



A submission from Indonesia
Nexus3 Foundation and the Centre for Regulation, Policy and Governance
“Mercury, artisanal and small-scale gold mining and human rights”
to the Special Rapporteur on Toxics and Human Rights

Controls on Mercury

1. Has your country prohibited the a) import or b) export of elemental mercury?
 - a) Ministry of Trade Regulation No. 20/2021 prohibits the import of mercury import only for gold mining and cosmetics industries.¹
 - b) No, Indonesia does not have mercury export prohibition. The Ministry of Trade No. 7 year 2022 and the Presidential Decree No. 21 year 2019 concerning the National Action Plan for Reduction and Elimination of Mercury² do not cover the prohibition to export mercury or cinnabar.
2. Has your country prohibited mercury use in artisanal or small-scale gold mining (ASGM) by law or regulation?
 - a) Minister of Energy and Mineral Resources Decree No. 1827/K/30/MEM/2018 on the Mining Techniques Guidance. The Annex II of this Decree states that the use of mercury for the refining process is prohibited. This guidance is for the general mining activities. This Decree aims as a guidance and there are no sanctions stipulated in this decree. In other words, if a miner/company does not follow this guidance there are no direct legal consequences.

¹ <http://jdih.kemendag.go.id/peraturan/detail/2169/2>

² <https://jdihn.go.id/search/pusat/detail/840308>

- b) The President Regulation No. 21 year 2019 provides an umbrella policy at the national level to reduce and eliminate mercury in four priority sectors: energy, manufactures, ASGM and health sector. Further, the President Regulation No. 21/2019 is strengthened by the Minister of Environment Regulation No. 81 year 2019 concerning the implementation of the Presidential Regulation 21/2019.³ The nature of this regulation is an umbrella policy, there are no direct legal consequences if the objective regarding reduction and elimination of mercury in ASGM cannot be fulfilled as it was planned based on this regulation.
- c) The prohibition of the use of Hg in ASGM is stipulated in the President Decree No. 21/2019, which targets the elimination of 100% mercury use in ASGM by 2025. This Decree is an umbrella policy to plan the elimination of mercury use in ASGM, there are no direct legal consequences if the target cannot be met by 2025.
3. What enforcement action and penalties apply to gold miners who use mercury, or to traders who supply mercury for this use, if such use is prohibited? Please share statistics on such actions.

Enforcement action for gold miners:

- There is NO regulation that covers the (direct) penalties for gold miners to use mercury. The penalties (criminal sanctions) can be imposed if the miner is proven guilty of violating Article 161⁴ Mining Law No. 3/2020 jo. No. 4/2009 by using the mercury that is from unlicensed mining operation as it is regulated under Article 37 (3) c and g, Article 104 , 105 of Mining Law No. 3/2020 jo. No. 4/2009.
- The sanctions will be 5 years imprisonment (maximum) and a fine of IDR 100,000,000,000. In this regard, the law enforcer has to investigate where the mercury is coming from.

³ http://jdih.menlhk.co.id/uploads/files/P_81_2019_RAN_MERKURI_menlhk_12202019112147.pdf

⁴ Article 161 states “ Everyone that obtain, use, process and/or refine, develop and/or use transport, sell mineral and/or coal from IUP, IUPK, IPR, SIPB holders or other permits regulated under 37 (3) c and g, Article 104 , will be punished with 5 years imprisonment (maximum) and fine IDR 100,000,000,000 (maximum)”

Enforcement for traders:

- If the traders supply mercury for ASGM activities (violates Article 23 (1) a the Ministry of Trade No. 7 year 2022) administrative sanction will be imposed. The administrative sanctions will be in the form of warning letters (two times) and then followed by the revocation of the permit (*pencabutan perizinan berusaha*). In addition, the trader has to return the mercury to the distributor or importer. In the event that it cannot be returned, the mercury has to be disposed of⁵.
 - Despite administrative sanction, the criminal sanction can be imposed if the trader violates Article 161 Mining Law No.3/2020 jo. 4/2009. In this case, if the trader is proven to be selling mercury from unlicensed mining operation as it is regulated under Article 37 (3) c and g, Article 104 , 105 of Mining Law No. 3/2020 jo. No. 4/2009, he will be penalized with 5 years imprisonment (maximum) and fine IDR 100,000,000,000. In this regard, the law enforcer has to investigate where the mercury is coming from.
4. If your country allows import of mercury but prohibits its use in ASGM, how do customs officers determine the end use of mercury at the point of import to ensure it is not directed to ASGM?
- There is no mechanism to determine it. The custom will only check whether or not the importer has a permit to import mercury for non-mining and cosmetic industry. There is no accountability mechanism at the end to inform the custom about the end use of mercury.
 - The Minister of Trade Regulation No. 7/2022 on Distribution and Supervision of Hazardous Substances, Article 18 and 19 mandates P-B2 and IT-B2 to report to the Ministry of Trade through an online platform every three months regarding the realization of the hazardous substance distribution. It covers the amount of hazardous substances, the name/identity of the distributors or the end users, the date of the distribution, etc. In this regard, there is no yet shared database on these reports between the Ministry of Trade and the Customs.

