the regional MASP/NLA collects these data.”</p>
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⁸⁷ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Perlindungan Pemukiman Kembali Tidak Secara Sukarela, Tabel A.10.2

⁸⁸ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 58

⁸⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 7,9

⁹⁰ Masalah translation lagi. Versi asli, Bahasa Inggris adalah “LARP”, yaitu Land Acquisition and Resettlement Plan, i.e. Rencana Pengadaan Tanah dan Pemindahan/Pengurusan bukan Dokumen Perencanaan Pengadaan Tanah. Bukan “Dokumen” yang dilaksanakan tetapi “Rencana” pengurusan yang dilaksanakan, tetapi tanpa kompensasi karena “tertunda”.

⁹¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 20

⁹² Yet another translation “problem” where the Indonesian translation materially changes the meaning of the sentence. The original sentence in the English language version is: “To date, no nominative lists (Daftar Nominatif) have been produced”. In the Indonesian translation, the word “no” was eliminated and, instead, the phrase “telah dibuat” (“have already been made”) was inserted, leading to a completely opposite meaning – i.e. “Nominative lists have already been made.”

				<p>ADB: “31. Results Stage. As the project was in the Implementation Stage at the time of writing, there are no results to assess at this time.”⁶⁷</p> <p>ADB:” C. Outputs</p> <p>35. Land Acquisition and Resettlement Plan Document. The LARP documents assessed were for the quarry on the Geblegan Mountain and the improvement of access road from the quarry to the Karian Dam. Two other LARPs for the Karian Dam Project were still under preparation at the time this report was written. The action plan for the Geblegan LARP is scheduled from 2016 to 2019 (3 years). The existing LARP documents showed that the subproject was fully consistent with spatial planning and the development plans. It described the activities, location, LARP methodology, and data on the land to be acquired and on the owners of the land. However, there was no discussion of socioeconomic impacts in particular with respect to vulnerable groups and gender in the document; the socio-economic survey was carried out on all affected persons equally.”⁶⁸</p> <p>“E. Review of Institutional Capacity among Key Sector Agencies”</p> <p>ADB⁹³: 1. Ministry of Public Work and Housing (MPWH)</p> <p>65. There are two directorates general under the MPWH which have specific unit for social safeguards, namely the Directorate General of Water Resources (DGWR) and Directorate General of Highways (DGH) or Direktorat Jenderal Bina Marga (Dirjen Bina Marga). While at the Directorate General of Human Settlement (DGHS) and Directorate General of Housing (DGS), there is no dedicated sub-directorate for safeguards.”</p> <p>ADB⁹⁴: Directorate General for Water Resources,“</p> <p>“72. At local level, the Balai Besars of DGWR have adequate number of competent staff, who mainly focus on technical/sector aspects. The number of staff assigned specifically to social safeguards is, however, very limited. The social safeguards issues are handled by the Satker or project manager (PPK), who is also responsible for overall project and may not pay detailed and dedicated attention to the substantive issues related to land acquisition/involuntary resettlement. Moreover, in some Balai Besars there are only 2–3 staff assigned to land acquisition despite a rather large number of projects for which land acquisition/ involuntary resettlement needs to be timely and adequately developed and implemented.</p> <p>TIDAK SECARA SUKARELA [PENGUSURAN/ PEMINDAHAN]⁹⁶ harus dikembangkan dandilaksanakan dengan tepat waktu dan memadai.”</p> <p>ADB⁹⁷: “Ditjen SDA tidak memiliki pedoman upaya perlindungan spesifik sendiri.”</p>
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^{67 89}ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 31

^{68 89}ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 35

⁹³ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 65

⁹⁴ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 72

⁹⁵ Masalah translation lagi: versi asli Bahasa Inggris “involuntary resettlement”, bukan “resettlement” saja. Istilah “involuntary” dihilangkan dalam translation .

⁹⁶ Masalah translation lagi: versi asli Bahasa Inggris “involuntary resettlement”, bukan “resettlement” saja. Istilah “involuntary” dihilangkan dalam translation .

⁹⁷ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 74

				<p>ADB⁹⁸: Directorate General Bina Marga [Roads] “81. Staff of the land acquisition division at DG Bina Marga have good knowledge and experiences in land acquisition. However, this division only covers toll road projects and does not serve land acquisition for national highways projects managed by the DG Bina Marga and UPT/Balai Besar. The staff of the sub – directorate of Environment and Road Safety have good knowledge of environment safeguards, yet less of land acquisition. The staff responsible for projects at DGH sector/thematic directorates has good capacity in technical matters</p> <p>(engineering), but its capacity in safeguards is limited.”</p> <p>“83. ... However, since most land acquisition/involuntary resettlement for the highway projects are handled and financed by local governments using their own budget, further assessment to the capacity and commitment of local government in handling social safeguard need to be strengthened.”</p> <p>ADB⁹⁹, “84. Directorate General of Human Settlement (DG Cipta Karya)</p> <p>84. The capacity of the Directorate General of Human Settlement (DGHS – DG Cipta Kaya) is rated “weak”. There is no dedicated safeguard unit at the DGHS.”</p>
3.2	<p>Improve, or at least restore, the livelihoods of all displaced persons</p> <p>through prompt replacement of assets with access to assets of equal or higher value.</p> <p>[Note: The Indonesian translation in the ADB’s CSS assessment eliminated the words “all” and “prompt” from the above requirement.] 100 101 102</p>	Full	Not Equivalent	<p>There is no requirement to “improve or at least restore the livelihoods of all displaced persons”; and not “all” who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have “land certificates”.</p> <p>The requirement for compensation is not “replacement of assets with access to assets of equal or higher value”.</p> <p>The requirement for “prompt replacement” is circumvented with the increasingly prevalent strategy of placing a sum of money in an escrow account at a district court, despite no agreement with a community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or amount of compensation. With the desposit funds of funds in an escrow account, despite the lack of “prompt” compensation to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>See additional information above.</p>

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⁹⁸ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Acceptabilty Assessment for Involuntary Resettlement Safeguards, para 81, 83

⁹⁹ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Acceptabilty Assessment for Involuntary Resettlement Safeguards, para 84

¹⁰⁰Versi Bahasa Indonesia ini menghilangkan kata “semua” dari prinsip2 kebijakan. Op cit. “Meningkatkan atau setidaknya memulihkan, mata pencarianorang yang **terpindahkan[dipindahkan]** dengan memberikan ganti rugi atas aset dengan akses atas aset yang bernilai setara atau lebih tinggi,

¹⁰¹ Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan.” Op cit.

¹⁰²Versi Bahasa Indonesia dari para konsultan ADB menghilangkan kata “segera” dan, demikian, sangat merubah artinya syarat ADB ini. Ganti rugi harus SEGERA diberi, mnt SPS ADB.

3.3	<p>Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored.</p> <p>[Note: The Indonesian translation in the ADB's CSS assessment eliminated the words "all" and "prompt" from the above requirement.] 100 101 102</p>	Full	Not Equivalent	<p>There is no requirement to "improve or at least restore the livelihoods of all displaced persons"; and not "all" who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have "land certificates".</p> <p>The requirement for compensation is not "replacement of assets with access to assets of equal or higher value".</p> <p>The requirement for "prompt replacement" is circumvented with the increasingly prevalent strategy of placing a sum of money in an escrow account at a district court, despite no agreement with a community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or amount of compensation. With the desposit funds of funds in an escrow account, despite the lack of "prompt" compensation to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>See additional information above.</p>
3.4	<p>Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes, where possible.</p> <p>Note: The Indonesian translation in the ADB's CSS assessment eliminated the word "all" from the above requirement.]</p>	Full	Not Equivalent	<p>There is no requirement to "improve or at least restore the livelihoods of all displaced persons"; and not "all" who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have "land certificates".</p> <p>The requirement for compensation is not "replacement of assets with access to assets of equal or higher value".</p> <p>See additional information above.</p>
4	Prinsip Kebijakan 4	Partial	Not Equivalent	

4.1	Provide physically and economically displaced persons with needed assistance, including, if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities. Integrate resettled persons economically and socially into their host communities, and extend project benefits to host communities	Partial	Not Equivalent	<p>ADB: " The Indonesian legal framework does not provide for comparable access to employment and production opportunities. The legal framework also does not require integration of resettled persons into their host communities and does not extend project benefits to host communities."107</p> <p>ADB: "22. Law 2 of 2012 and Presidential Regulation 71 of 2012 regulate on resettlement, however, they do not contain specific language regarding the issues of securing tenure to land ensuring better housing for displaced people at resettlement sites, and public facilities as stipulated by Law 1 of 2011. Both land acquisition law and housing and settlement law do not stipulate on integration of resettled people in the host community and extension of project benefit to host communities.</p> <p>23. The laws and regulations states on resettlement support, yet it is limited to support for housing and settlement area development and moving cost, but does not include transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities."108</p>
4.2	Provide physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.	Partial	Not Equivalent	" Under the Indonesian CSS, transitional support is limited to housing and settlement area development." 69

¹⁰³Versi Bahasa Indonesia ini menghilangkan kata "semua" dari prinsip2 kebijakan. Op cit.

¹⁰⁴ Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah "dipindahkan" dengan "terpindahkan". Op cit.

¹⁰⁵Versi Bahasa Indonesia ini menghilangkan kata "semua" dari prinsip2 kebijakan. Op cit.

¹⁰⁶ Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah "dipindahkan" dengan "terpindahkan." Op cit.

¹⁰⁷ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

¹⁰⁸ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 22.

