Industrial Disaster and Its Impact on Human Rights: A Gendered Perspective
Dian Noeswantari

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The case of the mudflow has influenced political and environmental dynamics in Indonesia. Reuters (02/02/2007) reported that the government has not established a standard to deal with both prevention of, and solutions, in the event of such accidents occurring. Aburizal Bakrie’s position in the ministry as a public officer directly connected with the case, on social issues, has been ‘an inappropriate post’ as stated by Jakarta Post (02/07/2007). Consequently, with the unravelling of the case, the public may have formed the view that it has not been free from ‘collusive [invisible] hands’ (27/06/2007). Whilst Indonesia has legalized the State Ministries Law that bans conflict of interest for public officers (Tempo, 17/11/2008), yet this still looks like a paper tiger. Business interests still carry influence with the government.

For instance, according to the presidential decision, most of the social and environmental impacts resulting from the mudflow have been borne by the government. In addition, there has been no official statement implicating Bakrie and his corporation in solving the case, and the government has already put a military man (a retired general) as the head of BPLS (Tempo, 16/04/2007). Binding Bakrie with a legal agreement is important, as he has received funds from the government for resolving the case (Tempo, 16/04/2007). Hence, it is obligatory to attach an emergency response or contingency plan, as well as

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AMDAL, UKL, UPL* for high-risked oil and gas drilling, as stated by Rubiandini in Tempo (21/08/2006). The government must develop a communication mechanism to discuss 'bad corporations' as suggested by Tempo (19/03/2007). However, the government's slow response in handling the mudflow case is probably due to the influence of patrimonial features, and of gender politics in Indonesian democracy.

Patrimonial Features and Sexual Politics in Indonesia

Indonesia is an example of a country that has a modern life in economic, social and political terms, but still shows patrimonial features in its political system, in which 'the ruler's power depended on his capacity to win and retain the loyalty of key sections of the political elite' (Crouch, 1979: 572). This has been shown by the factions in the military (Honna, 2003), which developed Golongan Karya (Golkar) as the only political organization for government officers and has cultivated an oligarchic economic system. Patrimonial features require the non-elites to be politically passive (Honna, 2003: 583). This is shown by the notion of the 'floating mass' during the Soeharto regime. These patrimonial features, can lead to the practice of corruption, collusion and nepotism (KKN* or korupsi, kohusi, nepotisme) by the elites, to facilitate the privileges of the ruler.

The New Order regime* always tried to depoliticize political parties and the masses. It also made the elites conform, by dominating the parties with military officers (Honna, 2003: 575). This was the time when patrimony took place. This was also the mechanism in the distribution of patronage, how to exert 'control over the machinery of patronage' (Honna, 2003: 577). By practicing patrimonial features, the military also developed their own businesses, and became financially independent from the government. However, as stated by Crouch (1979: 577), 'once they were in control of the government administration', they used their influence to secure economic matters, then increased their business activities by involving their wives, brothers, cousins, friends, colleagues and so on.

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*AMDAL is Analisa Mengenai Dampak Lingkungan or environmental impact assessment. UKL is Upaya Kelola Lingkungan or document on managing the environment. UPL is Unit Pemantauan Lingkungan or document on monitoring and evaluating the environment. These are the required documents in industries.

*This is a political term created by Soeharto in defining people (masses) who should not learn politics. The people should be a-political in order to ease the Soeharto regime's governance.

*This is a term of practicing corruption, collusion and nepotism.

*This term is used for the Soeharto regime.
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Most of these businesses were ‘in fact managed by Indonesian Chinese’ (Crouch, 1979: 577). However, in the post Soeharto era, businesses were managed also by people such as Bakrie, and Arifin Panigoro, the owner of Medco E&P Energi. This practice known as KKN, was a hallmark of the Soeharto period, but has continued up until now.

