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MESUJI CASE: IS THERE A VIOLATION OF ECONOMIC RIGHTS? THE AVAILABILITY OF JUDICIAL SETTLEMENT MECHANISM ON THE VIOLATION OF ECONOMIC AND SOCIAL RIGHTS IN INDONESIA

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Mesuji Case: Is There a Violation of Economic Rights? The Availability of Judicial Settlement Mechanism on the Violation of Economic and Social Rights in Indonesia

**Erna Dyah Kusumawati, Ayub Torry Satriyo Kusumo
and Sasmini***

This article focuses on the factors triggering the Mesuji conflict and the similar cases happening in Indonesia. In addition, this paper seeks to find the available settlement alternatives which can be used to solve the conflict. The study will take a long, hard look on state practices (South Africa and India) concerning on the settlement of the economic and social (socio-economic) rights. The conclusion drawn is that a conflict involving society's rights and interests should be solved in a comprehensive way. It cannot be solved only by litigation or non-litigation procedures. The Government should establish a policy concerning the regulation on the land expropriation. Also the government should monitor the implementation of the regulation in order to prevent from the abuses carried out by third parties (companies). Thus, the government will protect the socio-economic rights of the society.

Keywords: *Mesuji, Human Rights, Violation of Socio-Economic Rights*

I. Introduction

Universal Declaration of Human Rights (UDHR) 1948 recognizes freedom of want (civil and political rights) and freedom of need (Economic, Social and Cultural, or ESC rights) as human rights. Civil and political rights include several rights, such as the rights to life and the rights to the safety of life; freedom of expression; freedom from torture or to cruel, inhuman or degrading treatment or punishment; rights to equal before the law and are entitled without any discrimination to equal protection of the law; and others. On the other hand, ESC rights include a variety of rights, namely the rights to work and to just and favourable conditions of work; the right to social security; the right to an adequate standard of living, including adequate food, clothing and housing; the right to education; and others.¹ Both civil, politic and ESC

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¹ See on Universal Declaration of Human Rights, 1948.

rights are universal, indivisible and interdependent.

In recent years, the attention to ESC rights has increased considerably. Attention and commitment to the full realization of ESC rights are vital. It is because these rights are part of rights which should be fulfilled immediately, such as endemic poverty, starvation, and disease epidemic. States parties have to ensure protection these rights, and to take appropriate measures to make sure the fulfilment of these rights.² States failure to protect the ESC rights can cause severe fault or in several cases can constitute serious violation of human rights.³ Mesuji case⁴ is one of appropriate illustration to describe the situation.

Mesuji conflicts are caused by land conflict between farmers and plantation companies. These conflicts have started since 1997, and they transform in to a horizontal conflict that caused violence and death.⁵ There is strong allegation that the government is involved in that cases, and then if they are proven, Mesuji conflicts might be categorized as human rights violations, both right to life and ESC rights.

ESC rights require the government to make sure that each person has access to daily needs and ensure democratic mechanism in which society can express their complaints related to government policies. Legal systems that can enable state apparatus to be held responsible for their policy is needed, such as conducting investigation on information against human rights violations. The adjudication of ESC rights is still a big problem, which is different from civil and political rights that have clearer mechanisms either at international, regional, or national level. Therefore, the models of dispute settlement are needed for conflict which is transformed in to be human rights violations on ESC rights or even civil rights. Thus, analysing on settlement of allegation violation

² Majda El Muhtaj. 2008. *Dimensi-Dimensi HAM, Mengurai Hak Ekonomi, Sosial dan Budaya*. Rajawali Pers. Jakarta. p.xxviii.

³ See M. Foster. 2007. *International Refugee Law and Socio-Economic Rights: Refugee from Deprivation*, Cambridge University Press. New York. chapter.5.

⁴ Within the meaning of Mesuji in this case is case is happened in Sungai Sodong village, Mesuji, Cgan Komerang Ilir, Sumatra Selatan and also case is happened in P36 and P 37 block, division 2, Mesuji region, Lampung.

⁵ "Ini Kronologis Kasus Mesuji Versi Komnas HAM". Wednesday. December 21, 2011. Republika.co.id, and "Polri Paparkan Kronologi Kasus PT BSMI Warga di Mesuji Lampung". detikNews. Wednesday. 21/12/2011. [this articles is accessed on 8 Januari 2012]

on economic rights is very important.

One of the purposes of this article is to describe the factors related to land rights conflicts based on documentation studies. In addition, this article will analyse the alternatives of legal settlement available under Indonesian legal system. In this article, the writers draw four central issues. Firstly, it will begin with the concept of ESC rights especially land rights. Secondly is the background of Mesuji cases and primary causes of these conflicts. Following this, it will examine the available legal settlement based on Indonesian legal systems. Finally, the article concludes some suggestions for Mesuji settlement alternatives.

II. Economic, Social and Cultural as a Human Rights

Economic, social and cultural right is part of human rights concerning on prosperity. These rights are regulated in UDHR especially on articles 16, from 22 to 29. Furthermore, these rights are regulated in The International Covenant on ESC rights (ICESCR) 1966. ESC rights include a variety of rights, such as (i) the right to work and to just and favourable conditions of work; to rest and leisure; to form and join trade unions and to strike; (ii) the right to social security; to protection of the family, mothers and children; (iii) the right to an adequate standard of living, including adequate food, clothing and housing; (iv) the right to the highest attainable standard of physical and mental health; (v) the right to education; and (vi) the right to participate in cultural life and enjoy the benefits of scientific progress.⁶

ESC rights are an essential part of international human rights in which together with civil and political rights. Both of them are regulated in the International Covenant on ESC rights (ICESCR) 1966 and International Covenant on Civil and Political Rights (ICCPR) 1966. The two covenants constitute the core of the international human rights that is called the international bill of human rights. ICESCR plays important role in international human rights law, as a common standard of achievement for all peoples and all nations related to promoting and

⁶ Manisuli Ssenyonjo. 2009. *ESC Rights in International Law*. Hard Publishing. North America (US and Canada).p.3.

protecting ESC rights.⁷ Thus, the position of ESC rights is equal with civil and political rights. It means that ESC rights can not be regarded as a second-rank status compared to civil and political rights.