⁶⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

4.3	Provide physically and economically displaced persons with civic infrastructure and community services, as required.	Full	Not Equivalent	<p>Transitional assistance does not cover all of the transition costs. There is no specific analysis required regarding the needs of vulnerable populations, those without land titles, women, etc, to ensure that they receive transitional assistance.</p> <p>"Under the Indonesian CSS, transitional support is limited to housing and settlement area development." ⁷⁰</p>
5	Policy Principle 5	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework does not provide for comparable access to employment and production opportunities." ¹⁰⁹ ADB CSS Assessment, pg 10, para 28</p> <p>ADB's consultants correctly identify the fact that the Land Law 2 of 2012, the law generally used to seize lands for projects "does not specifically address the restoration of living standards of the poor and other vulnerable displaced persons" as required by the ADB (and WB, IFC etc.). Case studies by the ADB in appendices 8 – 11 of this CSS Assessment and many other studies prove that, in fact, not only is there a near-complete lack of attention to livelihood restoration or improvement associated with involuntary/forced resettlement, but there is no specific attention paid to "vulnerable displaced persons" and women, making up at least 50% of affected populations, in general.</p> <p>The ADB consultants attempt to cover up this massive lack of equivalence by referring to vague statutes including those which declare platitudes such as "Everyone has the right to just support and protection from an objective impartial judiciary" "all members of vulnerable groups.... are entitled to greater protection of human rights" etc. In this case, a 1999 law on human rights which ADB consultants claim would ensure livelihood restoration and livelihood improvement for the poor and vulnerable.</p> <p>However, as the ADB (and many other) case studies (and lawsuits brought by forcibly displaced impoverished communities) demonstrate, livelihood restoration and improvement for vulnerable evictees is not considered, nor monitored at all.</p> <p>This sort of spurious argument – citing vague regulations which are obviously not implemented – while ignoring field-based evidence of very clear track record of a resounding failure (refusal) to ensure livelihood restoration and livelihood improvement for the poor and vulnerable who are victims of landgrabbing or "land acquisition" – is a hallmark of this entire CSS assessment, rendering it not fit for purpose, a failed assessment featuring a refusal to clearly and independently assess the track record of the client.</p>

⁷⁰ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

				<p>ADB: “24. Full equivalence. Law 2 of 2012 does not specifically address the restoration of living standards of poor and other vulnerable displaced persons. However relevant provisions are made in Law 39 of 1999 on Human Rights. Article 5 states that (1) everyone is recognized as an individual with the right to demand and obtain equal treatment and protection before the law as befits his or her human dignity; (2) everyone has the right to just support and protection from an objective, impartial judiciary; and (3) all members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to <u>greater protection of human rights</u>.²⁷.”¹¹⁰</p>
5.1	<p>Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standard.</p>	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved." ⁸²</p> <p>“The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”⁶²</p> <p>“The Indonesian legal framework does not require monitoring of land acquisition / resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved..”⁶³</p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulate on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”⁶⁴</p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’⁶⁵</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”⁶⁶</p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”⁶⁷</p> <p>ADB: ““(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistancefor displaced persons.”⁵⁹</p> <p>ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly</p>

				<p>discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.”⁷³</p> <p>All of the field study cases which were analysed in Appendices 8 – 11 in the ADB assessment also prove that there is a complete lack of any analysis regarding gender issues, impacts on women or monitoring of the fate of the women impacted by the projects in the four sectors that were analysed, including the Energy Sector and the Water Sector.</p> <p>⁵⁹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p>⁶¹ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p>⁶² ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p>⁶³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p>⁶⁴ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 35</p> <p>⁶⁵ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p>⁶⁶ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p>⁶⁷ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p>⁷³ ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards,, para 14, hal 8</p>
5.2	In rural areas provide them with legal and affordable access to land and resources.	Full	Not Equivalent	See above, section 5.1
5.3	In urban areas provide them with appropriate income sources, and legal and affordable access to adequate housing.	Full	Not Equivalent	<p>See above, section 5.1.</p> <p>See also, the Bukit Duri eviction case where the courts ruled in favor of the evictees, indicating that their (relatively slim) rights had been violated and which is briefly mentioned (i.e. a statement, without describing the case, that the government plans to appeal the case). The violent attacks against impoverished evictees are not clearly described, in the study on the urban sector. For example, http://www.thejakartapost.com/news/2017/01/06/court-ruling-proves-bukit-duri-eviction-inhumane-agus.html</p>
6	Policy Principle 6	Full	Not Equivalent	

			lent	
6.1	Develop procedures in a transparent, consistent and equitable if land acquisition is based on negotiated settlement.	Full	Not Equivalent	<p>ADB SPS requires that there must be documentation by an independent external third party of the process of negotiation over land and any settlement, but Indonesian CSS does not require an independent external third party but merely requires that each land transaction must be “approved” by a government official, the “Land Deed Making Official” who cannot in any sense be considered an “independent external third party” given the government’s prominent role in land seizures for projects. ADB consultants claim that this government official is “independent” and a “third party” despite substantial government role, including use of force, determination of compensation, facilitation of “compensation” being placed in escrow, granting of project permits, etc. in land seizures/land acquisition, including as documented in the ADB’s CSS studies in Appendices 8 – 11.</p> <p>ADB: “26. With respect to ADB’s specification that “the borrower/client will engage an independent external party to document the negotiation and settlement processes” (SPS Appendix 3, paragraph 25), Indonesia’s CSS require that every land transaction must be approved by a Land Deed Making Official (Pejabat Pembuat Akta Tanah), who fills the role of professional third party.”¹¹¹</p> <p>The ADB consultants blame “misunderstandings” by landowners about the “valuation criteria” for their assets as the source of land disputes. However, unlike the ADB (and WB, IFC), which require compensation of land for land, and compensation at <i>replacement</i> value of property, Indonesia’s CSS does not require either of these. Clearly disputes would arise when landowners dependent on land-based activities for their livelihoods (farmers, fishpond owners, etc.) are not provided with replacement land and where compensation less than the replacement value of assets is offered. The ADB consultants do not examine these normal causes of disputes over land and landgrabbing practices facilitated by the government and private sector. Again, this report is not fit for purpose and fails to accurately describe the track record of the client’s CSS.</p> <p>ADB: “• There are an insufficient number of personnel to conduct land measurement and survey at the MASP/NLA regional offices. The valuation process in cases with multiple land parcels takes longer than required (more than 30 days) due to incomplete data for valuation and non-availability of independent appraisers. There are instances when landowners misunderstand valuation criteria, which often leads to disputes.” ADB CSS Evaluation, Page 20 para 56⁷¹</p>

¹⁰⁹ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, hal 10, para 28.

¹¹⁰ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesenjangan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 24.

⁷¹ ADB, Indonesian Country System Review, March 2017, pg 10, para 56

6.2	Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.	FULL	Not Equivalent	See all comments above, including in earlier sections. "ADB: "There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected.."65 ADB CSS Review para 56
7	Policy Principle 7	Partial	Not Equivalent	The lack of equivalence with this principal represents an extraordinary threat to the majority of Indonesian citizens because the majority of Indonesian citizens, and the vast majority of vulnerable groups including the poor, women, Indigenous Peoples and others do not possess proof of land ownership, land certificates, etc. This extraordinary problem and failure to recognize the rights of the majority of the population without written land certificates means that involuntary resettlement represents and extraordinary threat of impoverishment for vulnerable populations. The lack of equivalence with this core principle violates the primary safeguard requirements of the ADB, WB, IFC et al since it leads to direct impoverishment of the poorest and most vulnerable members of society.
7.1	Ensure displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.	Partial	Not Equivalent	See above. The lack of equivalence with this core principle violates the primary safeguard requirements of the ADB, WB, IFC et al since it leads to direct impoverishment of the poorest and most vulnerable members of society. ADB: "ADB: "(iii) Policy Principle 7, Key Element 1. "Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets." The Indonesian legal framework does not provide for resettlement assistance for displaced persons. "59112 [Indonesian version: "Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah." ADB: "28. With regard to the practice of "land clearing" (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants—from a piece of land or area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. These persons without land rights are also called squatters. 34 The provisions of Law 2 of 2012 on land acquisition for development of public use do not apply to squatters , since the land is already owned by an entity that needs the land for a project. ...Article 5 (3) provides that during the land clearing process, the entitled party must initially manage deliberation with the parties concerned. The procedure for such, however, is not well regulated, but requires the landowner/holder to obtain a permit from relevant government offices. Article 4 of Law 51 of 1960 stipulates that illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings. Article 6 of Law 51 stipulates that illegal occupants could be charged with "criminal offense." As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance."113

¹¹¹ ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 26

8	<p>Policy Principle 8</p> <p>Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood, restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.</p>	Partial	Not Equivalent	<p>A core ADB (and WB, IFC etc.) safeguard requirement is livelihood restoration for all affected parties and livelihood improvement for the poor and vulnerable, including women, and those without land title. This is not a requirement of the Indonesian CSS.</p> <p>The consultants appear, once again, to have attempted to avoid the very clear conclusion that the lack of livelihood restoration/improvement, the lack of monitoring of impacts on affected communities render the CSS not equivalent to ADB requirements. In order to avoid the clear conclusion of “not equivalent”, they have divided up this principle in to pieces that they can seek “partial equivalence” for (i.e.that there will be some kind of plan, some kind of report and schedule). However, the contents of the plan and report do not meet ADB (or WB or IFC) requirements.</p> <p>For example, yes, there is an ADB requirement for a resettlement plan, but the requirement includes a plan for entitlements, including for those without land certificates (not a CSS requirement); for income and livelihood restoration for all (not a CSS requirement) , for an increase in livelihood/income for the vulnerable, including women (not a CSS requirement), a plan for monitoring the impact of land acquisition/resettlement on all displaced persons (not a CSS requirement).</p> <p>In addition, the ADB CSS assessment finds:</p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/ resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.”¹¹⁴</p> <p>In the ADB CSS Case Studies the “Key Assessment Findings” regarding “Issues in the Land Acquisition Process” include:</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility study..’ and “auditors’ findings (allegation of corruption).”¹¹⁵

8.1	Prepare a resettlement plan elaborating on displaced persons' entitlements.	Full	Not Equivalent	For example, yes, there is an ADB requirement for a resettlement plan, but the requirement includes a plan for entitlements, including for those without land certificates (not a CSS requirement); for income and livelihood restoration for all (not a CSS requirement) , for an increase in livelihood/income for the vulnerable, including women (not a CSS requirement), a plan for monitoring the impact of land acquisition/resettlement on all displaced persons (not a CSS requirement).
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¹¹²ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, hal 10, para 28.