According to Akbar (2007), Medco E&P Energi was established by Panigoro, an ex student-activist from Bandung Institute of Technology (ITB or Institut Teknologi Bandung). This Medco Energi is the owner of Medco E&P Brantas, a member of the Brantas Block consortium in oil and gas drilling, which has already sold their shares to Prakarsa group (Tempo, 16/04/2007). Panigoro is an example of a successful business person who wants to play a political role. His business has gained success because of support and protection from the government (Akbar, 2007). This is the point at which business and politics married. As Fatah in Tempo (17/11/2008) states:

The increasing economic wealth of a public officer, who has a background as a business person, shows an abuse of democracy in facilitating the establishment of good governance, particularly in the principles of representativeness, accountability, and mandate. There is a conflict of interests between maintaining mandates and public policy as a public officer, and personal desires in gaining economic advantages for himself and his groups. [Thus] politics can be fertile soil for increasing his business, because our democracy has not yet developed the wall of ethics and laws to separate the public officer from his business, and this has resulted in anti-public attitudes.

The military domination in social politics and economics has also impacted on the culture of decision making. This is revealed by the decision to position military officers in civilian positions as a ‘watchdog’ (Emmerson, 1983: 1224), as well as to make civilian officials act in a militarized manner (p. 1231). Emmerson states that the officer can be more loyal to their military institution than to the civilian institution. The positioning of military officers who tend to be more loyal to the military institution, impacts upon governance (Freedman, 2006: 139) and political will in implementing strong democracy.

Emmerson (1983: 1229) maintains that most military officers were positioned in the ‘wettest’ ministries.

4Meaning ‘basah’ or wet. This is a metaphor for a ‘special section that gains more benefits than others’, especially in increasing income and facilities. Thus the wettest ministries are, according to Emmerson (1983) similarly Robison (1988), this is a money producing machine for the military.
This implies that the officers had less tolerance toward civilian autonomy in dealing with economic matters. Emmerson’s research brings him to the conclusion that the New Order regime was a kind of Javanese sultanate with its appendages, in a modern setting. Thus he concludes that the New Order governed Indonesia using forms of militaristic, sultanistic and clientelistic strategies (Emmerson, 1983: 1239, Chandra and Kammen, 2002: 96). This still tends to occur in the post Soeharto era. The style of government is still the same; it may even be worse because the persons, who serve as public officers or decision makers, thirst for power.

The government has since 2004 changed the centralised system with a package of Local Government laws (Undang-Undang Pemerintahan Daerah) which has decentralized the system. However, the new system is not only creating decentralization, but also a level of chaos, in relation to decision making from the central government to provincial and local sectors. As a result, there is much civil disobedience in response to decisions from the central and/or provincial government. Also, because of the strong patronage distribution, this new system also creates ‘little kings’ or raja kecil, officials who imitate Soeharto’s style in governing their people to gain benefits, particularly in economic matters.

After the 1998 riots which led to Soeharto’s resignation, Indonesia appeared to enter a democratic era. However, in relation to the new paradigm that the military should return to barracks, Honna (2003) identified that Indonesia lacks full military withdrawal from politics. According to him, this is because of the legacy of the problematic definition and implementation of the military’s dual function (duifungsi) and secondment (kekaryaan). This has affected Indonesian democracy greatly, because the military wants to maintain both a military role, and a socio-political role, in guaranteeing national (political) stability7 to support Indonesian development (Honna, 2003).

Soeharto and the military believed that to achieve economic success required socio-political stability. This required taking control over national life (Honna, 2003), as military officers did not want to lose their opportunity of running their businesses as usual (Crouch, 1972, 1976, 1979, Samson, 1973, Liddle, 1977, Robison, 1988, and Chandra and Kammen, 2002). Thus to achieve their goals, the military secured their way by arranging regular meetings to formulate political approaches and strategies. These were reflected by ‘little

7 See Roosa (2007) who has concluded that the military still acts as the guarantor of national unity.
freedom of the press, the cultivation of a-political civil society organizations, and processes of legislation as the ruler’s rubber stamp for military action (Freedman, 2006: 133).

