

# **Indonesia: Supreme Court sentences anti-mine activist to 4 years for 'spreading communist ideas'**

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**Jakarta — The Institute for Criminal Justice Reform (ICJR) says that a Supreme Court (MA) verdict increasing the sentence against an activist who protested a mine in East Java and was charged with spreading communist ideas is an example of the law being used to silence activists or SLAPP (Strategic Lawsuits Against Public Participation).**

There were a number of weaknesses in the MA verdict, one of which related to video recording of the demonstration against the mine which was not submitted in accordance with procedures.

Environmental activist Heri Budiawan alias Budi Pego was involved in protests by local people opposing a goldmine. He was later accused of putting up a protest banner with the symbol of the banned Indonesian Communist Party (PKI).

The Banyuwangi District Court and the East Java High Court sentenced Budiawan to ten months in jail. The MA upheld the verdict and increased the sentence to four years in jail.

"The incident involving Heri Budiawan can be said to be a form of SLAPP, because [the government] is using a criminal legal instrument to silence an activists opposing a gold mine", said ICJR Executive Director Anggara in a press release on Monday November 27.

Meanwhile Article 66 of Law Number 32/2009 on Environmental Management Protection (UU PPLH) protects human rights defenders and environmental activists. "People who fight for the right to a clean and healthy environment cannot be charged under criminal or civil law", reads the article.

Quoting from the Indonesian Forum for the Environment (Walhi) website, Budiawan's case began when local people protested against mining activities at the Tumpang Pitu Mountain in Banyuwangi, East Java, which had been carried out by the companies PT. Bumi Suksesindo (PT. BSI) and PT. Damai Suksesindo (PT. DSI) since 2012.

As a result of the mining activities, a mud disaster occurred in 2016 damaging the coastal area and coral reef at Red Island beach resulting in farmers and fisherpeople suffering a decline in income and a drop in tourism.

On April 4, 2017, residents from Sumberagung and nearby areas in Banyuwangi put up banners reading "reject the mine" along the length of the Red Island beach road between Sumberagung and the Pesanggaran sub-district offices.

Local police then declared that they found a logo resembling a hammer-and-sickle on one of the banners opposing the mine. Yet according to local residents, none of the banners had such a logo.

Four people were subsequently declared suspects and charged under Article 107 Paragraph (a) of Law Number 27/1999 on Revisions to the Criminal Code (KUHP) related to Crimes Against State Security. This article relates to the spread of Communist, Marxist and Leninist teaches which is synonymous with the PKI.

On January 23 the Banyuwangi District Court sentenced Budiawan to 10 months in jail. The East Java High Court upheld the sentence which was then increased to four years by the MA.

Anggara says that there were a number of weaknesses in the MA verdict. First, there is no exact definition in the verdict of how exactly Budiawan spread communist ideas. According to Anggara, Budiawan did not do this even if he had indeed put up banners with the hammer-and-sickle logo.

“In the ICJR’s view the phrase ‘spreading’ in the formulation of the offence in Article 107a of the KUHP refers to efforts or actions which through propaganda proclaim in a continuous and repeated manner with full awareness the intent to impart Communist, Marxist or Leninist teachings”, he explained.

Second, the electronic evidence presented in court in the form of a video of the demonstration against the gold mine was not presented based on the correct steps and procedures for examining electronic (digital) evidence.

Video evidence, said Anggara, must be corroborated by testimonies by a forensic digital expert on the authenticity and integrity of the video. The examination itself must be done in four forensic digital stages, namely collection, maintenance, analysis and presentation.

“Basically the recorded evidence of the hammer-and-sickle symbol in the form of a video which was presented at the hearing should not have been done by those in authority and it should not have been used as legitimate evidence in a court of law”, he said.

Third, said Anggara, the MA has a tendency to overstep its authority. The MA should not, he continued, have the authority to reexamine evidence which has already been examined at the judex factie stage or examination of facts (which is done by district and high-courts). The MA’s authority is judex juris or examining a case dossier.

“Based on the above notes, the ICJR is urging Budi Pego to submit an appeal (PK) as the next step in obtaining justice”, asserted Anggara. (sur)

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