¹¹³ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 28

¹¹⁴ ADB, Ulasan Upaya Perlindungan Negara:Draft KonsultasiMaret 2017, hal 10, para 28

¹¹⁵ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10, KAJIAN AKSEPTABILITAS UNTUK UPAYA PERLINDUNGAN PEMUKIMAN KEMBALI TIDAK SECARA SUKARELA DILIHAT DARI INSTANSI HUKUM, para 45, Tabel A.10.1

8.2	Prepare a resettlement plan elaborating on the income and livelihood restoration strategy.	Partial	Not equivalent	<p>ADB: “The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”⁶²</p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”⁶⁴</p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’⁶⁵</p> <p>ADB: ADB:“ The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan. ”⁶¹ADB CSS Review para 28</p>
8.3	Prepare a resettlement plan elaborating on the institutional arrangements and time bound implementation schedule.	Full	Not equivalent	<p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”¹¹⁷</p>
8.4	Prepare a resettlement plan elaborating monitoring and reporting framework.	Full	Not equivalent	<p>ADB:“ The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan. ”⁶¹ADB CSS Review para 28;</p> <p>The track record provides clear evidence of the lack of equivalence.</p> <p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”¹¹⁹</p>
8.5	Prepare a resettlement plan elaborating on the budget {“dan jadwal pelaksanaan terkait waktu”]	Full	Not equivalent	<p>There is no clear recognition of the rights of (the majority of Indonesia’s) citizens who do not have proof of land ownership (violation of ADB SPS requirements.) and ADB’s field work found that budget allocations for compensation were “often less than necessary to pay compensation”:</p> <p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”¹²⁰</p>

				<p>ADB⁸⁶: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility • Incomplete data on land acquisition objects, including remaining land • Budget allocation is often less than necessary to pay compensation
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¹¹⁶ Masalah translation lagi! Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan”.Lihat versi asli, ADB, Pernyataan Kebijakan tentang Upaya Perlindungan, 2009. “Menyusun satu rencana pemukiman kembali yang merinci hak penduduk yang dipindahkan, strategi untuk memulihkan penghasilan dan penghidupan, pengaturan kelembagaan, kerangka kerja pemantauan dan pelaporan, anggaran dan jadwal pelaksanaan yang terikat waktu.”

¹¹⁷ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 29

¹¹⁸ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017,hal 10, para 28.

¹¹⁹ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 29

9	Policy Principle 9	Full	Not Equivalent	
9.1	Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal . The disclosed resettlement plan should be in an accessible place and a form and language(s) understandable to affected persons and other stakeholders.	Full	Not Equivalent	<p>Normally, there is only “socialization” to inform affected communities that the project will be located in their area, on their lands and that it is a good project that they must accept. Normally there is not any meaningful consultation process.</p> <p>In fact this current CSS assessment implemented by BAPPENAS is a perfect demonstration of the violation of meaningful consultation requirements of the ADB and the use of standard CSS practices to avoid meaningful consultation. This “assessment” process has been implemented for 3 years, drafts were available last year or earlier and the ADB requirement for access to information as early as possible was violated. Until now there has been no process of meaningful consultation according to ADB SPS requirements. Clearly CSS is not equivalent to ADB requirements.</p>
9.2	Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	Full	Not Equivalent	<p>ADB’s own CSS field studies (Appendices 8 – 11, which were hidden from the public prior to the Fake Consultation in Jakarta and Makassar) found poor quality resettlement plans the hallmark of CSS. See above comments. Provision of poor quality plans which do not fulfill basic ADB safeguard requirements do not fulfill the equivalency requirement.</p> <p>For example: ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”¹²⁰</p> <p>ADB⁸⁶: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility • Incomplete data on land acquisition objects, including remaining land <p>Budget allocation is often less than necessary to pay compensation</p>
10	Policy Principle 10	Full	Not Equivalent	

10.1	Conceive and execute involuntary resettlement as part of a development project or program.	Full	Not Equivalent	<p>There is no requirement nor track record of complete budgets being provided for resettlement, covering all costs of resettlement, including ADB-required transitional costs, support for those without land title and these costs are placed as a burden on those forcibly resettled.</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”⁶⁶</p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”⁶⁷</p> <p>ADB: “(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”⁵⁹</p> <p>."Di CSS Indonesia, bantuan transisi terbatas pada perumahan dan pembangunan wilayah pemukiman baru." ADB UUPN Hal 10, para 28</p>
10.2	Include the full costs of resettlement in the presentation of project’s costs and benefits.	Full	Not Equivalent	<p>All costs borne by those who are evicted, including transition costs, costs faced by those without title to land are not required to be entered in the budget.</p> <p>There is no requirement for funds for livelihood improvement or restoration and those evicted are burdened with the costs of their eviction/transition which are not covered in the budget. See above for details.</p> <p>ADB⁸⁶: “Table A.10.2: Summary of issues in the land acquisition process” including: Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility Incomplete data on land acquisition objects, including remaining land Budget allocation is often less than necessary to pay compensation</p>
10.3	For projects with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.	Full	?	Unclear that there is any requirement for this.

¹²⁰ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesenjangan Upaya

11	Policy Principle 11	Full	Not Equivalent	
11.1	Pay compensation and provide other resettlement entitlements before physical or economic displacement.	Full	Not Equivalent	<p>The requirement for compensation is not “replacement of assets with access to assets of equal or higher value”.</p> <p>The requirement for “prompt” compensation is circumvented by the increasingly prevalent strategy where a project implementer places a sum of money in an escrow account at a district court, despite no agreement with the affected community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or no agreement regarding the amount of compensation sufficient to provide for replacement of assets and transition costs. With the deposit funds of funds in an escrow account, despite the lack of any compensation made to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>The ADB’s own case studies underscore this fact including that the compensation often does not occur prior to involuntary resettlement/displacement/eviction and budgets are often not large enough to cover actual costs borne by those evicted from their lands and houses.</p> <p>ADB⁸⁶: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility • Incomplete data on land acquisition objects, including remaining land • Budget allocation is often less than necessary to pay compensation” <p>For example, Water Resource Sector: Karian Multipurpose Dam Project:⁸⁹</p> <p>“there is no legal mandate to establish a specific safeguard unit at Balai level. All substantive work on land acquisition and resettlement is outsourced to consultants.” ... “The indicator used for the outputs of the Task Force for land acquisition is the percentage of land that has been acquired for the project. To date, the LARP [Land Acquisition and Resettlement Plan]⁹⁰ for the quarry and its access roads has been implemented, but compensation is still pending.”</p> <p>“20. One weakness identified in the planning stage was the lack of special attention to</p>

				<p>vulnerable people.⁹¹”</p> <p>“29. To date, no nominative lists (Daftar Nominatif) have been produced...”⁹²</p> <p>Footnote 9 for this sentence states: “9 Daftar Nominatif is the detailed information of the entitled parties which includes: location, area, and status of affected assets/land acquisition objects; area and type of buildings; type of use of affected assets; plants/trees and other objects related to the land. The assigned task force of the Land Acquisition Committee lead by the regional MASP/NLA collects these data.”</p> <p>See information in sections above for details.</p>
11.2	Implement the resettlement plan under close supervision throughout project implementation.	Full	Not Equivalent	<p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”⁶⁴</p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’⁶⁵</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”⁶⁶</p> <p>"The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.."ADB CSS assessment , para 28.</p>

12	Policy Principle 12	Partial	Not Equivalent	<p>There is no requirement to monitor the impact of eviction/resettlement on the people who have been evicted/resettled.</p> <p>ADB: “Key Assessment Findings...</p> <ul style="list-style-type: none"> • Poor to moderate quality of most land acquisition plan documents...no proper feasibility study. <p>...</p> <ul style="list-style-type: none"> • Knowledge of government auditors on recent legal framework on land acquisition is still weak and this affects the auditors’ findings (allegation of corruption). <p>...</p> <p>Budget allocation is often less than necessary to pay compensation</p> <ul style="list-style-type: none"> • Monitoring does not cover land acquisition impacts to the affected persons/entitled parties • Disclosure of land acquisition report is not required” 121 <p>“ Temuan Kunci dari Kajian: ...</p> <ul style="list-style-type: none"> • Pemantauan tidak mencakup dampak pengadaan tanah pada warga yang terkena dampak/ pihak yang berhak. • Pengungkapan laporan pengadaan tanah tidak disyaratkan”121
12.1	<p>Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline</p> <p>conditions and the results of resettlement monitoring.</p>	Penuh	Not Equivalent	<p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved” 122</p> <p>“UU No. 2/ 2012 dan peraturan pelaksanaannya tidak menetapkan tentang pemantauan dampak pemukiman kembali pada standar hidup orang-orang yang dipindahkan dan apakah tujuan dari rencana pemukiman kembali telah dicapai”122</p> <p>ADB: “39. Pemantauan dan Peninjauan. Berdasarkan UU No.2/2012, Kantor Tanah bertanggung jawab dalam memantau proses pengadaan tanah. Pemantauan dalam hal ini hanya mencakup proses pengadaan tanah termasuk pelaksanaan dan penyerahan hasil pengadaan tanah pada lembaga yang memerlukan tanah. Ruang lingkup pemantauan tidak termasuk dampak pengadaan tanah untuk orang-orang yang terkena dampak atau pihak yang berhak. Undang-undang tersebut tidak mensyaratkan</p>

¹²¹ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi ADB CSS assessment, March 2017, Appendix 10, para 45 KAJIAN AKSEPTABILITAS UNTUK UPAYA PERLINDUNGAN PEMUKIMAN KEMBALI TIDAK SECARA SUKARELA DILIHAT DARI INSTANSI HUKUM, para 45

¹²²ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 35

				<p>pengungkapan laporan pemantauan pengadaan tanah.”¹²³</p> <p>ADB: “• Monitoring does not cover land acquisition impacts to the affected persons/entitled parties • Disclosure of land acquisition report is not required”</p> <p>"Kerangka Hukum Indonesia tidak mensyaratkan pemantauan dampak pengadaan tanah/ pemukiman kembali pada penghidupan dan standar hidup penduduk yang dipindahkan, dan tidak menangani apakah tujuan rencana pemukiman sudah dicapai.”¹²⁴ ADB CSS para 28</p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” ¹²⁴ ADB CSS para 28</p> <p>"Pencapaian Hasil yang lemah dalam Aksi sosial /pemulihan mata pencaharian bagi pihak-pihak yang berhak dianggap rentan dan terkena dampak parah." ADB UUPN Hal 20 para 56</p>
12.2	Disclose Monitoring Reports	Full	Not Equivalent	<p>Tidak - karena CSS tidak mensyaratkan pemantauan dampak terhadap syarat² yang diutamakan oleh ADB, termasuk dampak terhadap pihak rentan, perempuan, tingkat penghidupan, dll.</p> <p>ADB: “UU No. 2/ 2012 dan peraturan pelaksanaannya tidak menetapkan</p> <p>tentang pemantauan dampak pemukiman kembali pada standar hidup orang-orang yang dipindahkan dan apakah tujuan dari rencana pemukiman kembali telah dicapai”¹²⁵</p>

Dari kajian terinci dan dari bandingan matriks diatas CSS Indonesia untuk pemindahan paksa sangat jelas bahwa CSS Indonesia TIDAK SETARA dengan 12 prinsip kebijakan ADB.

