

Type: **Research Article**

Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights

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ABSTRACT

This paper aims to analyse the concept of indigenous peoples in Indonesia and examines whether the concept is appropriate with an international legal framework. Analysing the concept is essential to legitimising indigenous rights under the international law regime. The discourse on indigenous in Indonesia emerged after the



government rejected an international treaty on indigenous rights and was reluctant to adopt the UNDRIP into their national law. The government opposes this by arguing that the concept of indigenous peoples under the international legal framework is inappropriate for the Indonesian context. Consequently, indigenous peoples in Indonesia do not benefit from international norms that have recognised and protected their rights globally. This paper found that the concept of indigenous peoples in Indonesia has similarities and is appropriate to the international instrument (ILO169 and UNDRIP). Thus, ratifying the ILO treaty or adopting the UNDRIP into national law will benefit the indigenous in protecting their fundamental rights, including their collective rights to traditional lands under international norms.

Keywords: Definition, Indigenous People, Indonesia, International Law

INTRODUCTION

The Indonesian government claims that all Indonesians are indigenous peoples and they have the same rights and obligations as citizens.¹ Once the government has recognised their citizenship equally, therefore, the government should not implement any specific needs for the group as required by international norms, either by the International Labour Organisation (ILO) Convention No.169 of 1989 or by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).² The opposing to adopts the international norms

¹ Republic Indonesia, 'Indonesian Constitutional Law', Pub. L. No. 1945 (1945).

² UN ILO, 'Convention C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)', 27 June 1989.

into the national legal system based on the controversy of the global concept of indigenous peoples.

Over a prolonged period of discussion in the UN Working Group on Indigenous Issues, representatives of indigenous organizations have jointly formulated a unified stance against the proposal of a defined notion of indigenous peoples that would be approved by States. Equally, state delegates have expressed that there is no need or desire to establish a universal definition for indigenous peoples. Ultimately, the Working Group, during their fifteenth session in 1997, arrived at the conclusion that creating a comprehensive and globally applicable definition of indigenous peoples was not practical nor essential for the ratification of the Draft Declaration on the Rights of Indigenous Peoples. Article 8 of the Draft Declaration delineates that: "Indigenous peoples have a collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such".³

Nevertheless, the prevailing definition of indigenous peoples is the one formulated by Jose R Martinez Cobo, which is widely accepted and utilized. He argued that:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as

³ ECOSOC, 'Draft U.N. Declaration on the Rights of Indigenous Peoples UN Doc.E/CN.4/Sub.2/1994/2/Add.1 -', 1994.

peoples, in accordance with their own cultural patterns, social institutions and legal system.⁴

According to the provided definition, it becomes evident that the notion of indigenous peoples, as conceptualized by Cobo, encompasses several distinguishing features. These include: 1) the occupation of ancestral territories with a historical continuity predating the arrival of colonial societies; 2) the preservation of their cultural heritage; 3) the maintenance of a distinct social and political system founded upon customary law; and 4) a commitment to safeguarding and transmitting their collective identity and ancestral lands to succeeding generations.⁵ Indigenous peoples are commonly regarded as minority groups, characterized by distinct social, cultural, political, and legal frameworks that diverge from those of the dominant majority society, which, according to the liberal perspective, is comprised of the descendants of colonialists.⁶

The prevailing colonial lineage narrative in the identification of indigenous populations, shaped by the discipline of anthropology, adopted Western preconceptions about non-European peoples, particularly throughout the nineteenth century, with the objective of exerting control over indigenous communities under imperialist rule.⁷ In this case, the Indonesian government argued that there was no Dutch colonial ancestry dominance in Indonesia following

⁴ Jose R. Martinez Cobo, 'Study of the Problem of Discrimination Against Indigenous Populations' (United Nations Economic and Social Council, 30 July 1981).

⁵ IG Wardana, 'Access to Justice for Indigenous Peoples In International Law', *Indonesian Journal of International Law* 9, no. 2 (2 January 2012): 309–25, <https://doi.org/10.17304/ijil.vol9.2.349>.

⁶ Colin Samson and Carlos Gigoux, *Indigenous Peoples and Colonialism: Global Perspectives* (Cambridge: Polity Press, 2017).

⁷ Colin Samson and Carlos Gigoux, *Indigenous Peoples and Colonialism: Global Perspectives* (Cambridge; Malden: Polity, 2017).

independence in 1945. Therefore, the government asserts that all Indonesians are native.⁸

Nevertheless, some scholars believe that although there is no domination of Dutch descent in modern Indonesia,⁹ the political and legal structure of the country succeeded from the Dutch colonial state.¹⁰ Anderson argues that Indonesia is a precise ‘product’ of the extraordinary extension of the Dutch East Indies state ruling the power between 1850 and 1942.¹¹ In addition, the Indonesian rulers have adopted several Dutch colonial legal systems, especially land and forest laws, which have discriminated against the rights of the native (indigenous) peoples, such as rights to collective land property (*hak ulayat*). This legal practice was similar to the Dutch colonial regime when the regime occupied the territories.

Hence, defining indigenous peoples is essential for ensuring that their rights are protected under both national and international law.

⁸ IWGIA, ‘Indigenous Peoples in Indonesia’, accessed 2 September 2018, <https://www.iwgia.org/en/indonesia>.

⁹ The name of Indonesia was firstly introduced by British scholar named James Richadson Logan in 1850 through his publication entitled “the Ethnology of the Indian Archipelago: Embracing enquiries into the Continental relations of the Indo-pacific Islanders”. Later was promoted by a German Scholar, Adolf Bastian. A professor of Ethnology and curator of a Museum at Berlin in his popular publication under the title “*Indonesien oder die Inseln des Malayischen Archipel*”, that published in 1884. These publications had made the name of Indonesia internationally recognised, and has been stated in the Encyclopaedia Britannica, vol.XIV, 1911. See Daniel S Lev, ‘Colonial Law and the Genesis of the Indonesian State’, Indonesia’, in *Law and Society in East Asia*, ed. Christoph Antons (London and New York: Routledge, 2017), 57–74.

¹⁰ Adriaan Bedner, ‘Indonesian Land Law: Integration at Last? And for Whom?’, in *Land and Development in Indonesia: Searching for the People’s Sovereignty*, ed. John F. McCarthy and Kathryn Robinson (Singapore: ISEAS-Yusof Ishak Institute, 2016).

