WALHI West Java Press Release:

Responding Jakarta- Bandung High Speed Rail Train Project

For published immediately

CDB Violate Environmental and Human Rights in Indonesia

Bandung- Responding to issuanced of Jakarta-Bandung high speed rail train (HSRT) development permit by Ministry of Transportation[[1]](#footnote-1), WALHI West Java (Indonesian Forum for Environment) – Friends of The Earth Indonesia proclaim our refuse statement to that project. Indonesia government seems like has closed their eyes to reconsider the urgency of the project which is too much ambitious.

Therefore WALHI West Java want to reminding and urge to China Development Bank (CDB) as a Chinese banking institution who will give capital loan to the consortium (PT.KCIC) to support their 75% of high speed rail train project budget requirement in Indonesia.

An effort that WALHI West Java has been done is sending letter to CDB main office in Beijjing, China, on Monday, August 21, 2014. The purpose and objectives of the letter are urging the CDB to reconsider their plan lending capital . Due to the HSRT project will give many negative impacts to environment and social community. Furthermore, content of letter also explain various violation of process and inconsistancy to the regulation that has been done by governmant and consortium it self.

It necessary to inform that CDB is one of Chinese state own company in banking sector. In lending as form of their foreign investment, CDB have to based on to Green Credot Guidelines (GCG) which is issuanced by China Bank Regulatory Commission (CBRC).

Benchmarking to GCG, WALHI West Java is reminding and urging CDB to reconsider their investment in the HSRT project which is full of regulation violation and inconsistancy on its way. Due to if CDB keep giving loan then it means that CDB is violating the regulation of their own country.

And some regulation violation and incosistancy that has happened in the HSRT project process are :

**Environmental and Social Impacts**

* *Loss of Livelihood and Homes*: Based on our analysis and field study, the project will create significant changes in the function and use of land. There are 727 farming households, and 113 non farming households along the planned rail route. All of these families will lose their livelihood and homes should the project move forward.
* *Water Supply*: The proposed rail route will negatively impact the region’s water catchment, thus affecting irrigation to rice paddies in West Java.
* *Risk of Earthquakes and Landslides*: The rail line will cut through Purwakarta, an area riddled with geological faults and thus prone to earthquakes and landslides[[2]](#footnote-2)
* *Land Use*: The rail route will profoundly alter the geographic and ecological functions of the region. Currently, the route cuts through areas which are primarily being used as community farms and rice fields. However, the project calls for the creation of a large rubber plantation which currently functions as an important water catchment area. This change in land use from community farms to a monoculture based plantation will likely lead to overexploitation of local water resources. The concurrent development of new cities, residential housing, and industries along the rail route will in turn further drive up demand for local water resources, while simultaneously leading to increased water or air pollution caused by the construction of the four proposed transit stations.

**Violations to Indonesian Law**

In light of the environmental and social impacts, the following legal violations do not inspire our confidence, nor local communities, that the high speed rail project can be developed in an environmentally and socially responsible manner. Even before its construction, the project violated numerous Indonesian environmental, spatial, transportation, and business law.

**Violations of Environmental Law**

*1.Country Law No. 32/2009 regarding Environment Management and Control.*

* The process for developing the EIA was not conducted according to proper procedure to the environmental law. Typically, an EIA of a project this size is expected to take at least 1-1.5 years. However, the EIA was conducted in just seven days. As a result, the EIA contains inaccurate and flawed data analysis regarding the project’s actual environmental impacts. For instance, the EIA did not even include analysis on cross province/district impacts. The project will cut across four provinces. The EIA also does not appropriately take into account cumulative, long term impacts that the project will have on the region.
* University faculty were tasked to conduct the EIA. For specific details on the staff, please see Appendix 1.
* Typically, feasibility studies for a project of this size take about 18-19 months. However, the feasibility study for the project was completed in just 3 months, instead of the usual 18-19 months. [[3]](#footnote-3)
* Given the inappropriate speed at which both the EIA and feasibility study were conducted and approved, the public safety of this project should be called into question. For instance, the EIA does not contain analysis on potential natural disasters, which is extremely troubling since the area is prone to earthquake activity and landslides.