In the post Soeharto era, up until now, most elements within the military still want to protect their military business interests and institutionalized corruption to support themselves (Freedman, 2006: 133). The military tends to act as the guarantor of national unity (Roosa, 2007). This understanding arises from the military doctrine of national unity, originating with the Youth Oath in 1928 (Roosa, 2007). It tends to be the case that the military uses a hardline approach towards ethnic conflict throughout Indonesia. Conflict arises because of unequal economic distribution between different areas of Indonesia. However, the government tends to ignore the problem – because most senior positions are held by military officers who only take care of how to secure military business, not how to improve democracy and/or to implement good governance. This incomplete democratic reform, as stated by Honna (2003), brings similar consequences in driving security sector reform. In spite of this reform, the military has very long term powerful political influence in Indonesia, because they use sexual politics (Wieringa, 2003) to support the legitimacy of their power through laws and development programs. Most scholars who study Indonesian politics and the military, have stated that the New Order has governed Indonesia with support from the military and the House of Representative (as the rubber stamp) to legitimate the laws and development plan offered by Soeharto.

Liddle (1991) and Crouch (1979) argue that patrimonialism exacerbated the political situation. Liddle (1991: 424) states that the military top leaders had regular meetings to set the political policy and approach in continuing their surveillance and control of national life, through generating constructs to justify their authority. This has been the case since the October 1st 1965 putsch in Indonesia. During the early phase of the New Order government, Soeharto implemented strategies to ensure the military backed him up, by offering them strategic positions, especially for those who were loyal to him, to create patronage and surveillance at all levels. He also wanted to cooperate with the House of Representatives to legislate his

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*The Youth Oath of 1928 is the first time Indonesian youth aimed to be united in one nation with one language. This inspired all grassroots movements at that time with the goal of Indonesian independence.

This was a putsch when Soeharto and his military ousted Soekarno from power. Following this putsch, large scale massacres occurred, and the Indonesian Communist Party (PKI / Partai Komunis Indonesia) and all leftist organizations were decimated.
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path, to protect his power and businesses. What emerged is a militarized identity as a distinct national form (Wieringa, 2003). According to Wieringa (2003), the 1965 putsch happened, because of the fear of the conventional population\textsuperscript{10} of the largest and most progressive women's organization in Indonesia, Gerwani (Indonesian Women's Movement or Gerakan Wanita Indonesia). Gerwani articulated women's needs, not only domestic, but also political–strategic ones. '[Gerwani] combines political, socialist, and nationalist activities with their duties in the household' (Wieringa, 2003: 73) to create a radical view of women and motherhood. The sexual politics constructed by the New Order, goes beyond 'the boundaries of sexual practices and the body of women' (Wieringa, 2003: 71). This sexual politics according to Wieringa (2003: 71-72) is:

...as the regulation of bodily, emotional, mental, symbolic and aesthetic sensations [that] the pleasures, as well as fears and obligation, are constructed in which the private and the public merge to create imbricating network of power relations. Sexual politics thus deal with the moral, sexual, symbolic, cultural and political codes in which individuals, families, and the nation are linked. [This] sexual politics involves the interplay between sexed and gendered bodies in the socio-political realm.

In this context, when Soeharto and other conservatives saw that Gerwani tried to articulate women's needs in parliament, in an effort to fulfill women's strategic needs, this was seen as an attempt to compete for power between women and men. The attitude that women should behave as conservatives expected, was a factor in establishing the image of 'kodrat wanita' or women's nature as a nurturer. This notion suggests that because a woman has a womb and breasts, she has to take care of her children and all of their needs. This includes preparing food, maintaining the household's needs and accompanying her husband to social events. This notion is aggravated by common religious understandings of how women were created. Thus, a woman has to serve her husband, including sexually, even if she is tired.

As a Javanese woman, I can state that the concept of kodrat wanita as a women's moral code most certainly is part of Javanese culture. Wanita\textsuperscript{11} (uani ditata) in Javanese language, means that a woman must endure being managed by a man. She should not overstep the limits

\textsuperscript{10} These conservatives are mainly the military and the conservative religious men at the time (Wieringa, 2003: 76).

\textsuperscript{11} In modern Indonesian language, wanita means woman.
of her gender roles. Traditionally in Javanese culture, the only roles for women consists of doing tasks in the kitchen, household, and bedroom areas (dapur, sumur, kasur in Javanese language). This implies that women only have a role in domestic areas, not in public areas.