¹¹ Benedict R. O’G. Anderson, ‘Old State, New Society: Indonesia’s New Order in Comparative Historical Perspective’, *The Journal of Asian Studies* 42, no. 3 (1983): 477–96, <https://doi.org/10.2307/2055514>.

Article 18 B of the Constitution of the Republic of Indonesia does not define indigenous peoples, but instead “*recognizes and respects customary law units and their traditional rights, so long as they are consistent with the development of society and the principles of the Republic of Indonesia.*”¹² This norm is particularly susceptible to the extinction of customary rights. This is due to the fact that customary rights are only recognized under certain conditions, including that they do not conflict with legal principles and state interests. In addition, a draft Indigenous Peoples Law proposed by a number of human rights activists and several political parties, which was expected to serve as a patron on the definition of indigenous people and aimed to protect indigenous rights, was also not passed by the government. As a consequence, the government frequently disregards indigenous rights, as it sees no distinction between indigenous people and other societies, including no protection for their ancestral land rights.

The author argues that the definition of Indonesian indigenous should have something in common with the concept of indigenous peoples as formulated in various international conventions. In the international context, identifying indigenous rights was not solely in terms of minority, but also had experienced discrimination and land expropriation.¹³ This statement pertains to the present situation of indigenous populations in Indonesia. These groups not only consist of individuals who have historically inhabited a region prior to colonization, but also possess distinct social, cultural, and economic systems. However, they also encounter numerous instances of discrimination, particularly concerning their ancestral land rights, perpetrated by the governing nation.

¹² Indonesia, Indonesian Constitutional Law.

¹³ Kenneth Coates, *A Global History of Indigenous Peoples: Struggle and Survival* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2004).

Indigenous peoples in international law exemplify the uninterrupted existence of societies that inhabited and ruled over lands before European colonisation. However, in post-imperialism, each of the States or indigenous societies has a different term used to identify the identities of the groups and their rights. The situation of indigenous peoples in the American continent is different from those in Asia or Africa, whether in the context of historical, cultural, social, economic, and political dimensions. Such diversity notwithstanding, this group shows similarities concerning their persisting marginalisation, especially on the rights to lands and natural resources.¹⁴

The author develops these claims by engaging with several issues raised by indigenous scholars by looking at the case of the Indonesian context. What kind of indigenous people was constructed to the context of Indonesia during and after the colonisation period, and whether this concept applies to the international standard that has been recognised by the international legal regimes? Following the introduction, the author will focus on discussing the concept of Indonesian indigenous peoples from the Dutch colonial period to the modern state of Indonesia. Next, it will examine the debate on the Indonesian indigenous term in the context of international legal perspective and its consequences. Finally, the concluding remark of this part will conclude and recapture the main points of the discussion.

¹⁴ United Nations Department of Economic and Social Affairs and United Nations, *State of the World's Indigenous Peoples* (USA: United Nations Publications, 2009); D. Kapoor and E. Shizha, *Indigenous Knowledge and Learning in Asia/Pacific and Africa: Perspectives on Development, Education, and Culture* (United Kingdom: Springer, 2010).

THE EVOLVING CONCEPT OF INDONESIAN INDIGENOUS PEOPLES

The concept of ‘indigenous’ in Indonesia had first been established by the Dutch during the colonisation era. The Dutch named the native with the term *Inlander*.¹⁵ This term had been used to distinguish the native from the Europeans and foreign Orientals (Chinese, Arabs, and Indians). After the Indonesian independence in 1945, the term ‘inlander’ was changed to the term ‘*pribumi*’ politically and *Masyarakat Hukum Adat*, MHA (Adat law society) legally. The following discussion examines the historical perspective of developing the term ‘indigenous’ in the Indonesian context.

I. The Term ‘*Inlanders*’ During the Dutch Colonial Era

In the early 1800s, the Dutch Royal took over the territory from the VOC (*Vereenigde Oostindische Compagnie*) and established the Netherlands East-Indies (NEI) State. The NEI adopted a new law called the “*Algemeene Bepalingen van Wetgeving voor Nederlandsch-Indies* (general provisions on legislation for the Netherlands Indies)” in 1848, and *Het Regerings-Reglement voor Nederlandsch Indies* (the NEI constitutional law) in 1854. Under these provisions, the colonial government categorised the populations based on the primordial

¹⁵ The term of ‘inlander’ means as the native of the land. The Dutch recognised the identity of the group within the Dutch East Indies legislation, namely *Algemeene Bepalingen van Wetgeving voor Nederlandsch-Indie*, (General Regulations concerning Legislation for the Netherlands East-Indies) that promulgated in *stb.* 1847, No.23 in conjunction with No.57. See: R. E. Elson, *The Idea of Indonesia: A History* (Cambridge, UK ; New York: Cambridge University Press, 2008), 29.

identity of race and religion.¹⁶ This classification includes Europeans, foreign Orientals (Dutch: *Vreemde Oosterlingen*), and native peoples.¹⁷ This categorisation was similar to the caste system in Hispanic America¹⁸ or the apartheid system in South Africa.¹⁹

As stated above that the Dutch called the Indonesian indigenous with the term “inlander.”²⁰ The *inlander* refers to those who identified as the native of the land; henceforth, it refers to native Indonesian.²¹ During colonisation, the Dutch had legally categorised the *inlander* into the lowest social status in the population hierarchy under the colonial authority. This discrimination was intended to exploit the indigenous, and their land became more legal and efficient. Comaroff describes, as cited by Lukito, that the Colonial used the culture of legality as a constitutive means of imperial domination, including concerning the workforce to support their economic interests.²² Thus, by insisting that the *inlander* was the lowest class of social strata, it would be effectively exploited to force slave work on the cultivation

¹⁶ Rosy Antons-Sutanto and Christoph Antons, ‘The Construction of Ethnicity in Colonial Law and Its Legacy: The Example of the Peranakan Chinese in Indonesia’, in *Routledge Handbook of Asian Law* (London ; New York: Routledge, 2017), 389–416.

¹⁷ Arthur Schiller, ‘Native Customary Law in the Netherlands East Indies’, *Pacific Affairs, University of British Columbia* 9, no. 2 (June 1936): 254–63, www.jstor.org/stable/2751411.

¹⁸ Allison Amend, *Hispanic-American Writers, Multicultural Voices* (New York: Chelsea House, 2010), 15.

¹⁹ John Allen, *Apartheid South Africa: An Insider’s View of the Origin and Effects of Separate Development* (New York, NY: iUniverse, Inc, 2005).