*2. Government Regulation No. 27/2012 regarding environment permit*

* This regulation requires public participation in the making of EIA document; however, public participation and concerns were not involved in the making of HSRT EIA document .
* The EIA Document Reference framework requires that EIA documents be completed in no less than 75 days. However, the EIA for the Bandung HSR project was completed within ten days. For good reason, this has become one of the most controversial aspects of the project.
* The environment permit was approved in only one day. This regulation requires that the process should take at least 60 days.

**Violations of Spatial Law**

*1.Country Law No. 26/2007 regarding Spatial Arrangement.*

* According to this law, all project activities must be done according to correct procedures in spatial planning. The law is set that spatial plan can only be changed every 5 to 20 years, or only if an extraordinary condition arises, such as a natural disaster . However, the central government coerced provincial and regional governments to alter their local spatial plans solely for the HSRT project. The HSTR project should not have been deemed as an extraordinary situation as a means to override the authority of provincial and regional governments. As a result, the project’s rushed approval by local governments, at the coercion of the central government, fundamentally violated the Spatial Law.

*2.Government Regulation No.15/2010 about Spatial Planning Management*

* According to this law, provinces, districts, and municipalities bear the authority to arrange, control, and manage local spatial planning. However, due to the need to accelerate approvals for the project, the central government violated this regulation by ordering and strongly urging the provincial, district, and municipal areas to change their spatial plans in order to accommodate for the project. At the same time, most of the districts and municipalities had already confirmed their own spatial plan, which did not account for the HSR project at the time due to the extremely rushed circumstances of the project.

**Violation of Transportation Law**

*1.Transportation Ministerial regulation No. 43/2011 about Masterplan of National Railways System*

* According to this regulation, the high speed train should begin development in the year of 2030. However, central government has accelerated train development to begin this year.
* Importantly, this regulation also defined and planned for the development of high speed rail to begin from the city of Jakarta with proposed stops at Cirebon, Semarang, and Surabaya. Although the project claims to reach Bandung, there is no reference to Bandung as a stop or end destination in this regulation.

**Violation of Business Law**

*1.Country Law No.5/1999 about Monopoly Practical and Unfair Business Dispute.*

- The HSRT project consortium has demanded exclusive rail rights[[4]](#footnote-4), which would create a rail monopoly. Allowing the project consortium exclusive rail rights would contradict the non-exclusive rights in business activity law.

**Violation of Chinese Policies**

* **Green Credit Guidelines**: In providing $4.06 billion[[5]](#footnote-5) in loans to the Chinese-Indonesian consortium developing the rail project[[6]](#footnote-6), CDB is subject to Article 21[[7]](#footnote-7) of the Green Credit Guidelines, which obligates Chinese banks to comply with host country law and international norms and best practices when investing overseas. However, due to repeated violations of host country law, in addition to the international standards (such as international practices regarding the proper process for conducting environmental impact assessments[[8]](#footnote-8), such as identifying cumulative impacts or alternatives to the project, and ensuring free, prior, informed consent[[9]](#footnote-9), which is recognized by the UN Global Compact), this project clearly violates Article 21 of the guidelines.
* **Guidelines for Environmental Protection in Foreign Investment and Cooperation:** The involvement of China Railway International requires that the Guidelines for Environmental Protection in Foreign Investment and Cooperation[[10]](#footnote-10) be applied. Under this policy, Chinese companies are required to abide by host country law, per Article 5 and 8. According to Articles 9 and 10, the policy obligates companies to “take full into account of the impacts of their development and construction as well as production and operation activities on the social environment”, and to “prior to the construction of the project, conduct environmental monitoring and evaluation for the proposed construction site”. In order to ensure good relationships between Chinese companies and local communities, Article 20 also advocates that enterprises to “establish a way of communication and dialogue mechanism for enterprises’ environmental social responsibilities…and take opinions and suggestions with respect to environmental impacts of their construction projects”. Given the deeply flawed EIA and the lack of free, prior, informed consent from local communities to the project, the China Railway International does not appear to be fulfilling these obligations.
* **Based on our research and observation of the project’s record of environmental and legal compliance, however, the Green Credit Guidelines are not being fully implemented.** We believe that the consistent implementation of Chinese policies, like the Green Credit Guidelines, would be a positive sign of China’s willingness and ability to acknowledge and address the environmental and social impacts of its overseas investments. However, neither the Green Credit Guidelines nor the Guidelines for Environmental Protection are being fully implemented.