In an effort to substitute the role of Gerwani as the biggest women's organization in Indonesia, the New Order regime designed the organisation Dharma Wanita, in order to 'sexually control women's organization and police women's obedience' (Wieringa, 2003: 73). This is reflected in Dharma Wanita principles that support the housewifization or women's domestication. Membership is automatic and voluntary. Most of their duties are being a voluntary liaison of the government. This women's domestication has happened because of religious people's fear of women's disobedience. Conservatives have recognized that disobedience has massive effects; a competing power relationship between men and women, especially in public areas.

In 1965, the military and religious conservatives, predominantly Muslims, feared the success of Gerwani both in socio-political and domestic areas. Then the coup occurred, in which some top generals and lieutenants were killed. Up to one million peasants in Java and Bali were subsequently killed in the aftermath. As indicated by Wieringa (2003: 79), religious conservatives and the rest of population were manipulated by the military to do the killings. Newspapers at the time were dominated by the military version of the news. From the beginning, the New Order regime never allowed journalists to fulfil their role and responsibility in political change and critical assessment (Kakaiailatu, 2007: 70).

Wieringa (2003) stated that the 1965 coup was also a reflection of a direct association of 'women's courage and their independence' with their construal as sexual deviants and murderers (p. 80), thus, 'women's disobedience would endanger the entire social system' (p. 82). In other words, the New Order regime has developed its power through 'the subordination of women'. This meant, according to Wieringa (2003: 72) that 'The 'woman' was no longer defined as a comrade in the revolutionary struggle, [but] under the New Order, she was a submissive wife and devoted mother. General Soeharto became the super-patriarch as the father of the development family he wanted his New Order state to become.'

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18 In her research, Wieringa interviewed women political prisoners, and also used articles published during the 1965 putsch, especially related to Gerwani.
19 At the time of the putsch, Gerwani women were portrayed in the media as whores and murderers. This image has remained until this day.
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This manipulation of sexual symbols clearly shows that ‘women’s political ambitions were discredited and channelled into the powerless organizations the state had established [Dharma Wanita]’ (Suryakusuma, 1991: 54 in Sears, 1991). This is part of housewifisation or domestication of women (Suryakusuma, 1991, in Sears, 1991). This is how to subordinate women as second class citizens and get them to be more dependent on men, in order to discourage women in contesting power relationships. This is a kind of re-subordination as stated by Wieringa (2003: 70). Therefore, it is difficult to address the case of gender violence, marital problems, and/or any form of discrimination against women, even to protect women or to fulfil their practical and strategic needs, especially in conflict areas. In this context, Indonesia needs reform in the security sector, to facilitate the accomplishment of women needs.

The Results of Military Influenced Democracy

In the mudflow case, some consequences of the military influenced democracy are evident, in the belated legislating of regulations and development of the national team, and in the government’s handling of disaster management for the displaced. It is also evident in the government’s reluctance to sanction Lapindo for its delay over the compensation payment process. Tempo reported that disaster management conducted by the government lacked coordination, leadership and transparency (26/06/2006). These factors have in turn, resulted in belated efforts to stop the mudflow (21/08/2006). There has no detailed plan issued by the government until now (Jakarta Post, 17/06/2006). Furthermore, the government has generated more problems, socio-economic and health related, both physical and mental health (13/06/2007). This will put the nation’s health status at risk, since health is ‘a state of complete physical, mental, and social well being and not merely an absence of disease or infirmity’ (13/06/2007).

The government has not yet produced a clear policy in handling the case since the mudflow began. The government has to develop a standardized disaster management plan, with a holistic and integrative approach. This could be run through education, as proposed by Tempo (24/07/2006) that people have to learn how to live in certain conditions. However, the government has already developed a disaster mitigation plan under the Department of Health (Jakarta Post, 26/06/2006). It is unclear whether this body will work properly.

14 Women’s Union, created and controlled by the State.
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This situation is exacerbated by the lack of coordination and management conducted by Lapindo, in handling the impact of this industrial disaster (Tempo, 18/09/2006). This coordination and management is difficult to practice, when political figures and public officers, who have made political policy, want to interfere in the technical handling of the case. Thus, this mudflow is an example of ‘multiple disasters [in] ecological suicide’ (Jakarta Post, 26/10/2006). Therefore, at this critical point, it is necessary to pressure the government into providing five percent of the Annual State Budget to fund the disaster (Tempo, 24/07/2006).