²⁰ Ab Massier, *The Voice of the Law in Transition: Indonesian Jurists and Their Languages, 1915-2000*, *Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde* 235 (Leiden: KITLV Press, 2008).

²¹ Elson, *The Idea of Indonesia*.

²² Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (London: Routledge, 2013), 24.

system, especially in Java Island and outside the island that was pouring enormous profits for the Dutch revenue.²³

The Dutch colonialist also presumed the term inlanders to be a primitive society.²⁴ It became the basic premise and was on par with the European colonialists claiming that their goal in colonising non-European territories was to bring civilisation.²⁵ This argument also was supported by some positivists, such as Thomas Lawrence, as quoted by Lukito on the evaluation of the legal status of nomadic tribes, that none of the indigenous communities would be subject to international law because they have various characteristics, which, though not essential to sovereignty, are essential to the membership of nations.²⁶ Thus, whatever the degree of sophistication of non-European societies, they were to remain outside the boundaries of international society, not because they lacked territorial sovereignty but because they were seen as unfit for inclusion in the family of civilised nations.

In contrast, other scholars believe that indigenous peoples in Asia and Africa, particularly in Indonesia, were not all nomadic societies or primitive inhabitants. Instead, they have either political, economic, or legal sovereignty. For instance, before the Dutch invaded the region, Indonesia had several sovereign kingdoms and civilised societies, such as the kingdom of Aceh, Java, Bugis, Banten, and others. The Aceh kingdom was established in 1496 and became the dominant player in trade and commerce during the 16th century,

²³ Cornelis Fasseur, 'Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia', in *The Revival of Tradition in Indonesian Politics*, ed. Jamie Davidson and David Henley (New York: Routledge, 2007), 52.

²⁴ Lukito, *Legal Pluralism in Indonesia*, 20.

²⁵ Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (England and New York: Routledge, 2016), 7.

²⁶ Lukito, *Legal Pluralism in Indonesia*, 20.

especially in Southeast Asia, and controlled the Malacca Strait.²⁷ From the 1530s onwards, the Kingdom of Aceh covered most of Sumatera and the Malay Peninsula, controlled Sumatera's pepper production and became the Portuguese's strongest rival in monopolising trade in Southeast Asia.²⁸ Therefore, the claim that Europeans were the only 'civilised peoples' regarding knowledge, technology and the economy and presumed that the Eastern world was primitive compared with the Western was not always truthful.

Furthermore, when the Dutch colonial rulers marked that native law system as uncivilised legislation compared to the Napoleonic law concept,²⁹ it also presented a sad spectacle for those who did not understand or doubted the traditional or customary legal system. Most Dutch lawyers who worked in judiciary institutions in the East-Indies territory presumed the European legal system was superior to the indigenous legal system. Thus, their attitude towards native law was underestimated.³⁰ Conversely, each of the native Indonesian societies has a complex legal system. In the land tenure context, the Indonesian indigenous law system consists of rights and obligations that link three aspects: history, land, and law.³¹ This linkage is a historical inheritance of the society in which the people have the

²⁷ Anthony Reid, *A History of Southeast Asia: Critical Crossroads* (United Kingdom: John Wiley & Sons, 2015), 108.

²⁸ Paulo Jorge De Sousa Pinto, *The Portuguese and the Straits of Melaka, 1575-1619: Power, Trade and Diplomacy* (Singapore: NUS Press, 2012), 159.

²⁹ C.Fasseur, 'Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia', 54.

³⁰ Cornelis van Vollenhoven and J. F. Holleman, *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht van Nederlandsch-Indië (Vol. 1, 1918, Vol. 2, 1931)*, Koninklijk Instituut Voor Taal-, Land- En Volkenkunde <Leiden>: Translation Series 20 (The Hague: Nijhoff, 1981), 114.

³¹ David Henley and Jamie S. Davidson, 'Radical Conservatism - the Protean Politics of Adat', in *The Revival of Tradition in Indonesia Politics: The Deployment of Adat from Colonialism to Indigenism* (New York: Routledge, 2007), 3.

collective rights and the jurisdiction to control their land and its resources under their laws or traditions.³²

In short, the Dutch colonial rulers had created the term '*inlander*' or called them 'uncivilised' society to classify the people into the lowest class within the Dutch colonial state population system. The colonists also acknowledged that the native had inhabited the territory before the Dutch invasion and settled in the 'East Indies.' While the Dutch became the ruler of the territory, the native still a dominant population instead of a minority society. Nevertheless, the indigenous were severely discriminated by the Dutch colonial minority in all aspects of their life, particularly in ownership of land property.

II. From *Inlander* to *Pribumi* After the Independence

After the independence in 1945, the term '*inlander*' was translated into the Indonesian language called '*pribumi*'. The word '*pribumi*' derives from Sanskrit terms *pri* (prior) and *Bumi* (earth), and it can be translated as "sons of the soil."³³ The term *pribumi* has a broader meaning than that associated with indigenous peoples. Frederick and Worden, in the Indonesian studies, define *pribumi* as follows:

Literally, an indigene or native. In the colonial era, most of the archipelago population came to regard themselves as indigenous, in contrast to the non-indigenous Dutch and Chinese (and, to a degree, Arab) communities. After

³² David Henley and Jamie S. Davidson, 3.

³³ Christoph Antons, 'Ethnicity, Law and Development in Southeast Asia', in *Reading Asia: New Research in Asian Studies*, ed. Frans Husken Huskin and Dick van der Meij (London ; New York: RoutledgeCurzon, 2004), 14.

independence, the distinction persisted, expressed as a dichotomy between *Pribumi* elements and those that were not. The distinction has had significant implications for economic development policy.³⁴

This term emerged after the independence of Indonesia to distinguish between the native and Chinese descent, also called *Tionghoa*, in particular. Historically, the Chinese descent was the second class while the NEI ruled the Indonesian archipelago. In contrast, the *pribumi* were positioned in the third or lowest level of people within the Indonesian society.³⁵ The *Tionghoa* also considered themselves Chinese instead of Indonesian native and was considered as such by the colonial authorities.³⁶ Nevertheless, this situation changed after Indonesian independence. Article 26 of the 1945 Constitution states that:

(1) The people who become citizens are people of the native Indonesian nation and people of other nations who are ratified by law as citizens; (2) Residents are Indonesian citizens and foreigners residing in Indonesia, and (3) Matters concerning citizens and residents are regulated by law.