Informal translation & update from Bahasa Indonesia version - updates are still in process .

Informal translation & update from Bahasa Indonesia version - updates are still in process .

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According to this detailed analysis, it is clear that Indonesian CSS for forced displacement/eviction **IS NOT EQUIVALENT WITH** ADB SPS. Further information can be seen below:

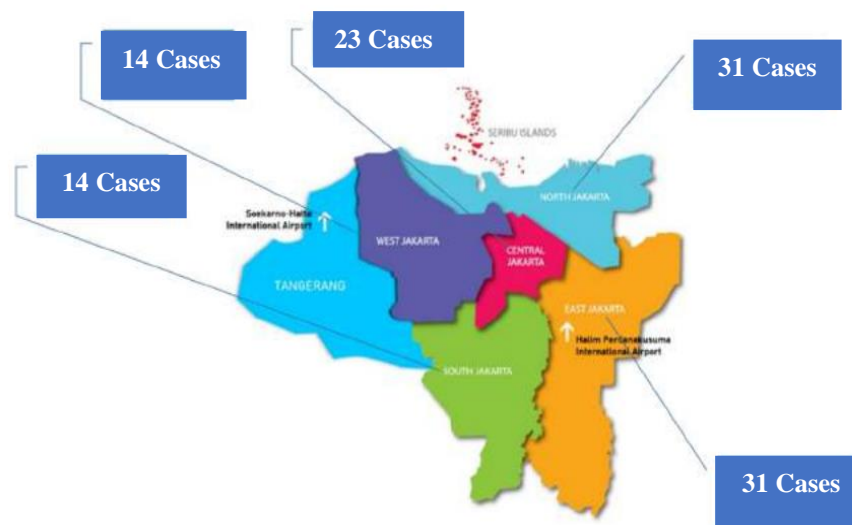
From the elaborate assessment and from the comparison of the matrix above, it is perfectly clear that the Indonesian CSS on forced displacement is not EQUIVALENT TO the 12 ADB policy principles.

(3) The forms of Nonequivalence of Involuntary Resettlement in Indonesia – Case of Arrangement of Settlement in Special Capital Region Province of Jakarta

Jakarta Special Capital Region (DKI Jakarta) is the capital of the Republic of Indonesia. Jakarta is the only city in Indonesia that has an equal status to a province level, with an approximately land size of 661.52 km² and total ocean area: 6,977.5 km², and a total of population of 10,187,595 people in 2011. Jakarta has become the center of business, politics and culture, a place where the headquarters of State-Owned Enterprises (BUMN), private companies, and international companies are located. It has made Jakarta as one of the destination cities for urbanization. Out of the total residential areas of 42,440.61 Ha (66.52 % from the total size of Jakarta), 20.18% of it is the slum areas. BPS recorded the number of slum houses amounting to 181,256 units which are spread out in 279 RW⁷². This is the area that will be the target for Kotaku Program for the next five years;

In the process of developing Jakarta, forced eviction had been done so many times. The following data indicates the approach pattern applied by the Jakarta Administration in managing the environment and social spheres in their development projects. Based on the results of the Legal Aid Society (LBH) of Jakarta, within January to December 2015, there had been 113 (one hundred and thirteen) cases of eviction, which occurred in North Jakarta (31 cases), East Jakarta (31 cases), Central Jakarta (23 cases), West Jakarta (14 cases) and South Jakarta (14 cases), it was spread out as seen in the following map.⁷³

Map of the Forced Eviction in DKI Jakarta 2015



Forced Eviction for various purposes. Out of the 113 cases, the eviction was undertaken for different purposes; dams construction (10 cases); water facility revitalization (37 cases); city parks (4 cases); private properties/BUMN (3 cases); road construction (13 cases), TNI (Indonesian Armed Forces) facilities (3 cases), Green Open Spaces (4 cases), executing the Local Regulation (Perda) on Public Order (43 cases); POLRI (Indonesian National Police) Facilities (1 case); MRT construction (1 case); assets of the Regional

⁷²Central Statistical Bureau of DKI Jakarta. 2012. Residential and Housing Areas; DKI Jakarta.

⁷³In the Name of Development Report on Eviction in Jakarta Area 2015, Legal Aid Society Jakarta (LBH), 2016, 58 pages. Can be accessed on http://www.bantuanhukum.or.id/web/wp-content/uploads/2016/02/Laporan-Pengukuran-2015_LBHJ_web.pdf

Government (Pemda) (2 cases); **JEDI Project (1 case)**; and other public facilities construction (9 cases).⁷⁴

Eviction without Deliberation. Based on the same research, LBH Jakarta found that eviction did not go through a deliberation process or meaningful consultation. Out of total 113 cases, 18 cases have gone through deliberations, while the other 95 cases, the people was evicted unilaterally. It was conducted without adequate information, in a hurry and without standard procedures in place.⁷⁵

The Use of Forces and Involving the Unauthorized Apparatus. Out of 113 cases of forced eviction in DKI Jakarta, during 2015, there was only 1 (one) case of eviction where the residents did it voluntarily. The remaining, were undertaken in various ways and at the same time, by repressing and threatening the residents, wide spreading the threat with heavy equipment (54 cases), involving Satpol PP (Municipal Police) (108 cases), involving the Police (67 cases) and Military Personnel (65 cases). The involvement of the Police Forces and the Armed Forces cannot be justified as it is not their main duty and function as regulated under the Law No. 2 of 2002 concerning the Police Forces of the Republic of Indonesia and Law No. 34 of 2004 concerning the Indonesian National Armed Forces.⁷⁶

Eviction without Solution. Both in the WB Safeguard Standards and Human Rights Standards, any victims of forced eviction have the rights to rehabilitation, in the form of the provision of a place to live with an equal degree of living quality (or better) comparative to the previous place, or compensation. However, out of the 113 cases, 72 cases did not provide any solution for WTP (People Affected by a Project), and only 41 cases that offered solution, which was relocation (32 cases) compensation fund (9 cases). Out of 32 solutions to relocate, there were only 18 decent relocations, 5 of them were not decent, and 9 relocations were only provided solution to a partial residents. As for compensation, only 5 cases that was granted the claim according to the value of loss and 4 cases were not⁷⁷. This means that eviction has made someone to be poorer than before, and in the context of non-habitable settlement, victims of eviction who don't have a solution can move and build a new settlement in other areas. It means that not only poverty continues to persist, but it also increases and has only shifted to another location.

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶*Ibid.*

⁷⁷*Ibid.*

The World Bank Asked Ahok to be More Humane in Evicting the People⁷⁸

Wednesday, 10 June 2015 | 07:25 WIB



Dozens of people living along the Grogol Riverbank were demonstrating by signing a petition opposing eviction in Kebon Jeruk, Jakarta, 17 September 2014. They refused to be evicted as the government won't give any compensation. TEMPO/Marifka Wahyu Hidayat

TEMPO.CO, Jakarta – The Governor of DKI Jakarta Basuki Tjahaja Purnama said there are differences in moving the people between the Jakarta Administration and World Bank.

Ahok said that the World Bank has asked him to be humane in relocating the people whose houses are affected by the Jakarta Emergency Dredging Initiatives (JEDI) Project.

"The World Bank has asked us to prepare a thousand unit of new flats prior to the demolition of one thousands houses. It is impossible," said Ahok at the City Hall, Tuesday, 9 June 2015.

In his opinion, the request cannot be met because of the large numbers of the flat tenants, while the government cannot expel the tenants who have paid the rents. "For us, the most important thing is that we are trying to prepare the flat as a substitution," Said the former District Head of East Belitung.

Head of Water Management Office of Jakarta, Agus Priyono said that the World Bank expected that the Jakarta Administration can settle the relocation of people who are affected by the JEDI project first.

The World Bank, he said, have asked the government that during the relocation, the government should consider the economic factor of the relocated persons.

"The World Bank has asked that when the relocation is carried out, the relocated persons should not suffer from economic downturn," he said. Whereas, Agus said that many residents of the riverbank do not have any building permit (IMB).

Agus explained that the World Bank will delay the issuance of *no objection letter* should the government does not relocate the residents according to the World Bank's standards. Whereas Agus said that the letter is highly needed to

⁷⁸<https://m.tempo.co/read/news/2015/06/10/214673671/bank-dunia-minta-ahok-lebih-manusiawi-saat-menggusur-warga>.

implement the project.

"Contract of work cannot be signed if the *no objection letter* is not immediately issued, meanwhile the tender is going on now," he said. Thus, Agus said that the work of JEDI project might take longer time.

JEDI is one of the measures taken by the Jakarta Administration to prevent flood. The objective of JEDI Project is to normalize and rehabilitate 13 rivers and five dams in Jakarta.

JEDI project is broken down to seven packages. The Administration of Jakarta Province got three packages. Whereas the Central Government will build four packages. The loan from the World Bank for that project reach up to Rp 1,2 trillion.