This mudflow case is a test case for Lapindo concerning corporate social responsibility. This is not only ‘presenting’ the company with an improved brand image, but also showing how the company manages its code of conduct from a human rights perspective. Thus, there needs to be political will in putting the theory of corporate social responsibility into practice. This is vital, since this mudflow case has impacted on the displaced in maintaining their enjoyment of life and rights. This is exemplified by the press reports that the displaced have been suffering, living in shelters without appropriate support for their basic living needs.

According to the police investigation, they suspected some low-level company officers, but have not implicated the manager or the director who gave the instruction in using the casing pipe or not (Tempo, 10/07/2006). However, the police had some difficulties in providing evidence, such as the joint operation agreement documents in Brantas Block oil and gas drilling, as asked by the Attorney Office, even though they had no doubt that the case was caused by the insufficient check in oil and gas drilling (Tempo, 07/01/2008). As a result, the police have cancelled the process of investigation, which has added to the difficulties of the locals in seeking legal support.

This is possible that the police were hindered by the complications of the mudflow problems that have now entered the political arena, as there were many investigation processes conducted by different offices. For example, the House of Parliament investigated the case, and concluded that the mudflow case was caused by natural phenomenon (Tempo, 25/02/2008). The Department of Energy and Mineral Resources developed a national team as instructed by the presidential decision No. 13/2006, and concluded that the mudflow case was an accident caused by human error (Tempo, 26/06/2006).

Yet still, the government has not yet followed up with appropriate solutions. The Indonesian Audit Board examined
the cause, and concluded that the government failed to give an oil and gas license, and BP Migas has not monitored the change of owner or participating interests, the contractor lacked capability and experiences in oil and gas drilling that triggered the man-made accident. BP Migas lacked control over monitoring and evaluation during the process of exploration and exploitation of oil and gas drilling in Brantas Block (Laporan Badan Pemeriksa Keuangan Republik Indonesia, 2007). Finally, Medco also studied the case, and the results weakened the position of Lapindo (Tempo, 18/09/2006, 27/11/2006).

Despite the fact that most of the investigations concluded that the mudflow was caused by human error in drilling, the challenge is in defining the cause of mudflow, as the Court and the House of Parliament has classified the case as a ‘natural phenomenon’. The attitude of the Court and law enforcement officers has hindered the police’s ability in finding and providing the evidence. This signifies that ‘collusive invisible hands’ have presumably played roles in this case. Additionally, some of investigation processes conducted by the government was funded by BP Migas (Tempo, 26/06/2006). This has impacted on the ability of the team to work independently.

The evidence of neglecting the standard procedures in oil and gas drilling, and the verdict from the Court in Lapindo’s environmental criminal case, should lead the Court to order an appropriate compensation. This must involve the share-holders in taking responsibility in normalising the environment and re-establishing local living standards. Thus, defining the cause, will ease the identification process of the party that has to take responsibility for the cause of the mudflow (Tempo, 25/02/2008). This is crucial, since it will lead to the party that shall bear the cost of recovery, namely Lapindo, if the cause was a human error, or the Government, if the cause was the earthquake.

The poor government response to the mudflow disaster has caused displacement and suffering in women’s lives. Some of the displaced women have turned to prostitution in an attempt to maintain their livelihood (Jakarta Post, 26/12/2006). Some mothers have sold their daughters into prostitution (Jakarta Post, 26/12/2006). Thus, under the military influenced democracy, in this mudflow case, the government tends to favour business interests above the needs of the displaced. This is proven by the time delays and the disputes in giving the payment, especially in giving evidence for the land owners (Jakarta Post, 03/07/2007, Kompas, 2007: 224) and the intimidation experienced by the displaced (Jakarta Post, 10/10/2006,
29/05/2008, 10/06/2008, 20/06/2008). If Lapindo had obeyed the rules, the women and the girl children would not have become victims of prostitution.

Threats to Human Rights

The Indonesian National Commission of Human Rights (Komnas HAM) has also studied the mudflow case, and has found evidence of human rights violations (Tempo, 02/02/2009). For example: the right to adequate housing, the right to health, the right to work, and the rights of internally displaced people, in particular regarding the process of exploration next to housing and farming areas. However, defining the status of human rights violations in this mudflow case, has been obstructed by Komnas HAM’s brief being limited to that of recommendation. Moreover, pros-justicia investigation has been deterred by Human Rights Law No. 26/2000⁴⁸ and this needs exhaustive data.