We strongly support the China Banking Regulatory Commission’s publication of the Green Credit Guidelines key performance indicators, which measures the extent which banks have implemented the guidelines. We include our assessment of CDB’s loan to the Jakarta-Bandung HSR based on these KPIs and welcome any bank feedback or comments. Please note that we only addressed KPIs which involve the procedural management of the loan and your clients. As you may recall, procedural management for environmental and social risks, as outlined in the GCG KPIs, also apply to overseas investments (4.21.2). **We hope that the application of the Green Credit Guidelines KPIs to the project can help clarify to CDB staff why the Jakarta-Bandung HSR loan should be cancelled, or at the least, suspended**.

**Violations to China Development Bank Policy**

* We note that as a participant of the Global Compact, CDB is expected to carry out the Ten Principles safeguarding environmental, social, and labor rights[[11]](#footnote-11). However, given the lack of compliance with required Indonesian law, the project clearly does not exemplify CDB’s commitment towards the UN Global Compact.
* Lastly, we would like to point out that the failure to comply with Indonesian law appears to violate CDB’s own environmental review process, as CDB requires that all loans for project should be completed in line with the relevant regulations[[12]](#footnote-12). Furthermore, environmental costs and standards can be written into loan covenants to ensure strong environmental compliance. It remains unclear to us if CDB has incorporated any environmental loan covenants in PT Kereta Cepat Indonesia China’s contract. If so, we would be grateful to learn more about how CDB is ensuring strong environmental, social and legal compliance from its client.

WALHI West Java have as a conclusion that HSRT project is a ambitious project of President Joko Widodo rezim which been forced and full of violation.CDB must take responsibility to environmental damage if they keep give loan to PT.KCIC. Moreover, CDB also have to take responsibility to the decrease of community prosperity level, due to loss of livelihood, houses, and farm land that caused of land acquisition. And it means CDB would violate human rights in practise of their invesment practical in Indonesia.

Bandung, September 22 , 2016

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2. Amy Chew, “Discontent in Indonesia over high-speed rail project jointly developed with China may turn the current impasse into a more protracted one”, South China Morning Post, February 19, 2016. <http://www.scmp.com/news/asia/southeast-asia/article/1913995/discontent-indonesia-over-high-speed-rail-project-jointly> [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Farid Susanty, “Tug of war in China-led rail project”, Jakarta Post, February 5, 2016. http://www.thejakartapost.com/news/2016/02/05/tug-war-china-led-rail-project.html [↑](#footnote-ref-4)
5. Khoirul Amin, “State firms get $20b loan commitment from China bank”, The Jakarta Post, June 18, 2015. http://www.thejakartapost.com/news/2015/06/18/state-firms-get-20b-loan-commitment-china-bank.html [↑](#footnote-ref-5)
6. This consortium, PT Kereta Cepat Indonesia China, was formed in October 2015. It consists of China Railway International, PT Wijaya Karya, PT Kereta Api Indonesia, PT Jasa Marga, and PT Perkebunan Nusantara VIII. [↑](#footnote-ref-6)
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8. “EIA Best Practice”, http://www.unep.ch/etu/publications/EIA\_2ed/EIA\_E\_top1\_hd.PDF [↑](#footnote-ref-8)
9. “United Nations Declaration on the Rights of Indigenous Peoples”, UNDRIP, March 2008. http://www.un.org/esa/socdev/unpfii/documents/DRIPS\_en.pdf [↑](#footnote-ref-9)
10. “Guidelines for Environmental Protection in Foreign Investment and Cooperation”, Ministry of Commerce and Ministry of Environmental Protection, February 2013. http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml [↑](#footnote-ref-10)
11. “Communication on Progress: China Development Bank”, UN Global Compact, December 28, 2015. https://www.unglobalcompact.org/participation/report/cop/create-and-submit/advanced/201161 [↑](#footnote-ref-11)
12. ‘New reports: Emerging sustainability frameworks at Chinese and Brazilian national development banks”, Friends of the Earth US, January 2016. http://www.foe.org/projects/economics-for-the-earth/international-finance/emerging-sustainability-frameworks [↑](#footnote-ref-12)