GANGSAR PARIKESIT

Formal Legal Approach in Providing Proof on Rights to Land. For example, in the ESMF *Kotaku* (My City/"City without Slums") Category Resident/Person Affected by a Project (*Terkena Dampak Proyek* or WTP) two general categories of WTP in this project: (1) person affected by private-owned land procurement; (2) person affected are living in government's land (state's land or local government's land) but doesn't own the land. These occupants are then furthermore divided into four categories: (a) resident who own and live in the residence and other structures built on state's or government's land without legal proof or proof of claim of the land they occupied; (b) tenant of the residence and other structures built on state's or government's land without legal proof or proof of claim of the land they occupied; (c) *perambah* (squatter), is, someone who expand or extend their property by clearing/opening up the adjacent state's or government's lands; (d) illegal landlords, are people who rent structures on state's or government's lands, but don't occupy those structures. Furthermore, according to the documents of Environmental Management and Social Management Framework of City without Slums Program (KOTAKU), or *Environmental and Social Management Framework* in this WTP category determine the delivery of rights, which is summarized in the following table:⁷⁹

Residents Affected by a Project

Residents Affected by a Project	Rights	Expected Results
The owner of land/assets who lost their land and/or other assets	Compensation over the lost of lands and assets based on the price appraisal, conducted by a certified appraiser	The land/assets owner receives full compensation over the lost of lands/assets
A person who owns and occupies a residence and other structures built on government's or state's lands without clear legal basis and claim over the lands that they	Compensation for the lost of residences and other structures, sources of income from the livelihood and assistance of resettlement, based on the assessment of a certified assessor	The compensation and assistance of resettlement provided would enable the households to gain access to a decent housing or a habitable place with legal basis and the land acquisition will not cause

⁷⁹Kerangka Kerja Pengelolaan Lingkungan dan Sosial Program Kota Tanpa Kumuh (KOTAKU), page 35-36 or in *Environmental and Social Management Framework*, on page 45-46.

occupied		impoverishment towards the affected community.
A tenant of a residence and other structures built on government's or state's land without clear legal basis and claim of the place they occupied	This project is considered would be able to provide sufficient time (minimum 2 months since the deadline/ during the census survey) for tenants to find another place	Tenant will find a place to rent or to live in according to their needs
<i>Perambah</i> (squatter), is someone who extend their lands by trespassing the adjacent state's or government's lands	Does not have the right to receive compensation of the assets affected for trespassing state's or government's lands	Does not have incentive for trespassing state's or government's lands in the future
Illegal landlords, persons who gain rent fees illegally from buildings built on state's or government's land but don't reside in that buildings.	Has no rights to compensation	Does not have incentive to repeat the rental scheme in other places or in the future

Citizen has the Rights to Abandoned Land. Although the citizen does not have the right to the land, within a certain period of time, a citizen has the right to the land under the law. Based on Article 1963 in conjunction with 1967 Civil Code (KUHPer) regulates that a citizen that occupies a land, with good will, for over 30 (thirty) years or more, may register the land as theirs. Some jurisprudence also regulates the period of occupancy that is shorter than 30 years may register a land which was abandoned as theirs. In the case of eviction in Jakarta, there are 19 cases where the residents have occupied the land for more than 30 years and they shouldn't have been evicted or be categorized as illegal occupants⁸⁰. However, because the approach that was used is formal, people who have lived for generations has lost their right to the land or received rehabilitation that they shouldn't be receiving.

Impact of Eviction towards Women and Children. Eviction in 2015 in DKI Jakarta has led 8.145 families and 6.283 business units to became the victims of eviction. And the most vulnerable victims are women, persons with disabilities, children and elderly. The real impact occurred in the eviction case of Kampung Pulo, Jakarta (normalization of Ciliwung River), where local residents were attacked by the apparatus. The people suffered from trauma after the use of violence. In such case, the offer of relocation to the flats is not solving the problem, especially for women and children. The citizen must rent the flat for Rp 300 thousands per month, whereas in general, women work as housewives, labor, domestic workers (PRT) and part of the poor urban citizen without a fixed job. This condition does not cut the chain of poverty endured by women;

Development without the participation of the Citizen. The people were not against the plan for normalization of rivers and dams in Jakarta. The Forum of Jakarta Riverbank Residents, on 17 March 2015 declared their support for the endeavor of Jakarta

⁸⁰Atas Nama Pembangunan Laporan Penggusuran Paksa Di Wilayah Dki Jakarta 2015. Op.cit, page 37

Administration to control flood, and submit an alternative concept for the setup of the riverbank settlements using the following arrangement principles:

- ✓ Construct inspection road along the river borders, 5 meters width from the right and left sides of the river and sterile from any structures;
- ✓ Planting trees at their own expenses along the riverbank;
- ✓ Process households organic waste to compost and recycle/sell inorganic waste
- ✓ Reuse the ditches along the river borders that once was built in 1994 by Jakarta Administration
- ✓ Set up residents houses to make it tidier and attractive

- ✓ Create households waste communal tank that can be utilized for biogas thus the waste will not be discarded to the river again
- ✓ Reorganize electricity installation in residents houses to avoid any fire hazards
- ✓ Put the residents as the main actor of the arrangement

The alternative concept and solution of the residents has been submitted to the DKI Jakarta Administration, as one of the solutions to for housings arrangement and management of the poor in Jakarta.⁸¹ However, the Jakarta Administration still opted for the short cut which was eviction, rather than accommodating public participation.

V. THE TRACK RECORD OF INDONESIAN CSS IMPLEMENTATION

When assessing a legal system of a country, we must assess (1) the Policy (Law, Government Regulations, etc.), where norms were established; (2) Structure/State Apparatus that implement the policies, and (3) Legal culture established that determine whether elements 1 and 2 are functioning in society. These three elements can not be separated in assessing the equivalence or its implementation per se. On paper, some regulations provides environmental and social protection, but the apparatus failed to implement it, and even were not aware of it. Patronage, feudal and militaristic culture that has remained strong in the governmental system puts the citizens in a nonequivalence position in every process of the development. The consequence is that violations of rights continue to happen. In the context of the environment, we will illustrate a small part of state acts that were not complying with the court, criminalization against activists and the severe corruption in Indonesia.

5.1 Evaluation on Acceptability Assessment of Indonesian CSS, the Acceptability Assessment result was “moderate” but it grossly violated ADB Requirements

In the ADB consultant assessment on Indonesian CSS, there are some tables analyzing the results of acceptability assessment. For instance, in the “Acceptability Assessment” that analyzed the track record of Indonesian Government in implementing environmental and

⁸¹<http://www.urbanpoor.or.id/advokasi-hak-dasar/rencana-penataan-permukiman-pinggiran-sungai-di-jakarta>.

social protection. Out of all aspects that were analyzed – per sector or per project (some cannot be assessed as the materials were not provided by the project implementers) – approximately out of 33 aspects, 24 are considered “moderate”, as indicated in the table below:

Table 2: Summary of Environmental Acceptability Assessment Results per Sector

	Sector	Component	Assessment Results
1	<u>Water Resource Sector</u> Karian Multipurpose Dam (DGWR-BBWS 3C)	Institutional Capacity	Moderate
		Process and Procedure	Moderate
		Output	Moderate
		Outcome	Moderate
2	<u>Road and Transport Sector</u> Palembang-Indralaya Toll Road (DGH/Satker-PT HKI)	Institutional Capacity	Moderate
		Process and Procedure	Moderate
		Output	Moderate
		Outcome	Strong
3	<u>Energy Sector</u> Transmission Line SUTET 500 kV PLTU 2 Jawa Tengah– GITET 500kV Kesugihan (PLN HQ-PLN UIP VII)	Institutional Capacity	Moderate
		Process and Procedure	Strong
		Output	Strong
		Outcome	Strong
4	<u>Urban Planning</u> Normalization of Kali Pesanggrahan and Development of Rempoa Flat Human Settlement (DGHS – DKI Jakarta)	Institutional Capacity	Weak
		Process and Procedure	Moderate
		Output	Moderate
		Outcome	Moderate

DGWR-BBWS 3C = Directorate General of Water Resources-River Basin Organization of Cidanau-Ciujung-Cidurian; GITET = high voltage relay station; PLN HQ = state electric company headquarters, PLN UIP VII = state electric company main power generation project; PT HKI = the state-owned toll road developer and operator; Satker = Task Force for Land Inventory and Acquisition, Land Procurement for Highway Palembang-Indralaya.

Table 3: Summary of Involuntary Resettlement Acceptability Assessment per Sector

	Sector	Component	Assessment Results
1	Water Resource Sector / Karian Multipurpose Dam (DGWR-BBWS 3C)	Institutional Capacity	Moderate
		Process and Procedure	Moderate
		Output	Moderate
		Outcome	Moderate
2	Road and Transport Sector / Palembang-Indralaya Toll Road (DGH/Satker-PT HKI)	Institutional Capacity	Strong - Moderate
		Process and Procedure	Moderate
		Output	Not accessed
		Outcome	Moderate
3	Energy Sector / Transmission Line SUTET 500 kV PLTU 2 Jawa Tengah- GITET 500kV Kesugihan (PLN HQ-PLN UIP VII)	Institutional Capacity	Strong – Strong
		Process and Procedure	Strong
		Output	Moderate
		Outcome	Strong
4	Urban Planning / Normalization of Kali Pesanggrahan and Development of Rempoa Flat Human Settlement (DGHS – DKI Jakarta)	Institutional Capacity	Weak – Moderate
		Process and Procedure	Moderate
		Output	Not Applicable
		Outcome	Moderate

Source: Asian Development Bank

Therefore, on the field, the level of “acceptability” – which is the implementation and track record are in general assessed as “Moderate”. Thus, it is important to check, what is the meaning of “moderate”. Let’s take the example of water resources sector – one of two sectors considered by the ADB consultants as less “ready” for CSS use.