ICESCR can not apply automatically to all nations, but the nations have to ratify/accede the covenant. Recently, more than 100 states have ratified this covenant. This number shows that this covenant has universalism characteristic. Some of international human rights scholars regard that the treaty which has universalism characteristic has a position as an international customary law. Therefore, some of international human rights scholars regard ICESCR as a customary international law, so this covenant will apply and bound to all nations with or without ratification.⁸

The ESC rights have an important role concerning protection of human rights. There are three reasons for describing this statement.⁹ Firstly, ESC rights are related to fundamental dignity of human being, such as basic social and economic necessities as adequate food, adequate shelter, and health care. Secondly, the ESC rights can not be separated from another rights, because they are interdependence and interrelated-. For example, the right to take part in the government of his country and the right to freedom of opinion and expression can not be separated from the rights to education and the rights to work. Finally, the ESC rights have changed form needs to rights. As a reason to support this that according to justice principle and dignity of human being, the societies can make possible their vital needs into rights to claim not only charity to receive.

III. The State Obligations Concerning Economic, Social, Cultural Rights

There are three state obligations in international human rights law, both in economic, social, cultural rights and civil political rights. These obligations are obligation to respect, obligation to protect and obligation to fulfil.¹⁰ All of these obligations have the same proportion, and

⁷ Majda El Muhtaj, *Supra* note 1, p.xxv.

⁸ Majda El Muhtaj, *supra*note 1, p.xxvi .

⁹ Agung Yudawiranata, *Wacana Hak Ekonomi, Sosial dan Budaya Pasca Rezim Otoritarian*, <http://wacana%20Hak%20Ekosob%20Pasca%20Rezim%20Otoritarian>.

¹⁰ A. Eide, *The Right to Adequate food as a Human Right*, UN Doc E/CN.4/

the fulfilment of human rights protection depends on conducting these all three obligations¹¹

The obligation to respect entails obligations not to interfere with the enjoyment of ESC rights. It requires states, at a primary level, to refrain from interfering directly or indirectly with the enjoyment of all human rights and freedom of the individual to use material resources.¹² The obligation to protect requires states to take measures to prevent third or private parties including individuals, groups, corporations and other entities as well as agents acting under their authority from interfering in any way with ESC rights.¹³ The obligation to protect has special meaning because it extends state responsibility doctrine. States are not only responsible for their organs' acts (omission) but also responsible for commission for its failure to prevent and protect their citizens from abuses conducted by third or private parties.¹⁴ The obligation to protect, therefore, generally requires the states to create and to maintain a framework of laws, regulations and other measures to regulate individuals/groups/organization behaviour which have impact to the fulfilment and enjoyment of their rights.¹⁵ The obligation to fulfil requires states to create appropriate legislative, administrative, budgetary, judicial, promotional and other measures including relevant national policies to ensure the goal of full realisation of ESC rights that is needed to make sure the fulfilment of human rights.¹⁶ Thus, the state parties to the ICESCR must respect, protect and fulfil ESC rights laid down in the Covenant to anyone within the power or within their effective control without discrimination.

International human rights law regime only recognizes state as the

Sub.2/1987/23, para. 66.

¹¹ Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on ESC Rights*, Intersentia, Antwerpen, 2003, pp. 165-184.

¹² Manisuli Ssenyonjo, *ESC Rights in International Law*, Hart Publishing, Oxford, 2009, p. 23, see United Nations High Commissioner for Refugees, *Human Rights and Refugee Protection*, Self Study Module 5 volume 1, Switzerland, 2006, p. 40.

¹³ Manisuli Ssenyonjo, *ibid*, p. 24.

¹⁴ Magdalena Sepúlveda, *supra* note 9, p. 222.

¹⁵ *Ibid*.

¹⁶ The Maastricht Guidelines on Violations of ESC Rights. Panduan Maastricht which is published in *Human Rights Quarterly*, Vol. 20, No. 3, 1998, pp. 691-704, and it is officially adopted by CESCR in E/C.12/2000/13 document, in 2 October 2000.

main party which can be responsible for human rights violations. Non state actors, such as belligerent, corporation, individual can not be responsible for human rights violations. If human rights violation is conducted by non state actors, the state must be responsible for the violation, but this situation only applied if there is an authority delegation being proven. However, because of globalization, the role of non state actors tends to increase considerably, so it raises some challenges for promoting and protection of human rights.

IV. The Concept of Economic, Social Cultural Rights Violations

The concept of human rights violations especially on ESC rights is known and regulated in the Limburg Principles on the Implementation of the International Covenant on Economic Social and Cultural Rights (Limburg Principle).¹⁷ In addition, The Maastricht Guidelines on Violations of Economic, Social and Cultural rights (The Maastricht Guidelines)¹⁸ also defines the violation of ESC rights violations: "states failure to fulfil their obligations as it has been stipulated in the ICESCR." (Para 70) Furthermore, paragraph 72 of Limburg Principle regulates type of state acts which can be categorized as ESC rights violation.¹⁹

¹⁷ The Limburg Principles is published in UN Doc. E/CN.4/1987/17, Annex (1987). This document has been reprinted in *Human Rights Quarterly*, Vol. 9, No. 2 (May, 1987), pp. 122-135, Nos. 29-34.

¹⁸ The Maastricht Guidelines is adopted without reservation in conference to commemorate 10th the Limburg principles on 22-26 January in Maastricht, Netherland. The objection of this conference is to elaborate the Limburg Principles by giving pay attention more on type and range of ESC rights violations, response and appropriate rehabilitation. This document is adopted by the UN Commission on ESC Rights in 24 th session in Geneva, from 13 November to 1 December 2000.

¹⁹ A State party will be in violation of the Covenant, inter alia, if: it fails to take a step which it is required to take by the Covenant; it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right; it fails to implement without delay a right which it is required by the Covenant to provide immediately; it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet; it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant; it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*; it fails to submit reports as required under the Covenant.

However, not all violations of ESC rights can be adjudicated in national court, including Indonesia. The concept of judiciability of ESC rights violations is still debatable. It is because ESC rights are not regarded as justiciable rights²⁰ and ESC rights can not be clearly defined in regulation. However, some countries have created and applied ESC rights in their national legal systems, such as India and South Africa.²¹ Therefore, actually the violation of ESC rights are justiciable, but the judiciability depends on the commitment of the government to respect, protect and fulfil ESC rights of their citizen.