⁵ Article 21, 31, 35, 39 Minister of Trade Regulation No. 7/2022 on Distribution and Supervision of Hazardous Substance

5. Are there tracking or certification processes to ensure that imported mercury is used according to its claimed purpose?
No, there is no tracking or certification processes to ensure that the imported mercury is used for the claimed purposes.
6. Are mercury importers registered on a government database and their activities periodically audited including the end-use of the mercury they import? Are postal imports of mercury banned?
- Yes, mercury importers are registered under the importer's license (IT-B2). The Minister of Trade Regulation No. 7/2022 on Distribution and Supervision of Hazardous Substances, Article 18 and 19 mandates P-B2 and IT-B2 to report to the Ministry of Trade through an online platform every three months regarding the realization of the hazardous substance distribution. It covers the amount of hazardous substances, the name/identity of the distributors or the end users, the date of the distribution, etc. Nevertheless, it is unclear whether the Minister will audit this report. It is unclear what the Minister does with the report that is sent by the P-B2 and IT-B2 every three months.
 - Based on the Article 31 (1), (2) of Law No. 38 of 2009 on Postal, the user of postal service is prohibited to send goods that may harm other goods, the environment or people's safety. Those who intentionally send the hazardous goods regulated under the Article 31 (1), (2) will be charged with 5 years imprisonment (max) or fine of IDR 1,000,000,000 (max). As this law applies within Indonesian jurisdiction, the process of sending the mercury from overseas depends on the regulation of the country of origin. However, it is prohibited for the people in Indonesia to use postal service to send mercury within the country or from Indonesia to overseas.
7. What remedies are available to persons in your country for pollution damages related to mercury exposure from ASGM activities?
None, unless the person files a lawsuit and wins.

Illegal Traffic

8. What actions has your country taken to prevent the illegal importation, smuggling and distribution of mercury to ASGM activities?
No specific actions that we know of.

9. What are the greatest challenges your country faces in preventing illegal mercury imports and smuggling?

- Law enforcement still focuses on small players (not the masterminds or the financiers) and uses conventional approaches in handling the cases (e.g. not using anti money laundering instruments).
- Lack of cooperation between government and non governmental organizations to address this issue.

10. Has your country established cooperative arrangements with bordering countries or at a regional level to combat illegal transboundary movement of mercury destined for ASGM activity?

- Between 2011 to 2018 there is the Asia-Pacific Regional Enforcement Network (REN) project chemicals and wastes.⁶
- REN is a project that combatted environmental crime through strengthening the capacity of 25 participating countries in Asia Pacific to control illegal trade in chemicals and waste.
- However, mercury is not in the agenda.

11. Are there instances of corruption among police, military or other officials involving the facilitation of mercury distribution in your country? What measures have been taken to address it?

Yes. Low and high ranks of military and police personnels are involved at the supply chain of ASGM business, from cinnabar mining activities, smelting the cinnabar ores into elemental mercury, selling/supplying mercury to ASGM miners, and getting the gold.

- We conducted research based on the verdicts regarding ASGM and mercury trade, below is the information regarding the involvement of the state apparatus based on the documents:

1) Unang Suparman Bin Hasan Bisri (Indonesian) Verdict No. 485/PID.SUS/2017/PN CBD.

⁶ <https://www.unep.org/resources/report/regional-enforcement-network-chemicals-and-waste-ren-final-project-report-december>