In 1946, the government enacted Law No. 3 of 1946 on 'Citizenship.' This law classified the eligibility of people entitled to Indonesian citizenship, including the Indonesian natives and those

³⁴ William H. Frederick and Robert L. Worden, 'Indonesia: Country Profile', in *Indonesia: Issues, Historical Background and Bibliography*, ed. William C. Younce (New York: Nova Publishers, 2001), 77.

³⁵ M. D. La Ode, *Trilogi Pribumisme: Resolusi Konflik Pribumi Dengan Non Pribumi Di Berbagai Belahan Dunia* (Jakarta: Komunitas Ilmu Pertahanan Indonesia, 2018), 62.

³⁶ Donald Earl Willmott, *The National Status of the Chinese in Indonesia 1900-1958* (Jakarta [Indonesia: Equinox Publishing, 2009), 16.

born and domiciled for at least five years or married to an Indonesian. Thus, they could apply to be Indonesian citizens.³⁷ However, this law was passively applied until the government passed a new law No.62 of 1958 on Indonesian citizenship. The law required all Chinese ethnicities to choose their citizenship, either become Chinese or become Indonesian citizens. Hence, most Chinese-descent declared in front of the court and became Indonesian citizens, while others disobeyed the law and returned to China land.³⁸

Although most *Tionghoa* had declared themselves Indonesian citizens, most have periodically experienced violence across many regimes and political models.³⁹ The violence has often coincided with social, political and economic change at national and local levels.⁴⁰ Politically, the anti-Chinese movement began in early Indonesian independence after the Communist effort to coup the State in 1965-66, of which Chinese were alleged to become the majority of the communist sympathies.⁴¹ Unfortunately, those who decided to be Indonesian had periodically experienced violence across many regimes, rulers, and political models.⁴² The violence has often

³⁷ See Art.1 paragraph (a) and (b) of Presiden Republik Indonesia, 'Undang-Undang Republik Indonesia tentang Warga Negara dan Penduduk Negara', Pub. L. No. No.3 Tahun 1946 (1946), <http://www.dpr.go.id/dokjdih/document/uu/816.pdf>.

³⁸ Mely G. Tan, *Etnis Tionghoa Di Indonesia: Kumpulan Tulisan* (Jakarta: Yayasan Obor Indonesia, 2008), 28.

³⁹ Purdey Jemma, 'Anti-Chinee Violence and Transitions in Indonesia: June 1998-October 1999', in *Chinese Indonesians: Remembering, Distorting, Forgetting*, ed. Tim Lindsey and Helen Pausacker (Singapore: Institute of Southeast Asian Studies, 2005).

⁴⁰ Jemma.

⁴¹ Akihisa Matsuno, 'The 30 September Movement and Its Aftermath in Bali, October - December 1965', in *The Indonesian Genocide of 1965: Causes, Dynamics and Legacies*, ed. Katharine McGregor, Jess Melvin, and Annie Pohlman (Germany: Springer, 2018).

⁴² Jemma Purdey, *Anti-Chinese Violence in Indonesia: 1996 - 99* (Hawaii: University of Hawaii Press, 2006).

coincided with social, political, and economic change at national and local levels.⁴³

During the Indonesian political and financial crisis in 1997-8, most of the *pribumi* alleged that the Indonesian Chinese – descent business people were responsible for the economic crisis.⁴⁴ Consequently, many business properties and assets belonging to Chinese ethnic were burnt during the chaotic situation. It also estimated that around 100,000 Chinese left Indonesia in mid-May 1998,⁴⁵ and many were reported murdered and raped by many uncontrolled demonstrators.⁴⁶

These riots were inseparable from the failure of the integration process of the State-nation between those who claimed as *pribumi* and those considered as non-*pribumi*. Gunawan Muhammad, a famous Indonesian humanist, as quoted by Purdey, asserts, "...in Indonesian State, racism has a history longer than the history of the Republic. Maybe even older than the entire known as the State...".⁴⁷

Besides, the Chinese-descents, the Arab-descents or the Indian-descents are still seen by some Indonesians as a group that merely has a part of nationalism, as stated by Heryanto as follows:

Nation-ness, and hence the distinction between Indonesian and non-Indonesian, are only a step away from the ethnic dichotomy of *pribumi* and *non-pribumi*. Nothing illustrates this better than the New Order's magnificent national park, the *Taman Mini Indonesia Indah*, 'Beautiful Mini Indonesia Park'... we find nothing

⁴³ Purdey, 2.

⁴⁴ Christian Chua, *Chinese Big Business in Indonesia: The State of Capital* (London ; New York: Routledge, 2008), 2.

⁴⁵ Jemma, 'Anti-Chinese Violence and Transitions in Indonesia: June 1998-October 1999', 15.

⁴⁶ Purdey, *Anti-Chinese Violence in Indonesia*, 160.

⁴⁷ Purdey, 2.

representing the lives of fellow nationals of Arab, Indian, Chinese or European ethnicity.⁴⁸

After the New Order regime stepped down in 1998, Indonesian President B.J. Habibie released presidential instruction No.26 of 1998 prohibiting using the term '*pribumi*' and '*non-pribumi*' in government policies.⁴⁹ This instruction requires government officials to stop using the term '*pribumi*' for the native and '*non-pribumi*' for those considered of the Chinese-descents in any government decisions, regulations, political statements, programs, and other government administration.⁵⁰

In 2008, the Government also introduced a new law No.40/2008 on Eliminating Racial and Ethnic Discrimination. The law prohibits any form of discrimination based on race or ethnicity. This law was also issued to support Law No.39 of 1999 on Human Rights and the Law No.29 of 1999 on ratifying the international convention on eliminating all forms of racial discrimination. Finally, these laws are required to imply equal treatment for any citizen of Indonesia without discrimination based on race and ethnicity.

⁴⁸ Ariel Heryanto, 'Ethnic Identities and Erasure Chinese Indonesians in Public Culture', in *Southeast Asian Identities: Culture and the Politics of Representation in Indonesia, Malaysia, Singapore, and Thailand*, ed. Joel S. Kahn (London ; New York: I.B.Tauris, 1998), 100.

⁴⁹ Presiden Indonesia, 'Instruksi Presiden No.26 Tahun 1998 Tentang Menghentikan Penggunaan Istilah Pribumi Dan Non-Pribumi', 30 November 1998, <http://itjen.kemenag.go.id/sirandang/peraturan/155-26-instruksi-presiden-nomor-26-tahun-1998-tentang-menghentikan-penggunaan-istilah-pribumi-dan-non>.