V. Land Rights as a Part of ESC Rights

A. The Protection of Land Rights in Indonesian Constitution, 1945

Land rights is stipulated in article 33 (3) of Indonesia Constitution 1945 in which stated that soil, water and natural resources enclosed are controlled by government, and it is used to rise the prosperity of citizen. This article serves as constitutional basis for natural resources management in Indonesia. The Decision of provisional people's consultative assembly No.XVII 1998 on Human Rights recognizes the indigenous rights, particularly the protection of traditional land rights. It means that indigenous rights are part of human rights which must be respected and protected. After the amendment of Indonesian Constitution 1945, the admiration and protection of indigenous society are better. Article 18B²² of this constitution regulates that constitutional obligation of Indonesia to respect and to protect indigenous people. Articles 28I (3) also regulates on indigenous people rights. It states that cultural identity

²⁰ Navish Jheelan, The Enforceability of socio-economic rights, *European Human Rights Law Review*, vol. 2, 2007, pp. 146-157, lihat juga MJ. Dennis and DP. Stewart, Justiciability of Economic, Social and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?, *American Journal of International Law*, Vol. 98, No. 3, 2004, pp. 462-515, p. 464.

²¹ B.G. Ramcharan (ed.), *Judicial Protection of Economic, Social and Cultural Rights*, Martinus Nijhoff Publishers, The Netherlands, 2005.

²² The state recognizes and respect indigeneous society and also their traditional rights as long as it is still life and appropriate for society development and according with the principles of Unitary State of Indonesia Republic which is regulated by law.

and indigenous rights are respected as long as appropriate for development of society and civilization. Another provision that regulates the recognition of indigenous people is the decision of provisional people's consultative assembly No IX 2001 on agrarian reform by government in natural resources management based on appreciation, democratization, transparency, participation, justice principles and also recognition, admiration and protection of indigenous rights. In addition, the Indonesian Constitution recognizes the rights to own property that can not be taken by anyone" (article 28H (4)).

B. The Act No 5 1960 on Agrarian Principles

Article 2 (4) the Act No 5 1960 on Agrarian Principles state that the authority of state can be delegated to autonomy regions and indigenous society, but if it is needed and does not contravene national interest. The existence of indigenous rights is stipulated in article 3 of this provision. The realization of indigenous rights and others as long as they still exist has to be appropriate in accordance to the national interest and does not contravene with the law and other provisions.

Even though there have been normative recognitions related to indigenous rights law, but there are some restrictions on their implementation. Therefore, Budi Harsono states that customary law laid down in the Act No 5 1960 is based on customary law that has been revised according to civilization.²³ These restrictions are regulated in article 5 the Act No 5 1960. Agrarian law which is applied for land, water and space is customary law which is not contrary the national interest, a set of laws and religious norms. The article 5 of the Act No 5 1960 gives affirmation that the existence of customary law as follows. First, it expands the application of customary law, and it is not only applied for indigenous people (native people) but all groups of the population. Latter, it is became a strictly limitation on the application of customary law in Agrarian sector²⁴

²³ Boedi Harsono, *Tafsiran Undang Undang Pokok Agraria*, Alumni, Bandung, 1973, p.6.

²⁴ Kosenoe, *Hukum Adat dan Pembangunan Hukum Nasional*. *Majalah Hukum dan Keadilan* No.3 first year 1978 , p.83. It is cited by Sudarsono in "Perlindungan Hak Masyarakat Adat berkaitan Hak Asasi Manusia" on Human Rights Seminar in Ubaya, Surabaya 2011. p.4.

Thus, it can be said that the implementation of the Agrarian Law almost does not give place for customary law as unwritten law. The Agrarian Law has ambiguity concerning enforcement of customary law. It can be seen that on the one side the Agrarian Law has eliminated the role of customary law, especially land rights, on the other side; it has recognized the horizontal separation regarding property rights and customary law. Therefore, Decision of Provisional People's Consultative Assembly No IX, 2001 has given mandate to government and House of Representative to settle the bill on reformation and structuring of agrarian structure, the bill on the settlement of agrarian conflict and the bill on natural resources management.

C. The Act No 39, 1999 on Human Rights

There is no specific article in the Act No 39 of 1999 which regulates land right. Actually, article 6 of this act gives regulation related to land rights, but it regulates traditional land rights that are considered as a cultural identity of indigenous people. In addition, land right is part of property rights regulated in article 36 and 37 of Indonesian Human Rights Act. Article 36 defines that every person is entitled to property rights, and no one can take it away, arbitrarily and unlawfully. Article 37 the Act No 39 of 1999 defines that property rights can be revoked for public interest. However, revocation is only allowed with reasonable indemnify and immediate. In addition, its implementation has to be appropriate with the provisions.

VI. Land Rights Protection in Some Countries

A. South Africa

The South African Constitution was promulgated in 1996, and since then South Africa has become a leader in Africa in the field of ESC rights litigation.²⁵ A number of ESC rights are integrated in the South African Constitution²⁶; therefore they are enforceable under the nation-

²⁵ See, Dennis Davis, Socioeconomic Rights in South Africa: The Record after Ten Years, *The New Zealand Journal of Public and International Law*, vol. 2, No. 1, 2004, pp. 47-66.

²⁶ *The Constitution of The Republic of South Africa No. 108 of 1996*, [Date of prom-

al jurisdiction. In addition, the Constitution explicitly requires the state to take action to realise these rights. It commands the state to “respect, protect, promote and fulfil” them and to “take reasonable legislative and other measures, within its available measures, to achieve (...) their progressive realisation.”²⁷ It mandates the South African Human Rights Commission to annually monitor and report on the implementation of ESC rights by organs of the state.²⁸ It also gives the courts the power to interpret these rights and to resolve the dispute on the basis of ESC rights.²⁹

In this regard the state carries out the duty to protect ESC rights, first, by regulating private control of access to land, housing, health care services, food, water and education; and second, by regulating private interference in existing enjoyment of ESC rights.³⁰ A recent case, concerning the duty to protect, decided by the Constitutional Court was the case between *President of the Republic of South Africa and Another v. Modderklip Boerdery (Pty) Ltd.*³¹

The case concerns the interpretation of state duties, in the context of unsuccessful efforts of a private land owner to force the community occupying his land to move. At that time, the community numbered approximately 40,000 individuals, a third of which were illegal immigrants.³² The owner attempted to force the eviction order by asking assistance from several organs of the states, but none of them agreed.³³ Furthermore, he applied to the court for an order obliging the state to assist him in securing his property rights based on the constitution.

However the constitutional court did not consider that it was neces-

uligation: 18 December 1996, Date of Commencement: 4 February 1997, available at <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>, sections 25-35.