However, Komnas HAM will set up a special team that will conduct further investigation, and may bring the mudflow case to the human rights court (Reuters, 25/02/2009). Further evidence of human rights violations is seen in the stopping of food supplies for the displaced, in order to force them into accepting the sale-and-purchase deeds agreement (29/05/2008). Paring Waluyo, a local leader, said that this is a ‘form of intimidation and unfairness’ (Jakarta Post, 20/06/2008). This human rights situation is aggravated by senior politicians who use human rights in their political jargon (07/01/2009). What has happened at the local level concerning this mudflow case, ‘is a systematic [human rights] omission [conducted] by the state’ as stated by the National Awakening Party.⁴⁹ (07/01/2009)

The reluctance of Lapindo in properly handling the mudflow case, and the government’s preferential treatment towards the company, has exacerbated the difficulties faced by the displaced. According to the Limburg Principle⁵⁰ from the United Nations, there is a human rights violation, when the State ‘fails to remove promptly obstacles which this is under a duty to remove to permit the immediate fulfilment of a right and fails to implement without delay a right which it is required by the [Economic, Social and Cultural Rights or ESCR] Covenant to provide immediately’ (p. 3)⁵¹. This is because the State has failed in its

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⁴⁴ This human rights law has only acknowledged genocides and crimes against humanity in their definition of gross human rights violations.
⁴⁵ Partai Kebangkitan Bangsa or PKB.
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obligation to respect, protect and fulfil the economic, social and cultural rights of its citizens (p. 4):

Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights ... The obligation to protect requires States to prevent violations of such rights by third parties ... The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Thus under the Limburg Principle, the Indonesian National Commission on Human Rights, was correct when they stated that this was an enormous case of human rights violation. The government failed to remove obstacles in the fulfillment of human rights of the displaced. This is because the State has not prevented rights violations by the third party, Lapindo. The situation was exacerbated by the fact that the Sidoarjo Regency forced some of the displaced away from the shelter (Mirdasy, 2007: 31). Also, in its obligation to fulfil human rights, the State has not yet taken appropriate legislative, administrative, and judicial measures concerning the mudflow case.

The legislative members favoured the company, as shown by their conclusion that the cause of the mudflow was due to a natural phenomenon (Tempo, 25/02/2008). This conclusion was reached because the House of Parliament only invited experts who supported Lapindo. Furthermore, the concept of compensation has been reduced to a sale-and-purchase deed in the presidential regulation. This has influenced the administration of the payment process, and has excluded the locals who only have 'Surat Hijau', 'Letter C', or 'Letter D'. This has occurred despite the fact that most of the public officers in Jakarta, have said that every form of legal paper can be used as evidence by the owners.

In their attempts to achieve justice for the displaced, prominent non governmental organizations, who serve as watchdogs in monitoring the environment and laws, (WALHI and YLBHI19) were defeated by the court (Tempo, 03/03/2008). This is because the court stated that Lapindo has helped

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19 WALHI or Wohana Lingkungan Hidup Indonesia (the Indonesian Forum for the Environment) is a member of Friends of Earth, the fifth largest environmental organisation in the world. YLBHI is Yayasan Lembaga Bantuan Hukum Indonesia or Indonesian Legal Aid Foundation.
the displaced by giving payment in the form of sale-and-purchase deeds; and also that the cause of the mudflow was due to natural phenomenon: an earthquake (Tempo, 07/01/2008). This attitude of the court was supported by the Attorney’s Office, which has forced the police to get the original contract of Brantas Block as the only evidence in this mudflow case. This attitude has seemingly caused the police to delay the investigation (Tempo, 07/01/2008).

The Maastricht Guidelines acknowledges the obligation of conduct, that 'requires action reasonably calculated to realize the enjoyment of a particular right', and the obligation of result, that 'requires States to achieve specific targets to satisfy a detailed substantive standard' (p. 4). Therefore, to avoid violation in the economic, social and cultural rights, the State has to fulfill in accordance with the principle of minimum core content (p. 5) in their policies, by using the principle of non-regression as stated in the Limburg Principle.