⁵⁰ Arif Hulwan Muzayyin, 'Inpres Habibie Larang Istilah Pribumi, Anies Tak Melek Aturan', nasional, 17 October 2017, <https://www.cnnindonesia.com/nasional/20171017084917-32-248920/inpres-habibie-larang-istilah-pribumi-anies-tak-melek-aturan>.

III. The Legal Term of Indigenous in the 1945 Constitution

Constitutionally, indigenous peoples in Indonesia are legally named *Masyarakat Hukum Adat* (hereinafter as MHA)⁵¹ and *Masyarakat tradisional* (traditional society).⁵² The MHA means or is equivalent to 'indigenous society.' The Society is also known as '*Masyarakat Adat* (traditional society) or *Orang Adat* (traditional peoples). The word 'adat' originates from an Arabic word that signifies customs, practices, traditions or habits.⁵³ The Indonesian dictionary defines *adat* as behaviour, tradition, law and culture consisting of values, norms and the rule of law that has interconnected and shaped life as a system.

Similarly, Hooker outlines *adat* as law, regulation, guidance, morals, practice, custom, consensus, principles, and the rule of law, as well as faith that the people shall obey the customary law.⁵⁴ The word *adat* refers to local tradition and customary law, especially to Islam in the legal context. Islam has influenced the way of life of most Indonesian citizens, and its values have transformed peoples' behaviour and society.

The Dutch orientalist, Christiaan Snouck Hurgronje (1857-1936),⁵⁵ concluded that *adat* or tradition was not derived from Islam

⁵¹ Indonesia, Indonesian Constitutional Law. See Article 18B Para 2.

⁵² Indonesia. See Article 28I Para 3.

⁵³ Max Gluckman, 'Adat Law in Indonesia', *Journal of Comparative Legislation and International Law* 31, no. 3-4 (1949): 61.

⁵⁴ M. B. Hooker, *Adat Law in Modern Indonesia* (England: Oxford University Press, 2008), 50.

⁵⁵ C. Snouck Hurgronje was appointed as the colonial political advisor for native and Arabic affairs in The Netherlands Indies based on the Dutch Royal Decree No. 6 issued on January 11, 1899. The main task was to understand the character of indigenous people, especially in the Aceh region and find a way to defeat the guerrilla movement or to overcome the resistance of the indigenous people to

or an Arabic term but referred to it as the genuine way of life (tradition) of the local people.⁵⁶ His research on the Acehnese people of Sumatra asserted that their ancestral tradition had influenced them and was not always based on Islamic values.⁵⁷ According to Hurgronje, the law implemented within indigenous society was customary law or what he called '*adat recht*,' and Islam would be accepted if it did not contradict the local customs or traditions. This concept is known as the theory of *Receptie*.⁵⁸ This theory asserted that Islamic law is accepted by the Acehnese indigenous people if it does not contradict their tradition (*adat*). Soon after its acceptance, it was no longer called Islamic law but *adat* law (*adat recht*).⁵⁹

This *receptie* theory was contradicted from previous Dutch colonial government advisor, LWC van den Berg's theory. Van den Berg claimed that Indonesian indigenous law refers to religious doctrine.⁶⁰ Herewith, Islamic teaching is the source of law for Muslims or Hindu religious doctrine is applied to the Hindus. Van den Berg also contends that Sharia (Islamic) law influenced the culture of the native people in the East Indies (Indonesia).⁶¹ Furthermore, he

Dutch colonial rule in Indonesia. See: Akhmad Muslih, 'Legal Political Thought of Christian Snouck Hurgronje in Indonesia Legal System Development', *South East Asia Journal of Contemporary Business, Economics and Law* 10, no. 4 (August 2016): 8.

⁵⁶ Chairul Fahmi, 'The Snouck Hurgronje's Doctrine in Conquering the Holy Revolts of Acehnese Natives', *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 10, no. 2 (20 December 2021): 248–73, <https://doi.org/10.31291/hn.v10i2.628>.

⁵⁷ See Christian Snouck Hurgronje, *The Acehnese*, vol. I (Leiden: E.J.Brill, 1906).

⁵⁸ Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 47.

⁵⁹ See Hurgronje, *The Acehnese*.

⁶⁰ L. W. C. van den Berg, *De beginselen van het Mohammedaansche recht ...* (Batavia: Ernst & Company, 1878).

⁶¹ Wael B. Hallaq, *An Introduction to Islamic Law* (United Kingdom: Cambridge University Press, 2009), 90.

recommends to maintain religious law and religious courts as an institution in which Muslim society could resolve the problems of indigenous people in Indonesia.⁶²

The most comprehensive concept of 'Indonesian legal system' was developed by Cornelis van Vollenhoven. He was acknowledged as the founding father of Indonesian indigenous law. Through his book "*Het adatrecht van Nederlandsch-Indies*" (Indonesian customary law), Vollenhoven categorised *adatrecht* as a clan, tribal or regional law.⁶³ For him, *adatrecht* is a type of '*ethnologische Jurisprudenz*.' It reflects the social phenomena that transform into legal rules and institutions in all its diversity. Vollenhoven also characterised *adatrecht* as a flexible and dynamic law, folk law (*volksrecht*) or living law (*levendrecht*). He affirmed that it was impossible to separate *adat* as an element of customs and belief on the one hand and *adat* as the legal norms belonging to the indigenous peoples of Indonesia on the other hand.⁶⁴ Vollenhoven further asserted that people obey *adat* law, not because of the threat of judicial force but because compliance has become a habit.⁶⁵ Indigenous people also would fear their ancestors when they violate the traditional system's rule that has become a belief. Therefore, this law commonly cannot be codified, although it remains a "living law."

Vollenhoven's theory of the *volksrecht* was inspired from Hurgronje's work on 'the Acehnese' and German law scholar von Savigny. According to Savigny (1779-1861), laws originate from people's customs and beliefs. It grew organically from the people's roots through a gradual process of history and was disseminated over

⁶² Nurlaelawati, *Modernization, Tradition and Identity*.

⁶³ Vollenhoven and Holleman, *Van Vollenhoven on Indonesian Adat Law*.

⁶⁴ Vollenhoven and Holleman, 9.