²⁷ See *ibid.*, secs. 7(2), and 25(2), 27(2), and 29(2) respectively.

²⁸ See *ibid.* sec. 184(3).

²⁹ For the discussion concerning the power possessed by the Courts, see Danie Brand, *Socio-Economic Rights and Courts in South Africa: Justiciability on A Sliding Scale*, in Fons Coomand (ed.), *Justiciability of Economic and Social Rights, Experiences from Domestic Systems*, Intersentia, Antwerp, 2006, pp. 207-236, at 208-211.

³⁰ See *Ibid.*, pp. 216-219.

³¹ Constitutional Court of Republic of South Africa, *President of Republic of South Africa and Another v. Modderklip Boerdery (Pty) Ltd and Others*, August, 2005, BCLCR 786 (CC).

³² *Ibid.* para. 8.

³³ *Ibid.* paras 5-6, 9.

sary to resolve the case in the basis of ownership rights (section 25) or the housing rights of the occupiers (section 26). It stated that the state failed to take reasonable steps to assist the landowner to vindicate his property and at the same time it failed to avoid the large scale social problem caused by the eviction of large community with no place to go. It stated that the state violated the principle of rule of law (section 1(c)) as well as the rights to access the court or other independent bodies (section 34).³⁴

The Court held that the progressive realisation of the right to adequate housing requires careful planning and fair procedures made known in advance to those most affected, as well as it should be orderly and predictable.³⁵ At the same time, these measures will not be reasonable if they are: "...unduly hamstrung so as to exclude all possible adaptation to evolving circumstances. If social reality fails to conform to the best laid plans, reasonable and appropriate responses may be necessary."³⁶

In its decision, the court provided a remedy by asking the state to compensate the landowner for the occupation of its property. In addition, it stated that the community was entitled to occupy the land until the alternative land had been made available for them by the state or provincial or local authority.³⁷ Thus, in this case, the Court delivered its judgement by emphasising that the state has the obligation to protect the community from forced-eviction carried out by private actors. Although, the court recognized that the community did not have the right to occupy the owner's land, the community still need to be protected by the state from private interference. Eviction without alternative place to live will violate the right of the community; therefore, the state has to provide an alternative land for them to live after the eviction. On the other hand, the court also protected the property right of the landowner by asking the state to compensate the loss caused by the state's failure in protecting the owner rights.

B. India

³⁴ Ibid. paras 43-51.

³⁵ Ibid., para. 49.

³⁶ Ibid.

³⁷ Ibid., para. 68, Order, para. 3 (c).

India is often credited with being the first jurisdiction which has developed a relatively mature ESC rights jurisprudence.³⁸ The Constitution of India, dating from 1950, guarantees both civil and political rights; and economic, social and cultural rights. The former are recognized as fundamental rights.³⁹ Civil and political rights are enforceable in the High Courts and the Supreme Court. ESC rights are found under the Directive Principles of State Policy (DPSP). Some of the ESC rights enshrined in Part IV of the Constitution include rights include right to free legal aid, to education, to health, and to minimum wages for workers. In addition, article 37 stipulates that the rights enshrined in part IV are not justiciable and cannot be taken as a claim for enforcement against the state in any court.⁴⁰ However, they are laid down as fundamental principles for the government. Thus, state has a duty to apply them in the law making process.

Although the Indian constitution does not include ESC rights as justiciable fundamental rights, the Indian Supreme Court and High Courts have pioneered the movement for enforcement of social rights through various forms of litigation.⁴¹ The social rights in DPSP have been enforced by the Supreme Court through the expansion of the fundamental rights, in particular the right to life.⁴²

The continuous expansion of article 21 to social rights has been widely used in the jurisprudence of both the Supreme Court and High

³⁸ Malcolm Langford, Domestic Adjudication and Economical, Social and Cultural Rights: a Socio-legal Review, *Sur International Journal of Human Rights*, Volume 6 Number 11, 2009, pp. 91-121, at 92, available at <http://www.surjournal.org/eng/conteudos/pdf/11/05.pdf>.

³⁹ The Constitution of India, it was adopted by the Constituent Assembly on 26th November 1949 and came into force on 26th January 1950, available at <http://aptel.gov.in/pdf/constitutionof%20india%20acts.pdf>, see particularly Part III, civil and political rights guaranteed in this constitution are included the right to life, the right to equality and freedom of speech and expression.

⁴⁰ Ibid., Article 37 "The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".

⁴¹ Jayna Kothari, Social Rights Litigation in India: Developments of the Last Decade, in Daphne Barak-Erez and Aeyal M. Gross (eds.), *Exploring Social Rights: Between Theory and Practice*, Hart Publishing, Oxford, 2007, pp. 171-192.

⁴² The Indian Constitution, op. cit. note 15, article 21 "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Courts; thus, social rights have become justiciable and enforceable. Remedy in the enforcement of ESC rights is important; therefore in dealing with a large number of ESC rights cases, the Supreme Court evolved new remedies for giving relief.⁴³ The approaches that were used by the Court are: first, minimal affirmation. It entails requiring the state to respect social rights (non-interference), ruling that the state has a duty to protect, and ordering state to actively promote social rights by developing policies.

The Supreme Court's jurisprudence reveals that the Court has played an important role in the "judiciability" of social rights despite the criticism concerning the courts' inability to hear the ESC rights cases. Its role is decisive, particularly in interpreting constitutional provisions and in describing the scope and content of individual rights. Hence, it has provided the encouragement of law and policy making which relates to the development of the human rights regime.⁴⁴

A case related to the land expropriation which more or less similar to Mesuji Case is Singur case.⁴⁵ Singur is in Hooghly district, around 45 kilometres from Kolkata. The crops produced are mainly paddy and potato but jute and a variety of vegetables are also grown in the fields.

Singur case might be said very similar to Mesuji case. As developing Countries, India and Indonesia need investor to encourage their economic development. However, increasing economic activities do not mean violating people rights. The facts show that the corporations have abused people's rights. Sometimes the condition even worst when the corporations were supported by the government policy. This has made people were more vulnerable.

⁴³ See the discussion of the remedies taken by Supreme Court in Jayna Kothari, Social Rights Litigation in India: Developments of the Last Decade, in Daphne Barak-Erez and Aeyal M. Gross (eds.), *Exploring Social Rights: Between Theory and Practice*, Hart Publishing, Oxford, 2007, pp. 171-192, at. 175-176.

