

**Report on Strategic Litigation Efforts Conducted by LBH Jakarta to Advocate the Fulfillment of the Right to Adequate Housing in Indonesia**

|  |
| --- |
| **Lembaga Bantuan Hukum Jakarta (The Jakarta Legal Aid Institute)** |

Communication to the United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context

**20th September 2017**

**INTRODUCTION**

1. This report is prepared by LBH Jakarta (The Jakarta Legal Aid Institute), a legal aid organization based in Jakarta, Indonesia, which provides *pro-bono* legal aid services for the poor. LBH Jakarta has represented a major number of human rights cases since our establishment in 1970, including cases relating to violations of the right to adequate housing conducted by state or non-state actors in Indonesia.
2. As a member of the United Nations, thereby bound by the Universal Declaration of Human Rights, and having ratified the International Covenant on Economic, Social, and Cultural Rights, Indonesia has take on commitments to uphold the highest standards in the promotion and protection of human rights, in general, and economic, social, and cultural rights, in specific.
3. LBH Jakarta would like, with this report, to draw attention to human rights concern in Indonesia, especially relating to forced evictions and violations of the right to adequate housing which mainly occurred in the capital city of Indonesia, Jakarta, and its peripheries. This report will mainly focused on strategic litigation efforts conducted by our organization to advocate the fulfillment of the right to adequate housing in Indonesia.

**MASSIVE FORCED EVICTIONS IN THE CAPITAL CITY AND ITS PERIPHERIES**

1. Forced evictions has become the main issue in the capital city of Indonesia, DKI Jakarta. In the past two years (2015 and 2016), LBH Jakarta recorded that there are 306 forced evictions cases with the number of victims consist of 13,871 families and 11,662 small enterprises.[[1]](#endnote-1) [[2]](#endnote-2) Although there are no formal reports informing number of victims of forced evictions in Jakarta peripheries, LBH Jakarta has received several requests from residents living in various areas in Jakarta peripheries whose residences are under threat of evictions.
2. The majority of cases were initiated by the Provincial Government of DKI Jakarta, military, and state-owned enterprises, especially PT. Kereta Api Indonesia (Indonesian Railways Company). The local government executions were mostly based on the development of flood-projects and infrastructures, while the military and state-owned enterprises executions were based on the motive of securing state assets (e.g. retirement homes and official residences).
3. According to our research, the majority of forced evictions didn’t perform in accordance with international human rights principles. Executions occurred without any deliberations, implemented by using violent approaches, and didn’t provide any adequate solutions for victims.[[3]](#endnote-3) [[4]](#endnote-4) Military units[[5]](#endnote-5) and police officers[[6]](#endnote-6) were deployed in many evictions areas to intimidate the victims.
4. Central government major Jakarta Bay land reclamation and Light Rail Transit (LRT) projects stimulating the rise of gentrification in various areas of Jakarta peripheries, turning poor residents living in *kampungs* or low-income housings are under threat as main target of forced evictions or being evicted already to make way for the projects development, such as Tangerang,[[7]](#endnote-7) Bekasi,[[8]](#endnote-8) and Karawang.[[9]](#endnote-9)
5. LBH Jakarta has assisted several numbers of cases mentioned above by conducting lobbies or performing strategic litigation to cancel or delay evictions or at minimum to ensure that the government would guarantee procedural protection which regulated under human rights standards during evictions. LBH Jakarta also endorses policy reform relating to evictions regulation in Indonesia to minimize the gap between human rights principles and national laws.

**JUDICIAL REVIEW OF INDONESIA’S EVICTIONS LAW**

1. Although Indonesia has ratified the International Covenant of Economic, Social, and Cultural Rights since 2005, Indonesia has not yet fully implemented human rights norms regulated under the covenant into national positive laws. One of the major gap of current existing laws with international human rights standards is the effectivity of the 1960 Evictions Law which legalized forced evictions.
2. LBH Jakarta represented victims of forced evictions in various areas in Jakarta and its peripheries to file a judicial review against the law on the basis of argument that the law violates rule of law and the right to adequate housing guaranteed under Indonesia’s constitution because the law granted the government an absolute authority to remove people from their land, without due consultation or even providing proper compensation.[[10]](#endnote-10)
3. The Constitutional Court of Indonesia has not yet to decide if the law is unconstitutional. LBH Jakarta and various NGOs in Indonesia are still running a campaign for the court to revoke the law.[[11]](#endnote-11)