⁶⁵ See Vollenhoven and Holleman, *Van Vollenhoven on Indonesian Adat Law*.

different levels of society.⁶⁶ There is Savigny's famous phrase, as quoted by Bourchier: "*Das Recht ist und wird mit dem Volke*" (the law is in and of the people)."⁶⁷

In terms of social, legal and political structure, Dutch scholars called the Adat people *Inlandsche rechtgemeenschappen*, which translates to MHA. This term stated that MHA is a complex society in which rights and obligations are connected to each other and comprise three things – history, land and law.⁶⁸ This relationship is essential for the *Adat* peoples because they have historical inheritance regarding their lands, and their own political institutions which governed their society based on their own legal system.⁶⁹ Hazairin, as cited by Mustari Pide, described the concept of *adat people* as follows:

Indigenous society's structure, such as *Desa* in Java, *marga* in South Sumatra, *Nagari* in Minangkabau, and *Kuria* in Tapanuli, are independent community units, which each of them has their self-government system. They have *kesatuan hukum* (legal structure), *kesatuan penguasa* (rulers' institution), and *kesatuan lingkungan hidup* (environmental unit), which are based on common rights to land and water for all its members. Their lives rely on agriculture, animal husbandry, fisheries and forest resources, including wild

⁶⁶ Hermann Klenner, 'Savigny's Research Program of the Historical School of Law and Its Intellectual Impact in 19th Century Berlin', *The American Journal of Comparative Law* 37, no. 1 (1989): 67–80, <https://doi.org/10.2307/840441>; Alison Dundes Renteln and Alan Dundes, *Folk Law: Essays in the Theory and Practice of Lex Non Scripta* (Univ of Wisconsin Press, 1995), 15.

⁶⁷ David Bourchier, 'Positivism and Romanticism in Indonesian Legal Thought', in *Indonesia, Law and Society*, ed. Timothy Lindsey, 2nd ed (Leichhardt, N.S.W., Australia: [Singapore]: Federation Press; Distributed by ISEAS in Asia, 2008), 98.

⁶⁸ David Henley and Jamie S. Davidson, 'Radical Conservatism - the Protean Politics of Adat', 3.

⁶⁹ A. Suriyaman Mustari Pide, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenada Media, 2017), 93.

animals, mining and handicraft materials. All members are equal in their rights and obligations and their livelihood asset based on communal rights, and *gotong-royong* (community self-help or mutual-cooperation) is the main character of the peoples.⁷⁰

After independence, the Republic of Indonesia recognised the existence and rights of the Adat people. Article 18B Paragraph 2 of the 1945 Indonesian Constitution states:

The State recognises and respects *Masyarakat Hukum Adat* along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the unitary State of the Indonesian Republic and shall be regulated by law.⁷¹

The 1945 Constitution has formally recognised indigenous peoples, including their collective rights to lands, based on this provision. Nonetheless, the Constitution set up several conditions. First, indigenous peoples' land rights still exist, and their existence can be confirmed.⁷² Second, the existence must not constrain the development of Indonesian national interests. Finally, recognition of the people must be in the context of the unitary State of the Republic of Indonesia and regulated by national laws. In many cases,

⁷⁰ Mustari Pide, 91.

⁷¹ Indonesia, Indonesian Constitutional Law. The Fourth Amendment

⁷² Based on Constitutional Court Decision No.31/PUU-V/2007, which states it can be concluded that the MHA unit (Indigenous Peoples) still exists (de facto), either its territory, genealogy or functionally, if they can fulfil certain criteria, including; (i) the group have a similar tradition and in-group feeling, (ii) they have a governance structure, (iii) they have collective properties, (iv) they have a legal system and (v) they have a certain land or territory. See: Mahkamah Konstitusi, 'Rinkasan Putusan Mahkamah Konstitusi Nomor 31/PUU-V/2007', 31/PUU-V/2007 § 3 (2008), <http://ditjenpp.kemendikhum.go.id/files/litigasi/Putusan%20PUU%2031-2007%20Tual-%20Dirjen.pdf>.

indigenous people cannot fulfil all these indicators, especially their collective rights to land, territories and resources.⁷³

Under the New Order regimes, most indigenous traditional land, territories and resources were expropriated under the national development doctrine.⁷⁴ This expropriation often occurred without considering people's concerns or providing proper compensation. It should be noted that the government has boosted economic development through domestic resource funding or foreign direct investments by providing land concession permits for timber, mining, plantations, and so on. The MHA who refused this policy were alleged to be anti-development parties and put under extreme pressure. They would face severe treatment or even be abused by actors from police or military institutions recruited informally by private companies.⁷⁵

After the political reform, the MHA people, led by numerous *adat* peoples' associations, held their first national congress in Jakarta in 1999. This congress witnessed the emergence of the collective awareness of the Indonesian indigenous movement, significantly reviving their collective rights after a long period of being neglected by the State.⁷⁶ This congress established the Indonesian indigenous

⁷³ Jayantha Perera and Asian Development Bank, eds., *Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia* (Mandaluyong City, Metro Manila, Philippines: Asian Development Bank, 2009).

⁷⁴ Chairul Fahmi, 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia', *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)* 5, no. 2 (2020): 105, <https://doi.org/10.22373/petita.v5i2.99>.

⁷⁵ Yence Arizona and Erasmus Cahyadi, 'The Revival of Indigenous Peoples: Contestations over a Special Legislation on Masyarakat Adat', in *Adat and Indigeneity in Indonesia: Culture and Entitlements between Heteronomy and Self-Ascription*, ed. Brigitta Hauser-Schäublin, Göttingen Studies in Cultural Property 7 (Göttingen: Univ.-Verl. Göttingen, 2013), 48.

⁷⁶ Sandra Moniaga, 'Emerging Indigenous Peoples Movement in Indonesia | ヒューライツ大阪', *Asia-Facifc Human Rights Information Center*, June 2004, 36 edition,

umbrella organisation called the “*Aliansi Masyarakat Adat Nusantara* (AMAN – The Indigenous Peoples Alliance of the Archipelago).”⁷⁷ The AMAN concluded that any terms associated with the *adat* peoples used within national laws are equivalent to “indigenous people” in international legal thought.

THE CONTESTATION OF THE TERM ‘INDIGENOUS’ WITH THE INTERNATIONAL LEGAL FRAMEWORK

Like most Asia and African countries, the concept of indigenous peoples in Indonesia is often subject to debate and questions, especially regarding the definition and the legal consequences of their rights. Since the development of indigenous peoples in the early 1970s, it was not accompanied by any general agreement to its meaning within international instruments. As a result, the controversy over the concept and its implication has become a serious discussion. Indeed, various categories have been internationally developed to identify the indigenous peoples, either by indigenous scholars or by international norms, such as the ILO conventions and

<https://www.hurights.or.jp/archives/focus/section2/2004/06/emerging-indigenous-peoples-movement-in-indonesia.html>.