⁴⁴ For example, the Supreme Court decision in M.C. Mehta v. Union of India (1987) 1 SCC 395 was lead to the enactment of the National Environment Tribunal Act in 1995.

⁴⁵ The chronology of Singur Case is a compilation from Dola Sen dan Debasish Bhattacharya (eds), *Singur and Nandigram and the Untold Story of Capitalised Marxism*, 2007, Calcutta, Kanoria Jute and Industries Limited Sangrami Shramik Union, available online at <https://aitmc.org/snn.pdf> and website <https://aitmc.org/singurstory.php>.

A country like India, with the advanced interpretation of socio economic rights, still faces some difficulties when dealing with the land expropriation, especially when the expropriators are supported by the government. The legal settlement is not enough even in the Singur case the enactment of an act is not solving the problem.

This fact has shown that solving the land expropriation is not easy at all. It needs the comprehensive government policy which considers the interest of all stakeholders, especially the farmers. In the international human rights regime, the government bears the responsibility if the human rights violation occurred. If the human rights abuses done by the third party (companies) the government has to be responsible, because it has the duty to protect people rights. Therefore, the entitlement of land to the companies should be really planned and carefully analysed both the advantages and the loss for the society.

VII. The Background of Mesuji Cases

Mesuji cases presented in this article are casea that occurred in the Mesuji District, Lampung Province, and in the Sodong River Village, Mesuji, Ogan Komering Ilir, and South Sumatra.

A. Land Dispute Resident, Register 45 with PT. Silva Inhutani (Mesuji District, Lampung Province) ⁴⁶

Mesuji is the name of the district in Lampung Province, as the result of splitting the Tulang Bawang district into three districts in 2008, namely Tulang Bawang, Mesuji and South Mesuji districts. In 1940, based on Besluit Resident Lampung district No. 249, 12 April 1940, the group of ban forest register 45 of the Buaya River was designated as production forests that has landmass of 33 500 ha. From 1986 to 1987, measurement boundaries and eviction of forest areas register 45 was conducted by a team boundary of level II of North Lampung.

On October 7, 1991 Minister of Forestry enacted decree No 688/

⁴⁶ KOMNAS HAM, Sub Commission on Monitoring and Investigation, The Investigation and monitoring report on Land Rights Conflict in Register 45 between PT. Silva Inhutani and villagers, Mesuji District, Lampung Province, from 3 to 6 February 2012, Jakarta, 2012.

Kpts-II/1991 in which the Department of Forestry gives the area of Plantation Forest Rights to PT Silva Inhutani Lampung in Register 45 of the Buaya River in the area of 33,500 ha. PT SIL is a joint venture between PT Silva Lampung Abadi and PT Inhutani V. On February 17, 1997, the Minister of Forestry enacted the Ministerial Decree No. 93/Kpts-II/1997 which gave a Plantation Forest rights (HPHTI) to PT. Silva Inhutani in the area of 43,100 ha, with the provisions of "if in the area of Industrial Forest Plantation (HPHTI) there was land that has been owned, village, rice fields or has been occupied and tilled by a third party, the land must be removed from the area HPHTI. This is not done by PT Silva Inhutani. In that land, there was a customary land of Kampung Talang Batu, but it did not removed from the area HPHTI. Furthermore, It continued conducting evictions, and it also happened expansion of land area of 32 600 ha to 43 100. Ha. After that, the policy was frequently changed. Because of the changing of government's policy, uncoordinated, minimal government control, investors who did not conduct their obligation, incompetence, abuse of permissions, the people who knocked out and be aggressive, operating of land speculators, have caused disputes that exist in the register 45 that continued to accumulate and never completely resolved.

On August 27, 2004, Ministry of Forestry enacted ministerial decree No. SK.322/Menhut-II/2004 was reimposed Ministerial Decree No 93/Kpts-II/1997 on the Granting of Forest Plantation rights to PT. Silva Inhutani Lampung on the production forest area, namely 42,762. There was a strange case because a copy of the decision was not given to the local government Lampung province, but it was given to the Governor and the Chief of Forestry Department East Kalimantan Province. This case triggered the conflict because of this decree PT. Silva Inhutani arresting residents who conducted activities that are considered as land of PT. Silva Inhutani.

Tension and mobilization that led to open conflict began in 1999 when the eviction occurred in the Talang Batu, Talang Gunung, Tanjung Harapan, Pelita Jaya, Setajim and Labuhan Batin Village, in Subdistrict of Way Serdang, Tulang Bawang District. The local communities fought back and demanded repayment of their village which had been included in the expansion of the registers 45. Since that case, the eviction, and demolition and evacuation efforts of residents who occupy that land

was done. These events were happened in Simpang D/Nanasan (2006), Simpang D/Pekat (February, September 2011). Those conflicts where happened in the register 45 for a dozen years has led to neglect of the constitutional rights of citizens. Thousands of people lose their rights to civil administration, appropriate education and health services. As an example was the experience of the Moro-Moro Community.

On February 4, 2012, The National Commission of Human Rights team has held meetings with Talang Gunung Villagers, Pelita Jaya Hamlet for dialogue. The team also asked for information related to the complaint submitted to the National Commission of Human Rights. On February 5, 2012, The National Commission of Human Rights team has conducted review locations of PT. BSML. On the same day, The National Commission of Human Rights team held a meeting with Police Chief of Tulang Bawang for dialogue. The information had received by The National Commission of Human Rights team from their investigation related to the land disputes in the register 45 submitted to the Mesuji Mayor.

B. The Land Dispute between Sungai Sodong Villagers with PT Sumber Wangi Alam (PT SWA), Palembang, South Sumatera ⁴⁷

PT SWA is one of the company's oil palm plantations in South Sumatra which authorizes the land area of nearly 6500 hectares. The legal basis of land rights by PT. SWA is as follows. a) Permission Decree of Location No 016/SK-IL/OKI/1996, 4 November 1996 is that 3200 hectares in the name of PT. SWA with the designation of oil palm plantations. b) Rights of Cultivation Decree No. 25/HGU/BPN/2000, June 13, 2000 granted 3193.90 hectares on behalf of PT. SWA. c) Rights of Cultivation Certificate No 01/Sungai Sodong Village, February 28, 2001 covering an area of 3193.90 hectares on behalf of SWA.