**CLASS ACTION LAWSUITS AGAINST THE GOVERNMENT**

1. LBH Jakarta represented evictees in several class action lawsuits against Jakarta’s local government or other state actors, among them are:
2. Pasar Ikan, a *kampung* community of 500 families of fishermen and women and maritime labours located in North Jakarta. Evictees had lived in the community since 1968—ancestors of a few residents even lived there since the Dutch colonial era. The Jakarta local government conducted forced evictions against them at 11 April 2016 without any consultation or transparency about the reason of evictions, deploying thousands of security guards, consisting of military units and police officers.[[12]](#endnote-12) Evictees filed a lawsuit a few weeks after evictions. Residents filed a class action lawsuit for compensation, but the court has not yet decided on the case. Squatters resettled Pasar Ikan area in defiance of eviction.[[13]](#endnote-13)
3. Duri Kepa, a middle-income housings community of 22 families located in West Jakarta. Residents had lived there since 1980s and could provide documents which indicate their proof of ownership of the land. In the other hand, a local religious figure also claimed the ownership of the land and reported the residents as land grabbers to the government. The residents asked to settle the conflict in the court, but the government unilaterally conducted forced evictions in August 2015, deploying thousands of military units. The government didn’t provide any form of compensation to residents. Residents filed a class action lawsuit for compensation, but the court has not yet decided on the case.
4. Budi Darma, a low-income housings community of 200 families located in North Jakarta. Residents have lived there since 1990s. The residents became victims of forced evictions by Jakarta local government in 2006 and filed a class action lawsuit soon after for compensation. Even after second appeal, the court decided not to grant any indemnification for the evictees. Evictees filed for reopening of the case to the Supreme Court of Indonesia in 2016, but the court has not yet decided on the case.

**SUCCESSFUL EXTRA-LEGAL EFFORT TO RECLAIM THE LAND OF KARAWANG FARMERS**

1. 400 farmers from Karawang, a regency in West Java, faced a land conflict against PT. Pertiwi Lestari, a real estate company. In October 2016, PT. Pertiwi Lestari unlawfully seized around 600 hectares area of land—by destroying homes and farmlands—which was originally populated by the farmers since 1990s. When the forced evictions occurred, farmers who were trying to defend their land were involved in a clash against the company’s security guard.
2. 40 farmers were detained by the local police, but none of the company’s security guards. 11 farmers among them were stipulated as suspects of battery. LBH Jakarta and LBH Bandung then represented them in the court.[[14]](#endnote-14) During the trial, the company hired hundreds of security guards to fill the courtroom in purpose of intimidating the defendant’s families and the rest of the farmers. The court then decided to release 5 of them as they are proven not guilty, but the rest of 6 were decided guilty and have to stay in prison for 5 months to a year.
3. Having nowhere else to live due to forced evictions, all of the Karawang farmers then decided to hold a public protest in front of the Presidential Palace by burying themselves in self-made coffins.[[15]](#endnote-15) The protest had held for 4 months (February-July 2017) and gained large media attention. President Joko Widodo then called the farmers for a meeting at the Presidential Palace in July 2017[[16]](#endnote-16) and promised to help them reclaim their land in Karawang. The government is currently on the middle of process to grant a new land titles for the farmers to reclaim their land.[[17]](#endnote-17)

**LAWSUIT AGAINST JAKARTA BAY LAND RECLAMATION PROJECT**

1. The central government and the local government of Jakarta set to develop a land reclamation project by building 17 new artificial islands in Jakarta Bay area. The project activities have cause a massive reduction in available fishing grounds for small-scale fishermen and women. Additionally, 17,000 fishermen and women and their families may face eviction from coastal settlements.[[18]](#endnote-18) [[19]](#endnote-19)
2. LBH Jakarta with KNTI and WALHI, prominent environmental organizations in Indonesia, represented all of the fishermen and women and their families to filed a lawsuit to Jakarta Administrative Court to annul the gubernatorial decrees which allows corporate developers to create the F, I, K, and G islands in the early phase of the project. The fisherpeople won the case in the first level of the court,[[20]](#endnote-20) [[21]](#endnote-21) but then lost in the first and second appeal for the G island. [[22]](#endnote-22) The F, I, and K islands has not yet decided by the court. During the trial, some fishermen were facing intimidation, such as robbery and death threat by unknown perpetrators.[[23]](#endnote-23)
3. The central government has granted the C (276 hectares) and D (312 hectares) islands with land title, *Hak Pengelolaan* for the Jakarta local government and *Hak Guna Bangunan* for the project developers.[[24]](#endnote-24) The issuance of these land titles were illegal because the Jakarta Regional Legislative Council has not yet set to pass the Regional Regulation on Planned Zoning of Coastal Regions and Small Islands, which requires as legal requirement for land certification of the project.

**VIOLENCE OF HUMAN RIGHTS DEFENDER ON FORCED EVICTIONS CASE**

1. LBH Jakarta human rights lawyer was attacked by state security forces and police officers during the forced evictions of Bukit Duri, South Jakarta, at 12th January 2016, following his effort to negotiate a suspension for his clients. The Jakarta Administrative Court was still to issue a ruling on the legality of the land evictions and the outcome of an audience with the Jakarta Regional Legislative Council. Alldo Fellix Januardy requested the police to await the outcome of the legal process before taking any actions. The attack resulted in significant wounds to his face.[[25]](#endnote-25)
2. Alldo Fellix Januardy has immediately reported the attack to the Jakarta Regional Metropolitan Police, which then directed the case to be investigated by the South Jakarta Police. A month after the report, a police officer from the South Jakarta Police asked Alldo Fellix Januardy for “mediation” in exchange to some amount of money. He refused. The police then terminated the investigation in August 2017 on the basis of “lacking of evidence”. LBH Jakarta is preparing a lawsuit against the decision.