⁷⁷ This organisation was the result of numerous meetings that helped to crystallise the ideas of the movement of adat communities especially against the discrimination policies of the adat peoples’ right to land across the country during the New Order era. Nowadays, the AMAN which consists of roughly 2,304 indigenous groups within the Archipelago, is the biggest indigenous peoples’ organisation in Indonesia. It also has 20 branches at the regional level and roughly 115 district committees. See: AMAN AMAN, ‘Profil Aliansi Masyarakat Adat Nusantara (AMAN)’, *Tentang Aman*, 2001, <http://www.aman.or.id/profil-aliansi-masyarakat-adat-nusantara/>; Arizona and Cahyadi, ‘The Revival of Indigenous Peoples: Contestations over a Special Legislation on Masyarakat Adat’, 43.

the UNDRIP. However, the question emerges, how does the character of the global indigenous concept be in line with the indigenous peoples in Asia or African countries, in particular to Indonesia country?

I. The Definition of Indigenous Peoples

Indeed, ILO No.169 does not provide a precise definition who are indigenous peoples.⁷⁸ However, it only classifies into two categories, namely: tribal peoples and indigenous peoples. The meaning of tribal people is stated in article 1.1 of the Convention, that is, “tribal peoples in independent states whose social, cultural and economic conditions distinguish them from other sections of the national community...”.⁷⁹ Meanwhile, indigenous peoples are mentioned in Article 1 para b, as follows:

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Based on the definition above, indigenous peoples are identified by classifying them as inhabitants who occupied their ancestral land or territory during conquest or during colonisation. Secondly, they

⁷⁸ International Labour Office, *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual* (Geneva: International Labour Organization, 2003), 7.

⁷⁹ ILO, ‘Convention C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)’.

retain some or all of their social, economic, legal and political structure. The authors argue that these criteria are identical or similar to the Indonesian indigenous situation. Historically, Indonesian indigenous have been occupying lands or regions before and after the Dutch colonisation, and most of them have lived traditionally in the whole sector of life, such as social, cultural, legal system, and livelihood.

Meanwhile, the UNDRIP omitted to define indigenous people; instead, the Declaration merely acknowledged the group's rights. Some scholars believe that by having no definition, it is unclear who is indigenous and to whom the Declaration applies. Hence, several countries in Asia and Africa still concluded that indigenous are not exist in their state-territorial or that all its citizens are equally indigenous.⁸⁰ It is an unfortunate interpretation that ignores the evolution of the meaning of Indigenous Peoples within international order over the past two decades, and above all, the rights of Indigenous Peoples to self-identification also has been ignored by the states as it has been recognised by international law.⁸¹

The Government of Indonesia argues that the concept of indigenous peoples in the UNDRIP is not applicable, as all Indonesians are indigenous.⁸² The national authorities also failed to introduce the term and concept of "indigenous," which recognises the unique positions and distinctive rights of the peoples it describes.

⁸⁰ IWGIA, AIPP, and Forum-Asia, 'ASEAN'S Indigenous Peoples', 2006, 6.

⁸¹ Chairul Fahmi and Muhammad Siddiq Armia, 'Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms', *Journal of Southeast Asian Human Rights* 6 (2022): 5, <https://heinonline.org/HOL/Page?handle=hein.journals/jseahr6&id=10&div=&collection=>.

⁸² Jakob Siringoringo and Mambor Victor, 'The Indigenous World 2021: Indonesia - IWGIA - International Work Group for Indigenous Affairs', 18 March 2021, <https://www.iwgia.org/en/indonesia/4224-iw-2021-indonesia.html>.

Instead, the term native, tribal, ethnic minorities, traditional community, isolated society, and others are still used in many national laws, including those regulating lands and natural resources. In most cases, the confusion on the definition has caused their rights not to be protected, such as rights to self-determination, and the right to lands, territories, and resources they have traditionally owned.

The absence of a definition in the Declaration has triggered indigenous organisation in Indonesia, *Aliansi Masyarakat Adat Nusantara*, AMAN (Indigenous Peoples' Alliance of the Archipelago) to adopt the doctrine of self-identification to claim Indonesian native as "indigenous" under the international legal framework. This claim, as proposed in Article 1 of the Draft of the Indonesian Indigenous Peoples Act, as it states that:

Masyarakat Hukum Adat (indigenous peoples) is a group of peoples which inhabitant on the basis hereditary in the form of the ancestral unit and or has a similarity in such of land/territorial in which the cultural identities and customary law are still obeyed. They also have a tight relationship with the land, the environment, and the value system that determines economic, political, social, cultural, and legal institutions.⁸³

This term, initially based on the philosophical idea of 'indigenous peoples' term that has been developed by international norms such as ILO, as well as by the UN special rapporteur, Martinez Cobo, and other international indigenous scholars. The basic idea of

⁸³ Presiden Republik Indonesia, 'Rancangan Undang-Undang Tentang Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat' (2019), <http://ditjenpp.kemenkumham.go.id/pembahasan-ruu/63-rancangan-peraturan/rancangan-peraturan-pemerintah/2453-rancangan-undang-undang-tentang-pengakuan-dan-perlindungan-hak-masyarakat-hukum-adat.html>. Article 1

whom the draft categorises as indigenous is those who occupy the land or territory based on their ancestral unit. The people also can be identified by having a relationship with the land and environment where they live, and the groups have a right to manage their economic, political, social, cultural and legal systems based on their traditional values.

However, the Government criticises the concept of indigenous peoples by referring literally to the international concept. They argued that the indigenous concept in Indonesia has characteristics that differ from the Indigenous Peoples in other parts of the world. Some Indonesian indigenous lawyers also address the concept that indigenous peoples worldwide differ in historical, political and social circumstances to the Indonesian context. Nevertheless, the concept of 'indigenous peoples' in Indonesia and other parts of the world also have similarities among dissimilarities. The similarities between MHA and indigenous are identified by having a particular land or territory. Both groups are also considered to have a different identity than the majority population and have their own social, cultural, and legal system. Furthermore, their identity still exists by having similar family lineage, language, customs, lifestyle, and livelihood system.

II. The Concept of Indigenous in the Context of Rights

The second issue is identifying indigenous in the context of rights. First, the question is whether indigenous in Indonesia are considered "people-hood" and entitled to people's rights under international law. This question has been vigorously debated at the international level, including in the national context of Indonesia. The second

question concerns the rights of indigenous to traditionally occupied land.