On Thursday, April 21, 2011 land disputes happened between residents and security of PT. SWA in Mesuji, Ogan Komering Ilir (OKI) district. The victims were two of villagers and five company security guards. The incident was happened because the company occupied and

⁴⁷ KOMNAS HAM, Sub Commission on Monitoring and Investigation, Monitoring report on land conflict between Sungai Sodong Villagers and PT. Sumber Wangi Alam, South Sumatera, Kayu Agung – Palembang, from 26 to 29 April 2011, Jakarta, 2012.

harvested the oil palm plantation area of 300 ha which is still disputed between PT SWA and villagers (status quo). The Security guards who were employed by PT SWA had been warned by residents that the status of the areas were still in conflict. However, the dispute happened, and it led to the incident. The villagers went to the location and took the corpse who reported as a victim of violence by the agents of the company. Because the residents were angry, the corporate offices vandalized by people and killed the company security guard. Clashes were allegedly because of 1200 palm oil plantation area between residents of Sungai Sodong with PT SWA. The land was claimed belong to the villagers, and it was not the property of company.

As a solution to these cases, on October 2, 2010 the first meeting was held between representatives of the Sungai Sodong Village and PT. TMM and PT SWA for finding a solution. Furthermore, on October 15, 2010, 10 November 2010, and 15 November 2010 the Head of Mesuji Sub district suggested to create a verification team to make a list the area of plantation and the land status as well as the plasma that managed by PT TMM and PT SWA. However, on 18 November 2010 the villager filed a requirement is that the location of the disputed was status quo. They also asked to hold a meeting with the management of PT TMM and PT SWA. Until 26 November there was no agreement. On December 6, 2010 residents were permitted to harvest at the disputed area, but there was no answer from the Commission II of House of Representative, OKI and companies. After holding a meeting on January 19, 2010, The Tripika, Mesuji District held a monitoring twice a week and provided guidance to the society to be patient while waiting for verification team in order to realize the interests of both parties.

During the meetings, the company stated that the community had committed a theft, on PT. TMM and PT. SWA land. This has been reported by PT. TMM to police, but the legal process had not gone yet as society expected. On Thursday, April 21, 2010 the PT SWA harvested in Block 19 which is claimed by the local community. At that time, two people came to stop them, but a dispute happened which resulted in both the villagers and the security suffered. At 11:30, the security was passed away, and one villager was passed away in that place and another died on the way. At 12.00, the villagers attacked the basecamp of PT. SWA. At 8:00 was found 4 corpses at the place. The entire house and

office building were severely damaged. Pillaging also found at the the employees houses. Until now, people still feel intimidated and worried because the Public relations of South Sumatra Police has stated that the people who were stayed in the location are put into the list of "Daftar Pencarian Orang" DPO) related to 21 April 2011 event.

C. Mesuji Cases vs. Violation of ESC Rights

For an agrarian society, owning a land is very essential because people depend on the land for supporting their lives. If access to land is not fulfilled, the State has violated human rights by not distributing or providing the opportunity for residents to get their constitutional rights. The Act No. 39 of 1999 on Human Rights regulates the definition of human rights violations. If it is linked to ESC rights, the definition of ESC rights violation is as follows:

1. every act of a person or group of people, including state officials;
2. both intentional and unintentional;
3. unlawfully diminish, prevent from, limit, or revoke of ESC rights of person or group of persons is guaranteed by law;
4. Do not get, or is feared will not get a fair trial based on the mechanism of the law.

Related to the subject of human rights violators, the concept of Indonesian law is different from the concept of international human rights law. International law only recognizes that human rights violations are committed by the state. Individuals can also be subject to human rights violations in a particular category, namely the serious violations of human rights as stipulated in the Statute of the International Criminal Court (ICC) 1998, namely genocide, war crimes, crimes of aggression and crimes against humanity. In addition to these violations, only the state has obligation to respect, protect and fulfil of human rights. If there are corporations or companies in a particular country commit violation of human rights, the State remains responsible for the actions of the corporations. The state has obligation to take steps to regulate the activities of a third party, so their actions do not interfere the enjoyment of human rights. Besides, the state has to provide sanctions or punishments if the third party abuses the enjoyment of human rights.

In Indonesian human rights law, especially in terms of human rights violations, there are three types of human rights violators, namely individuals, group / corporate and state officials. Thus, in essence of the perpetrator of human rights violation, Indonesian law recognizes broader concept compared to concept of perpetrator in the international human rights law in which only recognizes the State entity as a subject of human rights violations. Ideally, based on regulations, violation which is committed by the corporation can be prosecuted. Many corporate activities in Indonesia resulted in disruption of the fulfilment of human rights, especially ESC rights, such as Buyat case, Freeport Case, Lumpur Lapindo Case, and e Mesuji Cases

—The difference concept on subject of human rights violation can be considered as an advantage. It means that Indonesia has recognized corporation responsibility as a human rights violator. It needs supporting from the other rules that enable companies to be responsible for their actions by providing recovery or compensation to the victims. However, the Indonesian law has not been possible yet to bring the corporation to be prosecuted under human rights violations.

Furthermore, the next element of human rights violations is the element of intention or negligence by the perpetrator. The national human rights law does not explain the meaning of this element. In this case we can use the guidelines set out in the international human rights law regime. The Legally Binding international law does not define of the term of human rights violations. The term human rights violation, especially in ESC rights, is known in the Limburg Principles and the Maastricht Guidelines. Both instruments can be used to determine violation of ESC rights. Although they are categorized as soft laws or have no legally binding, they give interpretations of ESC rights violations. In addition these documents were adopted by the UN Committee on CESCR as official documents of the United Nations.

Based on paragraph 70 of Limburg Principles, violations means the failure of the State to fulfil their obligations contained in the ICESCR. Furthermore, paragraph 72 describes the state actions that can be categorized as a violation. The Maastricht Guidelines states that ESC rights violations occur when the state stipulates policies or practices either by intentional or unintentional or neglect their obligation as defined in the Covenant or fail to achieve standard or results that is required.

The differences concept between commission (with the intention) and omission are as follows.⁴⁸ Intentionally violation means direct action of state or institution or state agencies that are not regulated proportionally. Unintentionally violations occur if the state fails to take the necessary measures as provided in the law. The example given by The Maastricht Guidelines (paragraph 15) is the failure of the State to regulate the activities of individuals or groups in order to prevent them in conducting activities that can reduce the enjoyment of human rights, especially the ESC rights.