**RECOMMENDATION**

1. The state should strengthen its effort to end the practice of forced evictions which constitutes a gross violation of human rights by exploring all feasible alternatives in consultation with the affected persons or by ensuring inclusive participation of its people in determining the city’s development plan.
2. The state should ensure that even when evictions are unavoidable, it should be conducted in accordance with the international human rights principles by providing opportunity for genuine consultation, procedural protection, legal remedies, and provision.
3. The state should bring its national and municipal legislation and regulations regarding forced evictions, land acquisition, and land concessions in line with international human rights law and standards.
4. The state should end the practice of violence in conduct of forced evictions against its people or people who are representing those who are affected by evictions. If such violence occurs, the state should ensure a strong law enforcement to protect the victims.
1. Lembaga Bantuan Hukum Jakarta, *Atas Nama Pembangunan: Laporan Penggusuran Paksa di Wilayah DKI Jakarta Tahun 2015,* Jakarta: LBH Jakarta, 2015. [↑](#endnote-ref-1)
2. Lembaga Bantuan Hukum Jakarta, *Seperti Puing: Laporan Penggusuran Paksa di Wilayah DKI Jakarta Tahun 2016,* Jakarta: LBH Jakarta, 2016. [↑](#endnote-ref-2)
3. *Op. Cit.* LBH Jakarta*,* 2015 [↑](#endnote-ref-3)
4. *Op. Cit.* LBH Jakarta, 2016 [↑](#endnote-ref-4)
5. http://www.hlrn.org/news.php?id=pm9rZQ==#.WbKGHsgjHIV [↑](#endnote-ref-5)
6. http://www.thejakartapost.com/news/2015/08/26/legal-aid-institute-lawyers-concerned-role-military-police-eviction.html [↑](#endnote-ref-6)
7. http://en.bantuanhukum.or.id/lbh-jakarta-assist-dadap-residents-clash/ [↑](#endnote-ref-7)
8. http://gobekasi.pojoksatu.id/2017/07/11/9-kelurahan-di-kota-bekasi-terdampak-proyek-lrt/ [↑](#endnote-ref-8)
9. https://news.okezone.com/read/2017/03/16/338/1644545/alamak-terusir-oleh-korporasi-petani-teluk-jambe-mau-nginep-di-depan-istana-negara [↑](#endnote-ref-9)
10. http://www.reuters.com/article/us-indonesia-landrights-slums/indonesian-slum-dwellers-challenge-eviction-law-in-landmark-case-idUSKCN1201QK [↑](#endnote-ref-10)
11. https://www.bantuanhukum.or.id/web/9-alasan-mahkamah-konstitusi-wajib-membatalkan-pasal-penggusuran-paksa/ [↑](#endnote-ref-11)
12. https://en.tempo.co/read/news/2016/04/11/057761462/4000-Security-Personnel-Guard-Pasar-Ikan-Eviction [↑](#endnote-ref-12)
13. http://www.thejakartapost.com/news/2017/04/27/squatters-resettle-pasar-ikan-area-in-defiance-of-eviction.html [↑](#endnote-ref-13)
14. https://news.detik.com/berita-jawa-barat/d-3388681/konflik-agraria-11-petani-telukjambe-karawang-jadi-terdakwa [↑](#endnote-ref-14)
15. http://jakartaglobe.id/standalone/telukjambe-buried-alive/ [↑](#endnote-ref-15)
16. http://gres.news/news/events/113758-jokowi-to-meet-evicted-farmers-today/0/ [↑](#endnote-ref-16)
17. http://www.thejakartapost.com/news/2017/07/05/jokowi-s-generous-gift-java-s-poor-land-crops.html [↑](#endnote-ref-17)
18. http://www.thejakartapost.com/news/2016/05/03/threatened-fishermen-rally-against-reclamation-project.html [↑](#endnote-ref-18)
19. http://www.thejakartapost.com/news/2016/04/18/reclamation-project-the-answer-to-jakarta-bay-pollution-woes-ahok.html [↑](#endnote-ref-19)
20. http://jakartaglobe.id/news/north-jakarta-fishermen-win-land-reclamation-lawsuit-jakarta-administration/ [↑](#endnote-ref-20)
21. http://www.bbc.com/indonesia/indonesia-39300056 [↑](#endnote-ref-21)
22. https://metro.tempo.co/read/news/2017/08/11/083899166/reklamasi-pulau-g-berlanjut-ma-tolak-kasasi-neayan-dan-walhi [↑](#endnote-ref-22)
23. https://news.okezone.com/read/2016/08/04/338/1455188/penggugat-pulau-g-kerap-mengalami-intimidasi [↑](#endnote-ref-23)
24. https://www.tempo.co/read/fokus/2017/08/21/3562/alasan-pemerintah-terbitkan-sertifikat-pulau-reklamasi-teluk-jakarta [↑](#endnote-ref-24)
25. http://www.advocatenvooradvocaten.nl/11518/indonesia-lawyer-alldo-fellix-januardy-attacked/ [↑](#endnote-ref-25)