Based on the details on the impact and activities in the water resources sector, according to the information in the annex of CSS “assessment” carried out by the ADB consultants, a sector can be assessed as “moderate” despite there were violations against 12 ADP Principles Requirements and against the ADB Safeguards Objective on forced displacement/eviction. Usually, such violation against each requirement would normally consider that more appropriate assessment should be “weak” or “fail” or “unacceptable/not acceptable”. However, in the ADB, violations against all categories of ADP requirements are not

considered as “weak” and/or “unacceptable”. In the audit history and the ADB project assessment, the abuse of assessment/audit terms in such cases like this is not a new thing.⁸²

Water Resources Sector: Karian Multipurpose Dam Project⁸³

Let’s take the example from the analysis of the water resources sector, one of the examples where the “output”, is the Land Acquisition and Resettlement Plan (LARP), was considered by the ADB consultants as “moderate” despite the violation or assumption of violation of each 12 key requirement of the ADB on resettlement/eviction. Those violations include:

- **Violation of the ADB requirements** that there must be a special attention given to vulnerable community and gender issues. (Objective, Principle 1, Principle 2, Principle 5; Principle 7) According to the ADB: **“there was no discussion on social and economic impact especially related to the vulnerable groups and gender in that document.”**

If there was no special attention to the impact towards the vulnerable groups and women, it means it could not meet the requirements to ensure that the income of the vulnerable, the poor and women should be improved compared to the condition prior to the project (Principle 5).

- **Violation against the ADB requirements** that must “provide compensation in cash according to the compensation value” (Principle 3). Based on the ADB assessment, the value used as a basis is not the compensation value, instead they used **“NJOP (taxable item market value), market price, government price.”**
- **Violation against the ADB requirements** that must “immediately provide compensation” (Principle 3);
- **Violation against the ADB requirements** that must provide compensation prior to “land procurement/eviction” (Principle 11) and although the Land Acquisition and

⁸² In 2000, ADB’s Operations Evaluation Department (OED)⁵ found that half of all audited projects rated “successful” by the Bank in the preceding year (see Appendix B) were of questionable sustainability. In the case of Indonesia, for example, “successful” projects included those with massive unmonitored resettlement components, were (according to OED auditors) patently unsustainable, included projects where “record keeping also seems to have been abandoned” and could be (according to the OED) so poorly structured that rapid deterioration of project infrastructure was inevitable. ⁶ The ADB’s “partly successful” project category appears to be a euphemism for “largely unsuccessful” or “troubled.” In the case of Indonesia, this category includes projects such as a \$250 million Food Crop Sector loan where auditors found that the Bank had failed to carry out the most basic analyses of the implications or impacts of its policy recommendations, and had failed to identify “intended beneficiaries” of the policy changes. Auditors noted that “the overall impact of the Program Loan is not clear” because “there were no performance indicators against which Program impact could be assessed.”⁷

The “partly successful” category also includes a \$38 million health project where OED found that “user demand, actual needs, and operating capacities of the hospitals” funded by the project had never been analyzed by the Bank or by the Indonesian implementing agencies, leading to a failure to supply badly needed medical equipment to the hospitals.⁸ Auditors discovered that it was not until six years into the project that the establishment of a system for “benefit monitoring and evaluation,” including the collection of baseline data, was discussed.⁹ An examination of publicly available ADB evaluation documents indicates that the ADB’s “unsuccessful” project category appears to mean “abysmal failure” and often indicates project-related damage to the environment, the economic structure, and/or human health.¹ THE ASIAN DEVELOPMENT BANK: IN ITS OWN WORDS: An Analysis of Project Audit Reports for Indonesia, Pakistan, and Sri Lanka, Stephanie Fried, Ph.D. and Shannon Lawrence Environmental Defense, with Regina Gregory, ADBwatch, 2003.

⁸³ ADB, Country Safeguards Review: Consultation Draft March 2017, Annex 11: Acceptability Assessment on Involuntary Resettlement per Sector, para 31

Resettlement Plan have been started since 2014, until now **“when this report is written, the project has not paid the compensation to the affected...”**

- Violation against the ADB requirements (Principle 2) that there should be a “meaningful consultation” and requirements (Principle 9) that there must be a documentation of consultation conducted in a timely manner, prior to project assessment and meaningful consultation, they must “give special attention to the needs of the vulnerable groups, particularly those who live under the poverty line, citizen who doesn't own a land, the elderly, women and children, as well as traditional community, and those who doesn't have legal title to the land, and to ensure their engagement in the consultation”.
 - It has been explained in the assessment of the ADB consultants that there was no special attention given to the vulnerable groups or women. And there was no description on meaningful consultation procurement. What has been mentioned is that there was “propagation” during the inventory of land and materials. There was no explanation or proof that consultation process has taken place, let alone something that is meaningful and it is clear this process has not given the vulnerable group special attention.
 - “Proof” that a meaningful consultation mentioned by the ADB consultants is that they have just interviewed one person who said that “he attended 3 meetings”. (para 49). The ADB definition on “meaningful consultation” is different with a statement that there was one individual who has “attended a meeting”.⁸⁴
- There was no explanation about the fulfillment to the requirements of Principle 6 that “negotiation” process on land assessment was conducted “transparently, and consistently” and ensuring that those who participated in the meeting “would continue to have the same or better income and living status (for vulnerable society or women). There is an explanation about negotiation/approval on compensation that did not use the compensation price (violation on Principle 3). Due to non-equal power between the people and the state, and the lack of attention towards the needs and economy of vulnerable people and women, and the statement about the compensation value offered was lower than the actual claim, there is a possibility that **Principle 6 was violated**.
- There is the ADB requirement (Principle 4) that the displaced persons should have the “access to work and production opportunities that are equal, the integration of people who got resettled in terms of economy and social to the new society, (ii) transitional and development assistances, for instance land development, credit facilities, trainings or job opportunities; “there is no explanation on this (except for that in general there

⁸⁴ According to ADB, meaningful consultation process is a process that:

- 1) starts at early preparation stage of the project and continuously carried out throughout the entire project cycle;
- 2) provide relevant and adequate information disclosure in a timely manner that is understandable and can be directly reach out by the affected people;
- 3) is conducted in a situation free from intimidation or oppression;
- 4) is inclusive and gender sensitive, aligned with the needs of the less fortunate and vulnerable groups; and
- 5) is possible to incorporate relevant views from the affected people and other stakeholders in the decision-making, such as project design, mitigation measures, the distribution of benefits and development opportunities, as well as implementation issues.

was no monitoring on the economic situation of the displaced persons), thus there is possibility of a **violation against Principle 4**.

- There is the ADB requirement (Principle 7) that people without land titles must receive resettlement assistance and compensation over the lost of non-land assets. The ADB assessment does not represent any proof that it has really taken place. What was explained is about a pool of information concerning land certificates, but no explanation about the rights or fate of those without land certificates. Possibility of a **violation against the ADB requirement Principle 7**.
- From the lack of information represented in the analysis of the ADB consultants, violations against the ADB requirements (Principle 8 and Principle 10) which requires that the LARP must:
 - Elaborate the rights of displaced persons (including people without land certificates);
 - In the ADB analysis there is no explanation about the rights of people without land certificates;
 - Details the strategy to restore income and livelihood;
 - There was no explanation from the ADB consultants about how precisely the strategies will be implemented. There was only a statement that is hard to understand “restoration program of the livelihood including the option for relocation thus, the people and households affected by the land acquisition and lost their access to assets and income could at least live as good as it was prior to the project.” How this “strategy” can lead to “live as good as it was prior to the project” is not elaborated. The ADB requirement stated that vulnerable groups and women must have *better* livelihood compared to the condition prior the project.
 - Explained the monitoring on the fate of the displaced persons;
 - There was no explanation whatsoever about the plan or activities to monitor the fate and economy of the displaced/evicted persons;
 - Has the budget for all costs of displacement, restoration of income and “all cost of resettlement” should be included in the cost calculation and project income (costs and benefits);
 - However, according to the ADB analysis, although “In the Planning Document of Land Acquisition there is an estimation of compensation value in general and details for land and non-land asset that will suffer from the project impact **However, the Planning Document of Land Acquisition did not specifically mention the source of the funding, and details of the fund allocation for various stages of the land acquisition.**
 - No information in “the ADB assessment” about “all costs related to resettlement”, cost for restoring income, and transition.
 - Violation against the ADB requirement (Principle 12) that there should be monitoring and impact assessment on resettlement, including the impact on the income/living standard of all displaced persons, compared to the initial condition (baseline) including the people without land certificates. In the analysis made by the consultants on the LARP, there is an explanation that “However, the process of the Land Acquisition and Resettlement Plan Document [LARP] did not give special attention to the protection of traditional community, women, children, elderly and other vulnerable groups from the adverse impact of the development projects.” It is obvious that

without special attention given to the vulnerable groups and women prior the implementation of the project, there wouldn't be any possibilities to assess the impact on the vulnerable groups, where improvement of income after the implementation of project is required.