Furthermore, the Guidelines also distinguish between inability and unwillingness of a state in fulfilling people's rights.⁴⁹ Inability of state means that the State may not be able to fully realize the ESC rights because of certain conditions, such as natural disaster. Meanwhile, the unwillingness means that the State does not have willingness to provide maximum protection of human rights. For example, if the state removes Jamkesmas scheme for the poor. It is categorized as retrogressive while ESC rights require progressive steps for achieving the realization of ESC rights. Restricting the rights can be interpreted as impairing the enjoyment of the right or not fulfil the rights of citizens at all.

In Mesuji cases perspectives, the initial cause of the Mesuji Case is conflict over land management rights which have been prolonged. The government does not solve the problem until the root of the problems. The government's policy was always changed, and uncoordinated. The other factor is the action of the company abusing the permissions which has led to the conflict. The unclear of land has constituted violation of ESC rights especially the right to own property.

Economically, people do not have land for supporting lives. People try to manage the land which is neglected by companies to fulfill their daily needs. When the results are harvested, they are suspected doing a crime by company. Consequently, it triggered the conflicts. It can be categorized as violation by omission, especially violation of the obligation to protect Based on the principle of 15 of the Maastricht Guidelines, the Indonesian government has failed to take necessary steps so that the company (PT Silva Inhutani Lampung, PT. BSMI and PT. Sari Wangi nature) did not interfere the fulfilment of the economic rights especially

⁴⁸ The Maastricht Guidelines, para 14-15.

⁴⁹ Ibid, para 13.

land rights of citizens. Furthermore, the government has deliberately violated the economic rights of the people by making the problem persist and does not resolving immediately the conflict that has been known for a long time. The government should have a good faith to resolve the conflict and protect the local community rather than protecting the companies. By letting people live in conflict and making them live in uncertainty condition have fulfilled the deliberate element in the economic rights violations, particularly the right to land. Therefore, it is proven that the government has not fulfilled their obligations which is obligation to protect as contained in the Indonesian Constitution of 1945, Act No 39 of 1999 on Human Rights and ICESCR which has become national law by Act no. 11 of 2005. In addition, the government has violated the economic rights, both intentional and unintentional, as stipulated in the Maastricht guidelines.

VIII. The Judicial Settlement Alternatives of the Violation of ESC Rights Based on Indonesian Legal Systems

This section will discuss the mechanisms available resolving the ESC rights violations under Indonesian law, both conducted by the company (private entities) and the State officials.

The definition of legal settlement is settlement employing by legal proceedings in Court. The Act No 39 of 1999 on Human Rights states that everyone has a right to get legal remedies for violations of human rights that they suffered from (Article 7). Remedies mean that "the way that can be taken by everyone or group of people to defend and restore the rights provided by the law of Indonesia".⁵⁰ Including efforts to file an appeal to the High Court, file an appeal and file a judicial review to the Supreme Court against the decision of the trial court as well as the appellate levels. In human rights concept, everyone who wants to invoke human rights and basic freedoms at the international level are required to take all legal measures provided at the national level (the exhaustion of local remedies) before employing the mechanism available both at the regional and at the international levels.

⁵⁰ The explanation of article 7 the Act No. 39 of 1999 on Human Rights.

The legal bases for the judiciary power in Indonesia are contained in articles 24, 24A and 2 C of the Indonesia Constitution of 1945. The judicial power shall be implemented by the Supreme Court and other judicial bodies placed under this court, such as the general courts, religious courts, military courts, and administrative courts,⁵¹ as well as a judicial body newly established by Act No. 24 of 2003, namely the Constitutional Court.

The Supreme Court is the highest court in the judicial system in Indonesia which has four types of courts. The General Court has jurisdiction to examine and adjudicate criminal and private law.⁵² The Religious Court has jurisdiction to examine and adjudicate a problem relating to marriage, divorce, inheritance and bussiness engagements by Islam law.⁵³ The Administrative Court examines the matters related to administrative policy products by government.⁵⁴ The Military court has the authority to examine and adjudicate crimes committed by members of the military or "misconduct" by members of the military, as well as disputes over the decision of military agencies.⁵⁵ The discussion the authority of the court will be limited only to general courts. It is based on the fact that this type of courts is widely used for claiming or invoking the violation of ESC rights.

Other types of courts, which are possible to examine human rights violations, are the Constitutional Court and the Court of Human Rights. The Constitutional Court has the authority to examine and adjudicate "judicial review" of a law that is inconsistent with the Constitution, the disputed of election results, and the dismissal of the President and Vice Presiden.⁵⁶ The Constitutional Court also has the authority to examine and adjudicate the "legal standing" which filed by individuals or groups whose rights were violated because of the enacting of a new law.⁵⁷ However, the burden of proof is in the Plaintiff. If the claim is

⁵¹ The Act No 14 of 1970 on Judicial Authority.

⁵² The Act No. 2 of 1986 that has been amend by The Act No 8 of 2004 on The general Court.

⁵³ The Act No. 7 of 1989 on Religious Court.

⁵⁴ The Act No. 5 of 1986 that has been amend by the Act No. 9 of 2004 on Administrative Court.

⁵⁵ The Act No. 31 of 1997 on Military Court.

⁵⁶ Article 10, The Act No. 24 of 2003 on Constitutional Court.

⁵⁷ See the detail indormation jurisdiction comparison between Supreme Court and

proven, the Constitutional Court will ask the Parliament to amend that legislation. Thus, the Constitutional Court does not have direct authority to examine of ESC rights violations. It is because the competences of the Constitutional Court just examine the consistency of an act with the Indonesian Constitution of 1945, and the Constitutional Court does not examine as to whether state action has violated the constitutional rights of its citizens. If the Court finds that a law was inconsistent with the Constitution, the Court will make a verdict to cancel or to amend the law. The Court in its verdict does not provide rehabilitation and compensation to the victims of human rights violations.

The Court of Human Rights is enacted and is based on Act No 26 of 2000. The Indonesian Human Rights Court is different from the European Court or the Inter-American Human Rights Court which have authorities to investigate the case relating to violations stipulated in international human rights. The Indonesian Human Rights Court is authorized only to investigate and prosecute the serious violations of human rights, namely genocide and crimes against humanity.⁵⁸ The ESC rights violations can not be categorized as a serious/gross violation of human rights, unless it has proven that there are state policies or facilities provided by the state to prevent the access of food, medicines which made people are suffering from starvation, and they could not access the drugs. Thus, the Indonesia Court of Human Rights is not relevant to examine and adjudicate on ESC rights violations.