On these critical points, the Maastricht Guidelines also acknowledges rights violations through acts of omission, which deal with the 'unwillingness of [the] State to comply with [the] treaty obligations' (p. 6), and acts of commission, which deals with 'direct actions [from] the State or other entities insufficiently regulated by [the] States’ (p. 7). This means that in the violations through the acts of omission, the State has lacked the political will in making measurement under its legal obligations, but in the violations through the acts of commission, there have been inadequate regulations. Hence, the State must establish legal rectification. This includes ‘monitoring investigation, prosecution, and remedies for victims' (p. 8), and also ‘controlling behavior of such non-State actors' (p. 9).

In this mudflow case, the displaced have not only suffered through the loss of their economic, social and cultural rights, but also their civil and political rights, as they have been forced to flee from their homes. In its fulfillment of the principle of minimum core content, the State is required to give a guarantee that Lapindo will give the exact date of payment. This payment is crucial in an attempt to start a new life for the displaced. Also, after more than two years, the government has made limited efforts in supporting basic life for the displaced, especially in providing clean water and sanitation, healthy food, basic schools, and in maintaining social life and mental health, as reported by the press. Most of the facts as documented by the press in this mudflow case, are the key to

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* Measures that actually worsen people’s access to economic, social and cultural rights.
dealing with the human rights violations through acts of omission. This is reflected in the presidential regulations and the work of BPLS, which is reluctant to provide affirmative action for the displaced. Thus, under the Maastricht Guidelines, the government has shown a ‘failure to take appropriate steps’ in the human rights fulfillment for the displaced; ‘failure to reform or repeal legislation [such as the presidential regulations] which is manifestly inconsistent with an obligation of the [Economic, Social, Cultural Rights] Covenant’; ‘failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights’; and ‘failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance’ (p. 8).22 These failures have exacerbated the difficulties of the displaced, particularly women, in their efforts to maintain their family livelihood.

According to the Jakarta Post, the displaced have displayed signs of mental health disorders (18/07/2007), have a feeling of homelessness (Reuters, 29/05/2007), and often have to skip eating healthy food, to save money for their school-aged children (Jakarta Post, 10/06/2008). Pitanto (Jakarta Post, 29/05/2008) notes further, that some of the women are elderly and widows who do not own any house or land. Most of the displaced women have started to beg along the roadside, after Lapindo stopped providing food for them (Jakarta Post, 03/05/2008). This mudflow case has forced the locals to become homeless and jobless, thus increasing the ranks of the poorest in society.

Advocacy in Progress

On May 29, 2006, the people of the villages at Porong Sidoarjo were forced to flee from their homes and land because of the mud that covered the area. The dispute continues about the reason for the mudflow, with some geologists arguing that this was due to the inappropriateness of oil and gas drilling procedures, while others viewing this as a natural phenomenon. Lapindo, the company that operated the oil and gas drilling in Brantas Block, prefers this second explanation.

This mudflow drowned the equivalent of 2000 football fields and displaced more than 50,000 people from more than seven villages. This catastrophe has not only ruined the social life of the locals, but also their economic and political life. This means that they have lost their identity as the

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residents of a certain village, their cultural identity and collective memories as civilian. Being displaced and forced to live in a shelter has increased this sense of loss.

The disputes in defining compensation and in enforcing the legal rule in the payment process, have also increased the suffering of the people who have been displaced. Most of the displaced have been diagnosed with mental health illnesses. The long process in waiting for compensation has meant that this has been too long before starting a new life. The difficulties of gaining income for their family, has forced some women into prostitution and one mother even sold her daughter to a pimp in order to maintain their family income.

However, Lapindo has still denied responsibility for the disaster, and instead has blamed the Yogyakarta earthquake that happened two days before the calamity. Lapindo also admitted that the earthquake was the natural cause during the time of that parliament was sitting. This advertising campaign had the effect of convincing the members of Parliament’s to define the mudflow as a natural disaster, not an industrial disaster.