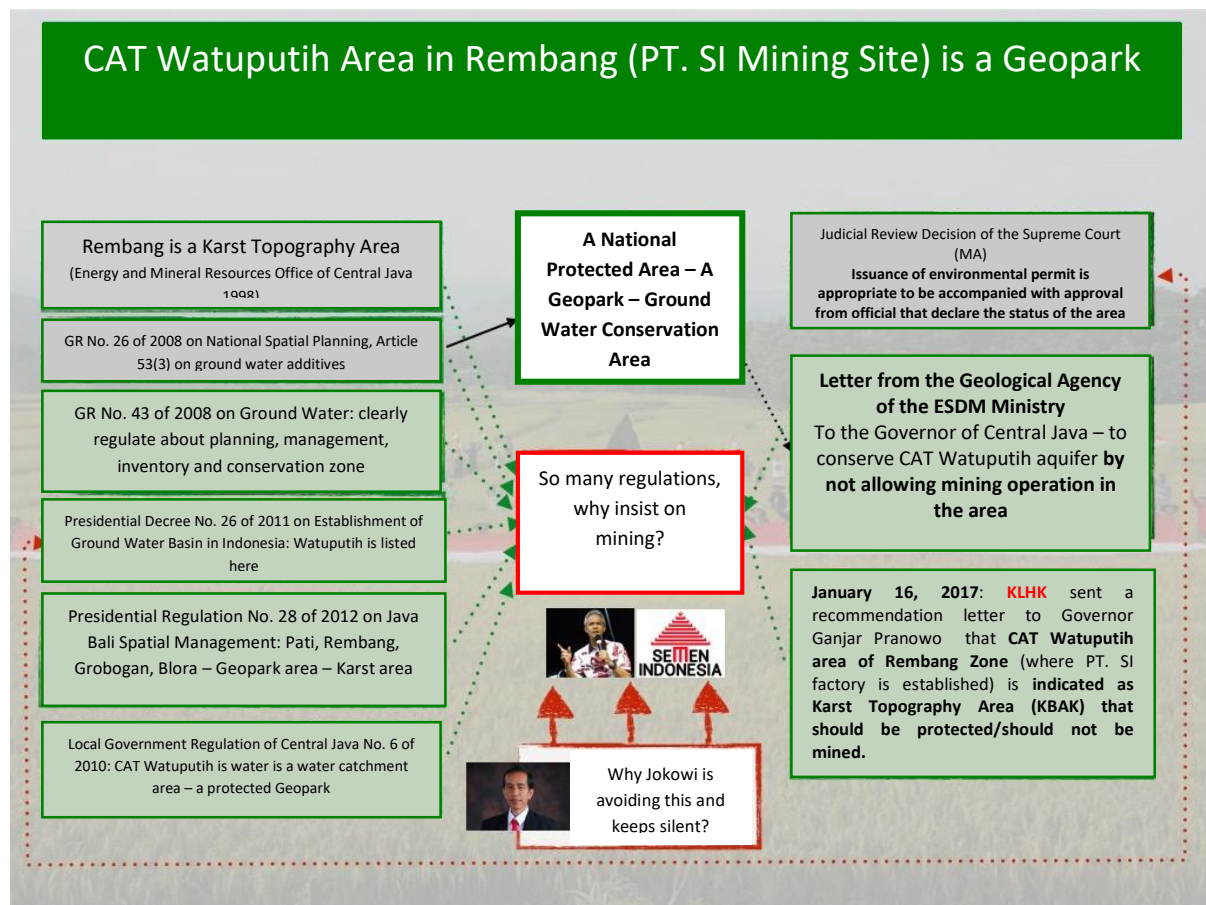
5.2 Non-compliance to the Court Ruling

(1) Noncompliance act of the state in the case of Cement Factory case in Kendeng Mountain



The Supreme Court (MA) of the Republic of Indonesia has decided to accept the judicial review (PK) of the class action filed by the people of Kendeng in Rembang against the Decision Letter issued by the Governor of Central Java regarding the environmental permit granted to the PT Semen Gersik (Persero)—now PT Semen Indonesia. The environmental permit number 668/1/17 year 2012 was signed by the Governor, Mr. Bibit Waluyo on June 7th, 2012. The struggle of Kendeng people in Rembang, is continuing the struggle of the people in Pati, who also won in the Administrative Court (PTUN) of Semarang.

Their reason to oppose the construction of cement factory is because Kendeng mountain is a karst mountain, where more than 100 water springs that supplies water to 14 districts and farmlands are located. And according to the laws, the groundwater basin (CAT or *Cekungan Air Tanah*) in this mountain is part of geological conservation areas. The issuance of the environmental permit that has been revoked by the Supreme Court, was re-issued through the amendment made by the Governor of Central Java which indicates the noncompliance act committed by the State against their regulations.



In addition to that, in the ruling of judicial review of the Supreme Court that annulled the environmental and mining permits of PT. Semen Indonesia in Rembang, one of the novums given were ticket, boarding pass and official letter from Garuda Indonesia on behalf of Joko Prianto, one of the residents who made the claim. The District Government of Rembang and PT Semen Indonesia on 22nd of June 2013 held a gathering event with the residents of Tegaldowo Village, and Joko Prianto was claimed for attending that gathering event, which was named as public consultation.

Based on that novum, we can understand how a fabricated consultation was done in order to meet the administrative requirements without considering the substance of the environmental impact on the community. It indicates that public consultation was never taking place, what happened was just the delivery of information of the upcoming business/activities in that area.

(2) Non-compliance against the Ruling of PTUN on the Eviction in Bukit Duri

The citizen took legal measures by filing a lawsuit to the court against the eviction plan in Bukit Duri, Jakarta, set to normalize the Ciliwung River. Although this case is part of the case that was “assessed” by the ADB consultant, there was no detailed information regarding this case and the violation against the ruling of the District Court by Jakarta Administration that continued to proceed with the eviction despite the prohibition from the Court.

The residents of Bukit Duri from Citizens Association (RW) Number 10, 11, and 12 filed a class action to the District Court of Central Jakarta to oppose the eviction plan setup by the Jakarta Administration for the normalization project of Ciliwung River. The Head of the Panel of Judges who examine the proceeding of class action of the Bukit Duri residents ordered the Government of Jakarta to refrain themselves by not evicting the residents of Bukit Duri until the examination process of the proceeding is completed. However, the Government of Jakarta disregarded the order and proceeded with the eviction by issuing the second warning letter (SP2) for the residents of Bukit Duri.

Similar incident also occurred when the residents were filing an administrative lawsuit at Administrative Court to oppose the demolition order letter issued by Jakarta Government to the residents of Bukit Duri. This condition shows that the Jakarta Government has taken an arbitrary action and don't respect the judge's decision.

5.2 Criminalization of Activists

Engineered cases in the form of forced criminalization started to increase in Indonesia. The victims are varied: public officials, farmer activists, labor activists, traditional community, women activists, journalists, fishermen, and public lawyers. The accusation made was for example, blasphemy article that brought against Wayan Gendo Suardana, an activist that refused the reclamation of Benoa Bay, Bali. Gendo was reported for his tweets in his twitter account. Other activist who dealt with similar case is Haris Azhar, for the posting on his Facebook account regarding the case of a drug lord, Freddy Budiman. Or Tigor & Obed, a dedicated servant of legal aid LBH Jakarta, Hasyim (student), and 23 labors that held a demonstration against cheap wage, were accused for vandalizing vehicles during the action took place.

Whereas the *freedom of expression* in substantive has been clearly specified in Article 28E paragraph (3) of the 1945 Constitution that provide space for the public to explore their rights in expressing opinion in *definitive*. Every individual has the right to give their opinion and to express themselves which covers the freedom of expression without intervention, and free to seek, receive, as well as exchange information and ideas. There are even more particular regulations which stipulate that eco warriors are protected by Article 66 of Law No. 32/2009 on Environmental Protection and Management, and so the lawyers from Legal Aid Providers (OBH) who provides legal assistance are protected under the Legal Assistance Law.

Based on the records of the Commission for Missing Persons and Victims of Violence (KontraS), there are at least 25 cases of criminalization which occurred in 2015. Such cases happened not only to public officials like the KPK leaders, but also to other members of communities, labors, farmers, fishermen, journalist as well as members of traditional

community who fights for their rights. The Agrarian Reform Consortium (KPA) on December 2015 indicated that the number of criminalization in agrarian conflicts has increased from year to year. In 2012, there were 156 farmers and agrarian warriors arrested and detained. In 2013, it increased to 239 persons. And then in 2014, it increased again to 255 persons. And in 2015, the number has totaled to 278 persons. Within one decade, which is 2004 to 2014, the number of agrarian warriors who were arrested reached up to 1.395 persons. Whereas, Indonesia Corruption Watch (ICW) together with the Anti-Forest Mafia Coalition also disclosed that between January to June 2013, 207 eco activists were arrested by the police. This condition is disturbing, the activists were facing legal process for investigating corruption allegation in the natural resources sector.

Criminalization also happened to traditional community. Based on the records of the Indigenous People's Alliance (AMAN) noted that in 2015, there were 220 cases of criminalization against the traditional communities across Indonesia. Out of those 220 cases, 5 persons has been convicted and serving their sentences in the prison. Meanwhile the remaining are still undergoing examination with the police. There are also some of them who are undergoing legal process in the court. In marine and fisheries sector, fishermen are also victims of criminalization. The People's Coalition for Fisheries Justice (KIARA) recorded that between 2013 to June 2016, 40 coastal people of various professions (traditional fishermen, fisherwomen, fish cultivators, salt farmers, and coastal ecosystem conservers) were criminalized.

The professionals are also suffering the same problems, The Alliance of Independent Journalist recorded that in 2015, there were 43 cases of violence against journalists, where 3 of them are criminalization cases. It was not surprising that Indonesia's rank in the *World Press Freedom Index 2015* has dropped to 138 out of 180 countries. And lastly, the Legal Aid Society (LBH) Jakarta found that in 2015, there are 49 persons who were criminalized. Criminalization not only faced by state officials or anti-corruption activists, but also by labors who demonstrated to demand for their rights, legal aid workers, and other activists, including the arrest of around 5000 Papuan activists within 6 months.

People who refused to be expelled...was tortured, and electrocuted"

Tirto



Sugianto: Sugianto, a minister from a Christian Church of Southern Sumatra, was criminalized by the Police of Tulang Bawang for defending the farmers who demanded to get their land back.

tirto.id – Hundreds of people gathered in front of the District Court of Menggala, Tulang Bawang, on Thursday afternoon, 23rd of February. They were attending the trial of five farmers and activists who are criminalized in the dispute of land of 10,000 Hectares against PT Bangun Nusa Indah Lampung (BNIL), a subsidiary company of Bumi Waras, one of the oldest plantation industry companies in Lampung. This dispute has been going on since 1986. The people who are transmigrants were evicted from their lands because the lands were handed over to PT BNIL by Lampung Government.

Since then, the farmers who lost their lands continue striving to get their lands back. Until October 1st, 2016 their action led to clash with the private security (*Pam Swakarsa*) of PT BNIL. The people was accused as the trigger and perpetrator of violence acts. Some people and activists were criminalized and arrested by the police with accusation as "provocateurs."

One of them are Sugianto, the minister of Christian Church of Southern Sumatra, who accompanied the people. Sugianto was arrested and accused as the "mastermind of the riot."

"At that time, I came there to calm the crowd. They were all carrying sharp weapons. I said, "Put down all the sharp weapons! 'If I didn't prevent it, it could have turned brutal.'" Said Sugianto refuting the accusation.

Sugianto said the people has done any way possible to get their lands back. They have met with the District Head of Tulang Bawang and took the complaint to the House of Representatives (DPR) to no avail. On the contrary, the people were criminalized.

So how did the dispute started between seven villages in Tulang Bawang with PT BNIL? The following is the interview between the reporter of *Tirto* with Sugianto by phone before the defense in District Court of Menggala, Thursday, 23rd of February 2017.