- a) Unang Suparman is an individual carrying out business as cinnabar rock trading broker since June 2017, and business as mercury trading broker since March 2016 until 2017 by connecting sellers and buyers and gaining fees from mercury trading in the amount of Rp. 1,000 to Rp. 2,000 per kg.
 - b) One of his cinnabar rock suppliers was a person named Budi Winaryo. Budi Winaryo sent 8 tons of cinnabar rock using 2 units of Army's Truck (as the means for transporting the rocks) and two Army members (in Army uniform) which drove the truck. The cinnabar was sent from Ambon, through Surabaya (East Java), Jakarta and then to Unang's place in West Java (final destination).
 - c) Based on the court decision, Unang Suparman is legally proven to have committed a criminal conduct of "Hoarding, selling mineral not sourced from holder of IUP, IUPK and/or license in accordance with the provisions of Article 37, Article 40 (3), 7 Article 43 (2), Article 48, Article 67 paragraph (1), Article 74 (1), Article 81 paragraph (2), Article 103 paragraph (2), Article 104 paragraph (3), or Article 105 paragraph (1) Law No. 4 of 2009 on Mineral and Coal.
 - d) Punishment for Unang Suparman is 1 to 6 years imprisonment and penalty of Rp. 1,000,000,000 (one billion Rupiah) provided that if the penalty is not paid it shall be redeemed by 2 (two) months detention. Court decision ordered for the detention that has been carried out by the Defendant shall be fully set off from the punishment;
 - e) Evidence in the form of 129 (one hundred twenty-nine) small sacks of cinnabar rocks with average weight of 40 kg amounting to approximately 5,121.11 kg **shall be confiscated for the state, handed over to the Ministry of Mineral Resources through the relevant institution.**
- 2) Rahim Tomia (Indonesian). Verdict No. No. 31/Pid.Sus/2018/PT AMB.
- a) Rahim Tomia Onong is an Indonesian Police Officer (BrigPol rank). He is a police officer in Sector Leituhu, Ambon. He was caught carrying 100 kg of mercury on a boat KM Permata Bunda.

b) He has violated Article 158 Law No. 4/2009 as he has been proven guilty of conducting mining operations (business) without a permit (IUP/IUP-OP) as it is regulated under Art 37 (a), Art 48 (a) Law No. 4/2009.

c) There are no specific measures to address the involvement of state apparatus in mercury distribution that we are aware of.

12. Is there any information to suggest local or regional organised crime syndicates are distributing mercury to facilitate gold smuggling in your country?

Yes, we conducted research based on the verdicts regarding the ASGM and mercury trade. There are indications of organized crime syndicates that involve various actors including foreign nationalities and entities. Below is the summary of the cases:

1) Chander Hass Khera. Verdicts No:

- No. 92/Pid.Sus/2018/PN. JKT Utr (first court/Jakarta Utara Court)
- No. 230/Pid.Sus/2018/PT.DKI (appellate/High Court DKI Jakarta), and
- No. 425K/Pid.Sus-LH/2019 (Supreme Court)

Chander Hass Khera is an Indian Nationals, he stayed in Indonesia with a Limited Staying Permit (Kartu Izin Tinggal Terbatas/KITAS). He lived in the Apartment Gading Mediterania, Kelapa Gading, Jakarta Utara. He was the Director of a company namely PT Savitha Khera Indonesia. Indonesian National Police (*Tipidter Bareskrim Polri*) found that Chander stored 3800 kg of mercury planned to be exported to India and Dubai in the storage of PT Mandiri Putra Yudha, Jakarta Utara.



In addition it was also found that within 7 February 2017 to 23 June 2017, he exported mercury from Indonesia overseas as follows:

- a) Export mercury by PT Savita Khera Indonesia, 7 February 2017 from Semarang to Punjabi, India. The amount of mercury was 2070 kg . The buyer was Advance Tools Technologies, India;
- b) Export mercury by PT Savita Khera Indonesia, 9 February 2017 from Jakarta to Durban, South Africa. The amount of mercury was 2070 kg. The buyer was Advance Tools Technologies, India
- c) Export mercury by PT Savita Khera Indonesia, 18 April 2017, from Semarang to Laem Chabang Thailand. The amount of mercury was 1035 kg. The buyer was Khant Ha Wun Company, Ltd
- d) Export mercury by PT Savita Khera Indonesia, 16 May 2017, from Jakarta to Laem Punjabi, India. The amount was 2070 kg . The buyer was Advance Tools Technologies, India.
- e) Export mercury by PT Savita Khera Indonesia, 24 May 2017, from Jakarta to Laem Chabang, Thailand. The amount of mercury was 1035 kg. The buyer was Khant Ha Wun Company, Ltd.
- f) Export mercury by PT Savita Khera Indonesia, 23 June 2017, from Semarang to Laem Chabang, Thailand. The amount of mercury was 1035 kg . The buyer was Khant Ha Wun Company, Ltd.
- g) Based on decision of the North Jakarta District Court, Chander violated Article 161 of Law No. 4/2009 and was proven to possess mineral (cinnabar) from an unlicensed mining activity as regulated in Article 37, Article 40 (3), Article 43 (2), Article 48, Article 67(1), Article 74(1), Article 81 (2), Article 103(2), Article 104(3) or Article 105 (1) of Law No. 4/2009.
- h) The punishment for Chander was based on the decision of the North Jakarta District Court: 1) 3 years 6 months of imprisonment, 2) fines of Rp. 3,500,000,000; (if not paid shall be redeemed with 8 months of detention).
- i) The punishment for Chander on appellate level: 1) 1 year 6 months of imprisonment and fines of Rp. 1,000,000,000 (if not paid shall be redeemed with 3 months of detention), 2) Defendant to pay dispute costs in the amount of Rp. 2,000