The government has already issued some presidential regulations in handling the case, but after three years, these have not yet been finalised. This, then, has created the opportunity for the people who have been displaced to fight back for their rights. In their struggle to win back their rights, they have adopted various advocacy strategies.

This concluding chapter aims to document some of these important strategies that have developed and grown around the mudflow issue.

Advocacy Strategies and the Future of the Displaced

One strategy has been for the displaced to organize themselves in order to coordinate and to link with others. In running their campaigns, the displaced need to organize themselves in order to speed up the process of compensation payment. This has resulted in several groups of the displaced being formed. One is the Association of Lapindo Mud Victims, led by Pitanto and Sunarto. They have chosen the hardest way in getting back their rights, as part of their efforts in protecting their elderly groups in their former village. As a consequence, they want to choose a twelve acres piece of land in Pandaan to live together as a big family community as before (Jakarta Post, 29/05/2008).

Another strategy has been to make alliances with others, in order to help them negotiate with Lapindo and with the government in speeding up the compensation process. Alliances have therefore been made with local members.
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of parliament (*Tempo, 08/12/2008*, *Jakarta Post, 23/01/2009*).

The groups have also linked with and been supported by volunteers, who have helped them in formulating their advocacy, particularly in articulating their demands, organizing rallies and linking to other pressure groups. Due to the political barriers, most non-governmental organisations have remained silent and not provided humanitarian attention. This is, as stated by Akbar (2007) because they have difficulties in helping the people in need, due to the local bureaucracy that has hindered the organizations in running their programs. These alliances have resulted in the Institute for Human Rights Defenders, Jakarta awarding them with the Princen Award, to give moral support (*Jakarta Post, 29/05/2008*).

Another approach has been the organizing of periodic strikes to attract the government’s attention. They commemorated the anniversary of the mud eruption by conducting rallies that attracted other residents, and also by performing street theatre or carrying banners in some strategic places. For example they marked the second year of the mud eruption by dressing in black, carrying banners, and handing five birthday mud cakes over to five top officials including the president and the vice president (*Reuters, 29/05/2007*). Some of the displaced gathered at the stadium, dressed in white prayer clothes, prayed together, listened to a sermon and watched the mudflow film. Some of them blocked the railway track (*Reuters, 22/02/2007*) or the street to the main vent (*Jakarta Post, 10/11/2008*), planted banana trees on the eastern dike (*Jakarta Post, 10/11/2008*), marched near the shelter, or prayed and laid flowers at the mudflow site (*Reuters, 29/05/2007*). Some also rallied in Surabaya, Jakarta (*Reuters, 11/02/2009*), and at the gate of the Kahuripan Nirwana Village (*Jakarta Post, 23/01/2009*).

Another successful approach has been to empower themselves by running local education in the shelter. This is as a way of coping with their circumstances due to their struggle in maintaining their income. Thus, they have conducted a modest local kindergarten, and some religious and sport activities in the shelter (*Jakarta Post, 29/05/2008*).

Additionally, in encouraging the struggle of the displaced, some welfare organisations and individuals have given scholarships and have provided basic learning facilities by running local kindergartens in the shelter (*Jakarta Post, 10/06/2008*). This has also included some equipment in running a local radio, website, and small business incubators (the organisation donated sewing machines and beauty salon equipment) (26/12/2006). However, most of the participants of the local radio
and website projects, are likely to be intimidated and to be threatened directly and indirectly (20/06/2008), because they are challenging the status quo.

This mudflow case represents a unique form of human rights violations, both by the corporation and the government. Whilst the government has favoured the business interests, the corporation in turn, has ruled as the government (Korten, 1995). The invisible hands of the corporation have directed the handling process of the mudflow case, particularly in the making and administering of public policy.

Hence, this is necessary to work together with the local people, in order to strengthen their capability to know and to defend their rights, significantly in conducting advocacy. This has to start from their daily experiences. Learning from and working with the locals is important, in order to help them develop their knowledge and skills, including how to negotiate with big corporations.

The mudflow case raises important questions about governance in Indonesia, human rights and gender issues arising when people are displaced after a crisis, and the role of corporate responsibility. The mudflow case also highlights various advocacy strategies. Even though this seems like a local issue, this provides important global lessons for non governmental organizations and human rights activists everywhere.

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