The alternatives of legal settlements that are available under the Indonesia legal systems that can be used to make a claim for ESC rights violations are the general courts. In addition, the Administrative Court can also be used when the cause of human rights violations is a decision (*beschikking*) of state administration organs.

However, the legal basis that can be used to claim ESC rights before the general courts is not merely (*per se*) a violation of human rights, but it is classified as tort (*onrechtmatige daad*). The main legal basis which is used to claim before the General Court is the Indonesian Civil Code *Burgerlijk Wetboek Voor Indonesie-BW*. This instrument does not regulate the violations of human rights, but it regulates the element

Constitutional Court, Bivitri Susanti, *supra* note 5, at. 237-238.

⁵⁸ The Act No 26 of 2000 on national Court of Human Rights, article 1 Paragraph 2 and article 4.

of tort (Article 1365 of BW). This article gives the burden of proof to the plaintiff. Thus, the plaintiff must prove the human rights violations that could be associated with "onrechtmatige daad". If it is proven, the violator has to give some money as compensation to the victims. The amount of money that must be paid depends on the decision the court's decision.

There are many cases employing this article to claim the violation of ESC rights, but they were failed.⁵⁹ As an example is the Lumpur Lapindo case.⁶⁰ Two cases that were filed to the the Court did not provide a strong decision to refer to the human rights laws. The judges only considered the elements of tort and the efforts that have been carried out by the government. As a result, the decisions of these cases showed that the Government had conducted their obligations without further consideration on the elements of human rights violations spelled out in the claim. The judges in the General Court were lacked of good understanding in human rights elements, both in theory and practice.

In the Case of Mesuji, the criminal acts; shooting and murder, has been processed in local courts. However, the elements of human rights violations were not examined yet. This was because the legal basis of the prosecution is the criminal law. The violation of human rights elements is not applicable because the perpetrator of the violation is an individual. Also, the cases could not be categorized as serious violations of human rights. Thus, the procedure used the criminal law. The ESC rights violations have not been resolved yet. The Land rights as a part of property rights of the local community is still unclear. These conditions will enable the conflict increasing in the future, so the government's intention to settle the Mesuji Cases is indeed needed.

If ESC rights will be resolved through litigation systems, e.g. the case of people claiming their rights to the company, they must be able to give adequate evidence of their land ownership. Based on the results of

⁵⁹ See on Bivitri Susanti, Susanti, *The Implementation of the Rights to Health Care and Education in Indonesia*, in Varun Gauri and Daniel M. Brinks (eds.), *Courting Social Justice: Judicial enforcement of Social and Economic Rights in the Developing World*, Cambridge University Press, New York, 2008, pp. 242-265.

⁶⁰ Erna Dyah Kusumawati, Unpublished Thesis, *The Role of the Indonesian Human Rights Commission and National Courts in Facilitating the Justiciability of Economic, Social and Cultural Rights (A Case Study on the Hot Mud Flow Disaster in East Java Province, Indonesia)*, University of Groningen, The Netherlands, 2011, pp. 65-68.

interviews with Indonesian National Commission of Human Rights⁶¹, in some cases people do not have certificate of ownership. The company will give the compensation based on certificate of ownership. Therefore, the local community already gave the certificate to the company. However, they did not receive the compensation but the certificate is not at their hand anymore. Thus, if there are claims based on *onrechtmatig daad*, the local community remains in a weak position. The real examples of a weakness of general court to resolve the case with human rights dimension is in Bulu Kumba Case. This case has settled down in the District Court to the Supreme Court, but the decisions still could not provide legal certainty for the parties to the conflict.

The Indonesian National of Human Rights Commission (KOMNAS HAM) has duty to study, conduct research, control and monitor, and take mediation to promote and protect human rights in Indonesia. This section will only discuss the mediation role of KOMNAS HAM. Komnas HAM is given the function of mediation in order to resolve the dispute out of the court. The competences of Komnas ham in the functions of mediation are regulated in Article 89 (4) The Act No 39 of 1999.

Mesuji cases are possible to solve by mediation. This method has been used to mediate at least two previous cases related to land disputes in Indonesia, namely Bulukumba and Colol. The case of Bulukumba is not purely solved by mediation conducting by Komnas Ham but by the Team of the South Sulawesi Provincial Government. Actually the mediation team of Komnas Ham has carried out mediation to the indigenous people, including witnesses related to land disputes. While in the Colol case in East Nusa Tenggara, mediation is conducted by Komnas Ham. It can be said that the mediation can be effective for resolving disputes over land rights violations.

However, there is a weakness in mediation system. This weakness is the settlement different, because mediation is carried out case by case. It means that there is a possibility of land disputes in Indonesia which can not be simultaneously solved. When granting the land ownership to the Plantation Company, rarely does the Government did not give attention that the land has been occupied and cultivated by the local

⁶¹ Interview with Sub Monitoring and Investigation staff of KOMNAS HAM, on 27 August 2012.

people. Furthermore, it does not notice the customary land ownership, such as in Bulukumba and Colol. As a result, when the company will use the land, conflicts are often happened, and sometimes the civilian bureaucracy and the security militer are involved.⁶²

IX. Conclusion

The results show that Mesuji and similiar cases are happened because the escalation of conflict occurring a long time ago. Most of the conflicts occurred between the farmers and the company. One of the reasons is that the company did not give the compensation to the farmers to substitute the land. Another reason is the government policies. When giving a right to use the land to a company, rarely does the government pay attention as to whether these particular lands have been cultivated and managed by the people in the surrounding areas. Therefore, when the company wants to exercise its rights given by the government, the people will defend their rights because they feel that the land is theirs. National law provides two alternatives to settle the conflict with the human rights dimension. First, the parties might use the procedures available in the general courts or administrative courts. Second, mediation as the non-litigation procedure based on the human rights law act might be employed by the parties. South Africa and India give an authority to settle the socio-economic rights violation before the court; the Constitutional Court and the District (until Supreme Court) respectively. Therefore, the socio-economic rights in these states are justiciable. Although, the justiciability of socio economic rights in these two states is advance than it is in Indonesia, they still face some difficulties in solving the land seizure/expropriation. This problem cannot be solved both by litigation and non-litigation procedures. The comprehensive policy is indeed needed to solve the problem caused by land seizure.

⁶² It is recognized by KOMNAS HAM as stated in Bulukumba Investigation Report, , log.cit 44, pp. 36-38.

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