How did the dispute started between the people and PT BNIL?

The land case consists of two stages. It was started in 1986 and 1988 when the people who resided in the 10 thousand hectare areas, there were 9 villages, and the villagers of two old villages namely, Indraloka and Bujuk Agung were about to be evicted. That year, the Governor of Lampung determined that 10,000 hectares became the reserved areas for three subsidiary companies of Bumi Waras or Sungai Budi Group. And then in 1991, the residents of that area were evicted by PT BNIL who employed the soldiers.

At the beginning, the land was customary land but it was declared by the State as State's Lands. There is a story that the Customary Leader in Marga Tegamoan once handed over the lands to the Department of Transmigration, designated it as transmigration areas, then it became Unit 1, 2 and so forth. And then, there was still a remaining parcel of land. The remaining lands were then dedicated for developing new villages. They invited outsiders to come for that purpose.

It is that land which was handed over to the three companies. As the government has transferred it to these companies then they evicted the people. But it did not work. At that time, the resettlement was coordinated by the Department of Transmigration. Because the attempt failed, they released wild elephants and made that areas as combat practice areas.

Wild elephants swarmed the villages. One villager, Pak Kliwon was trampled to death by elephants. The villagers still resisted and refused to be expelled, they were then tortured and electrocuted. Some of the villagers were taken by the trucks and the planning was to move them to two old villages, Bujuk Agung and Indraloka. Because the villages were no longer fit, the villagers were dropped somewhere. Some villagers got resettled some others did not.

The villagers were under turbulent situation. There was Pak Kirman in Bujuk Agung who was active. The villagers then coordinated with the Ministry of Home Affairs and local government. It was then agreed that the villagers who once lived in the area of 10,000 Hectares would join the voluntary transmigration program.

Each villager was given a 2 Hectares land consisting of $\frac{1}{4}$ yard, $\frac{3}{4}$ for food crops, and 1 hectare should be included as plasma land owned by BNIL. Furthermore, based on the decision of the Minister of Home Affairs, the Governor of Lampung determined that PT BNIL was granted with core plot (*lahan inti*) of 5,100 Hectares and plasma land of 1,500 Hectares.

A few months afterwards, the villagers who got 2 Hectares of lands were forced to sign a blank form. Those who refused were beaten, including Pak Muhadik. After 1998, it was found that the form was a compensation payment letter of one-hectare land. The villagers only received a compensation of Rp 100,000 This is the second stage where villagers lost their lands.

So how is the dispute case now?

In 2015, PT BNIL wanted to convert the land function. The District Head of Tulang Bawang told PT BNIL to undertake the existing EIA, which the latter did not do. The District Head finally froze the permit for land conversion. And then, PT BNIL cannot operate.

The villagers saw this situation as an opportunity to take back their rights which was taken by force by PT BNIL. Thus, since 2015, the villagers started to join forces for taking action. Last 2016 was the peak of our struggle.

Now it came to criminalization, you mean?

Yes. I was arrested in Jakarta last October. We already expected a criminalization like this. We, the villagers and I went to Jakarta twice to report this case to the National Human Rights Commission (Komnas HAM) and DPR. We have met with members of the Commission II of the DPR, it was Mr. Budiman Sudjatmiko from Indonesian Democratic Party of Struggle (PDI Perjuangan) and Ammy Amalia Fatma Surya from National Mandate Party (PAN) who met us. We have explained everything.

The second time we went to Jakarta to report the case to ICW as we suspected there is corruption practice in the determination of land for PT BNIL. We handed over the files to ICW to be examined. After that we went to KPRI. It was there when I was picked up by 15 police officers from Lampung.

How did you get criminalized?

On 1st of October 2016, there was a huge action going on here. Villagers, of around 2,000 people, occupied the land. It was protected by the police but then suddenly they were gone. And then there was provocation by the quasi-military private security personnel (*Pam Swakarsa*). The villagers were provoked and led to a clash. Dozens of villagers were arrested, some of them have been released. Now it is me and a few friends are under

process.

When it happened, I came down to calm the villagers. They have brought sharp weapons. I told them, “Put down all the sharp weapons!” If I didn't stop them, it could have turned brutal. But not all can be controlled as they have been provoked by the quasi-military private security personnel (*Pam Swakarsa*).

And then what is the allegation made against you with the Article 160 of the Criminal Code (KUHP) on provocation?

It was strange. I was accused of producing brochures to get the villagers to be anarchist. It was true that I made the brochures but I didn't not distribute it. And the content was not a call to do anarchist action, but it was about organization. The police found these brochures in the cardbox at the secretariate. It was not distributed.

I was charged for 3 years along with other four friends. Everyone got 3 years of sentence charges but with different allegation. It is strange. In the trial, there was no witness who really saw it, the prosecutor seemed only hold onto the police investigation report (BAP). Our lawyer has prepared the defense for today's trial. It said that all claims made by the public prosecutors have no ground in the court.

So far who are involved in the advocacy?

Many are involved. We have parties from the Church, from the PGI (the Association of Indonesian Churches or *Persekutuan Gereja-Gereja* in Indonesia), KPA (Agrarian Reform Consortium), KPRI (Confederation of People's Struggle or *Konfederasi Perjuangan Rakyat Indonesia*), from GKSBS (Christian Churches of Southern Sumatera or *Gereja Kristen Sumatera Bagian Selatan*), and Legal Aid Foundation (LBH) of Lampung as well as several activists who are involved in the advocacy.

What is your hope regarding this case?

My hope is that the central government will immediately take action to this land dispute case. It is clear that the lands belong to the villagers. Agrarian conflict like this is not only happening here, the government should be focused more on the agrarian conflicts that involves the farmers. President Jokowi must prove his promises that he takes side with the people.

The use of criminal articles to intimidate or prevent public participation has made the democratic spaces narrower. Thus, the development process is moving in a condition heading to an authoritarian system where the State disobey the laws yet arbitrarily uses the laws to fight its citizens.

5.3 High Level of Corruption in Indonesia

Transparency International, in January 2017 has issued an annual report on Corruption Perception Index that indicates the corruption ranks in 176 countries. Although Indonesian score was up but the rank was down to rank 90. Corruption Perception Index issued by Transparency International is based on survey and report on perception of business actor and governmental concerning corruption in public sector. The index uses the scale 0 – 100, where 0 is a score for a country with the worst corruption level and 100 is for country with the cleanest level. It means that Indonesia is still a country in the corrupt position, despite the progress it has in dealing with corruption.

Government institutions such as the House of Representatives (DPR), DPRD (Regional House of Representatives), bureaucracy, tax and police sectors are perceived as a corrupt institution. The result of GCB 2017 gives an illustration that corruption is still occurring in the public service sector provided by the state. In order to enjoy the public service more than one third of the people must pay a bribe. The police are considered as the public service provider with the highest bribe, followed by the administrative and the population sector.

VI. CLOSING

Based on the description above, we concluded that:

1. The evaluation process of the Indonesian CSS has violated the ADB safeguards in terms of the substance and process regarding the obligation to hold a meaningful consultation and right to information. There was no announcement on the Equivalence Assessment Draft of the Indonesian CSS that has been presented to the Government by the ADB in 2016, there was no announcement on the structure of the Researchers Team and there was no meaningful public consultation since the development process was started, within 2013-2017;
2. The public consultation process did not align with the ADB consultation standard. The seminar to disseminate information on the CSS that was so-called as public consultation and held on Thursday, March 30th 2017, was not a meaningful public consultation. It is indicated from: (1) The consultation documents were just uploaded on March 19th, 2017; (2) The documents were not completely available for the public, crucial Appendices, describing all of ADB consultant's field studies, Appendices 8-11 were missing; (3) There are significant discrepancies of meaning between the English and Indonesian versions of the documents; (4) The field studies on the actual implementation of Indonesian CSS were kept secret from the public prior to the fake consultation; (5) The ADB claimed to have no responsibility over the content of the CSS assessment; (6) Invitations and link of materials sent to the public was sent only 3 working days before the "public consultation" was held in Makassar and only 6 working days before the "public consultation" was held in Jakarta; (7) "Public consultation" were only held in two cities; and (8) it didn't involve the victims or NGOs that provided legal assistance to the victims of forced displacement; 9) There is no gender analysis of the assessed policies or of the results of the CSS assessment; 10) the results of the CSS assessment and "equivalence" matrix do not depict the situation and facts on environmental endamages and pollution as well as eviction that occurred in Indonesia. (For example, energy and water sectors); 11) There is no analysis on the roles of security personnel who played important roles in the eviction.
3. Weak analysis of the ADB. The analysis undertaken by the ADB, however, the ADB itself did not dare to claim that they can *"guarantee the accuracy, reliability or timeliness of these materials, and therefore will not assume any responsibilities in any capacities over any losses or losses that might arise from the use of these materials"*... this statement itself is a violation against the ADB requirements which made compulsory that **"the ADB shall ensure** that the implementation of safeguards system at country level in ADB projects will not disregard the achievement of the objective and policy principles of the ADB" and **"the ADB is responsible for assessing and**

determining the equivalence of country system in the safeguards and adequacy of practices as well as the capacity of the debtors in implementing it.”⁸⁵

4. Despite clear evidence, including throughout the ADB’s own assessments, of lack of equivalence of Indonesia CSS with ADB safeguards, strangely the summary and conclusions find that the Indonesian CSS is equivalent or close to equivalent to the ADB safeguard for Energy and Water sectors. In fact it has violated the safeguards and in the context of the ADB SPS, it is not acceptable; it is a violation against the ADB requirement for the ADB consultants not to specify the details regarding the implementation track record of the regulations of environmental protection and forced resettlement.

Therefore, we declared our objection to and rejections against the results of the CSS assessment carried out by the ADB consultants and WE DEMAND THE REJECTION AGAINST THE IMPLEMENTATION OF THE INDONESIAN CSS for any ADB-funded projects, including since this would constitute a violation of ADB SPS requirements and we insist that ADB supported projects must continue to comply with the ADB safeguards which must be consequently and consistently implemented.

⁸⁵ADB, "Safeguards Policy Statement", 2010. Para 68, page 31.

Informal translation & update from Bahasa Indonesia version - updates are still in process .

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