2) Awad Alla Khalfalla Mohamed Ahmed Farah Bin Khalf Alla Mohamed (alias Mohamed). Verdict No 984/Pid.Sus/2017/PN Smg. Mohamed is a Sudanese Nationals, he lived temporarily in Indonesia. He planned to export 8,383.5 kg of mercury from Indonesia to Dubai.

- Mohamed has violated Article 161 of Law No. 4/2009 (“hoarding, utilizing, transporting, selling mineral not sourced from a holder of mining area, special mining business license” 8 based on those articles”) as referred to in Article 37, Article 40 (3), Article 103(2), Article 104(3), or Article 105 (1) Law No. 4/2009.
- Criminal punishment for Mohamed: 1) 1 year imprisonment and penalty in the amount of Rp. 150,000,000; (if not paid shall be redeemed with 1 month detention), 2) Pay dispute costs in the amount of Rp. 5,000.
- Evidence in the form of 41 boxes comprising 40 boxes containing @ 6 bottles @ 34.5 kg of mercury and 1 box containing 3 bottles @ 34.5 kg of mercury shall **be confiscated for the State to be handed over to the Ministry of Energy and Mineral Resources through the Relevant Service Office in Central Java Province.**

Minamata Convention

13. Has your country ratified the Minamata Convention on Mercury and if yes, what measures have been taken to eliminate mercury from ASGM, including its diversion to ASGM?

Yes, Indonesia ratified the Minamata Convention. Indonesia has developed a National Action Plan on Mercury Elimination and Phase-Down in various sectors, including ASGM, health, manufacturer, and energy, as stipulated in the Presidential Regulation No. 21/2019.

14. How could access to capacity building or technology transfer under the Minamata Convention’s Specific International Programme help your country to eliminate mercury pollution from ASGM?

What Indonesia need is strengthen the law enforcement to combat corruption and illegal trade of mercury.

Protections for Indigenous Peoples

15. What specific actions has your country taken to directly protect the health of indigenous peoples from mercury contamination related to ASGM?

There are projects in the Sulawesi (with AGC Indonesia) and Banten Province (with Telapak) area that involve the Association of Indigenous People of Indonesia and Association of Artisanal Miners. They are called Community Green Gold Mining, trying to find alternatives of mercury use in the artisanal gold mining sector.

However, they are not genuine indigenous people who are impacted, or involved in ASGM activities.

16. Has any government or public forum for consultation with indigenous peoples about mercury pollution from ASGM been established?

No consultation that we are aware of.

17. Have any mercury related health assessments or studies been conducted in your country that relate directly to the exposure of indigenous peoples to mercury pollution from ASGM activities and associated mercury pollution? Please describe or share.

None specifically to the indigeneous people but Nexus3 conducted a study in 2012-2015 in Kasepuhan Adat Csitu and found severe cases of mercury intoxication (Boese-O'Reilly, Ismawati et al. 2016, Trimiska, Wiryono et al. 2018).

18. What health services and advice does your country provide to indigenous peoples to either treat high mercury levels or to minimise their exposure to mercury through diet (e.g. fish) or direct exposure via ASGM activity?

None specifically to the indigeneous people.

19. What constitutional or legal rights do indigenous peoples have to prohibit mercury based ASGM in their traditional lands and territories?

None.

General

20. Please provide any further information that you consider relevant for the purposes of this questionnaire.

We have attached a simple mind map regarding the legal case of mercury trade and a map of actors. The law enforcers isolated the case (they treat the case as an individual scene). The law enforcers do not see the bigger picture/ the relation with other cases, do not track banking transactions although they have information about it, and they do not pay attention to clues (repeating names/actors) in various cases.

Bibliography

Boese-O'Reilly, S., Y. Ismawati, R. Schierl, D. Nowak, U. Siebert, J. William and F. Owi (2016). "A preliminary study on health effects in villagers exposed to mercury in a small-scale artisanal gold mining area in Indonesia." Environmental Research **149**: 274-281.

Trimiska, L., Wiryono and H. Suhartoy (2018). Kajian Penambangan Emas Tanpa Izin (Peti) Di Kecamatan Lebong Utara Kabupaten Lebong, Universitas Bengkulu.