Identifying indigenous as people-hood was the most contentious issue under international law. This issue is related to the right to self-determination. The Indonesian government has insisted that recognising indigenous as people-hood under an international framework will be linked to the political choice of independence.⁸⁴ Therefore, the Indonesian authority believes that the concept of 'peoples' under international law who have a right to self-determination in politics would lead to separatism.⁸⁵ For instance, the independence of Timor-Leste from Indonesia through self-determination in 1999⁸⁶ and the emergence of ethnonationalism in Aceh, where Acehnese ethnic nationalism erupted after the Indonesian reform era when the people in Aceh sought independence from Indonesia.⁸⁷ The Free Aceh Movement insisted that the idea to re-establish a modern state of Aceh was a successor of the Aceh Kingdom.⁸⁸

⁸⁴ Ehito Kimura, *Political Change and Territoriality in Indonesia: Provincial Proliferation* (London & New York: Routledge, 2013).

⁸⁵ Kimura.

⁸⁶ John R. Ballard, *Triumph of Self-Determination: Operation Stabilise and United Nations Peacemaking in East Timor* (USA: Greenwood Publishing Group, 2008); Noelle Higgins, *Regulating the Use of Force in Wars of National Liberation: The Need for a New Regime: A Study of the South Moluccas and Aceh* (The Netherlands: BRILL, 2009), 200.

⁸⁷ Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia* (United Kingdom: Stanford University Press, 2009); Anthony Reid, *Verandah of Violence: The Background to the Aceh Problem* (Singapore: NUS Press, 2006).

⁸⁸ Edward Aspinall, 'Place and Displacement in the Aceh Conflict', in *Conflict, Violence, and Displacement in Indonesia*, ed. Eva-Lotta E. Hedman (USA: Cornell University Press, 2018); Reid, *Verandah of Violence*; Patrick Ziegenhain, 'The Aceh Conflict During the New Order and the Following Democratization Process', in *Aceh: History, Politics and Culture*, ed. Arndt Graf, Susanne Schroter, and Edwin Wieringa (Singapore: Institute of Southeast Asian Studies, 2010).

Nevertheless, the author argues that rejecting the concept in the rights context contradicts the ILO treaty itself. Article 1 para 3 of the ILO169 has insisted that “The use of the term peoples in this Convention shall not be construed as having any implication as regards the rights which may attach to the term under international law.” It means that the concept of ‘peoples’ within the ILO169 has a limitation, which has no right as ‘peoples’ that is recognised by international law. Dean and Levi assert that the Convention only provides a vague cultural right and not the first principle of peoples’ political rights – the right to self-determination.⁸⁹ Indeed, in the international legal document, self-determination is a fundamental right of all peoples. Consequently, the indigenous peoples under the ILO169 may not have advanced rights, especially the right to declare independence, but rather merely limit rights by unwittingly amplifying the power of the states where they live.

Hence, the government's opposition to ratifying the ILO169 has also been detrimental to the state as a nation-state that consists of a thousand ethnic diversities. In contrast, the ratification would considerably strengthen the position of indigenous peoples without bringing the government into a disadvantageous position. The government will also have support from the international community to ensure that indigenous’ life would be better. It is well known that the ratification is a precondition for having proper supervision from ILO on the application of the Convention by the signed government.

Similarly, UNDRIP has recognised the rights to self-determination for indigenous peoples. Article 3 of the Declaration states:

⁸⁹ Bartholomew Dean and Jerome M. Levi, *At the Risk of Being Heard: Identity, Indigenous Rights, and Postcolonial States* (USA: University of Michigan Press, 2003), 33.

Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

This provision is the most controversial issue in international law discourse. In particular, the right of ‘peoples’ and self-determination in a postcolonial context that becomes the most discussed issues of international law. Fitzmaurice believes the debate on these issues is unlikely will be resolved at the international level due to the political nature of the issue involved.⁹⁰

First, any analysis of indigenous peoples' rights as collectives today is intrinsically linked to how international law has conventionally understood the concept of ‘peoples.’ The historical understanding of this concept is essential because indigenous peoples are primarily understood based on classical international laws' perception of States.⁹¹

Second, the classic theories argue that the right of self-determination—to terminate the colonial relationship and (usually) the peoples become independent.⁹² This definition of self-determination was developed during the Cold War, especially in the context of the Soviet Union, where the Union had conquered many regions, such as the Baltic States, Ukraine, and others. For the Soviets, these countries were not colonies. Therefore, the Soviets argued that these populations had no right to self-determination. However, the

⁹⁰ Malgosia Fitzmaurice, ‘The Question of Indigenous Peoples’ Rights: A Time for Reappraisal?’, in *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, ed. Duncan French (Cambridge: Cambridge University Press, 2013), 351.

⁹¹ Mattias Åhrén, *Indigenous Peoples’ Status in the International Legal System* (Oxford ; Portland, Or: Oxford University Press, 2016).

⁹² Fernando R. Tesón, *The Theory of Self-Determination* (United Kingdom: Cambridge University Press, 2016), 3.

opponent supports the view of self-determination due to the distinctive factor from the majority in ethnicities for thousands of years.⁹³

Accordingly, the right of self-determination in the UNDRIP in which the group “freely determine their political status and freely pursue their economic, social and cultural development”,⁹⁴ could be interpreted to separate from the nation-state of Indonesia, and the case of Timor-Leste that successfully conducted self-determination and became an independent state,⁹⁵ became a precedent for the Indonesian disintegrate of its nationhood. The struggle for self-determination has also emerged in West Papua to seek independence from Indonesia. Consequently, this provision becomes crucial for the government to implement within their national laws.

Nevertheless, the frightened of self-determination that might occur in the disintegration of such a state is unnecessary. Article 46 para (1) of the UNDRIP has blocked the effort of indigenous in reclaiming their territorial politically or declaring independence from their host state. The UNDRIP remarks:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair,

⁹³ Tesón, 3.

⁹⁴ See General Assembly UN, ‘United Nations Declaration on the Rights of Indigenous Peoples’, 61/178 of 20 December 2006 § (2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. Article 3

⁹⁵ Ian Martin Vice President and Alexander Mayer-Rieckh, ‘The United Nations and East Timor: From Self-Determination to State-Building’, *International Peacekeeping* 12, no. 1 (1 March 2005): 125–45, <https://doi.org/10.1080/1353331042000286595>.

totally or in part, the territorial integrity or political unity of sovereign and independent States.

Additionally, Article 4 of the UNDRIP also insists that the right of self-determination refers to indigenous peoples' autonomy regarding internal and local affairs instead of external affairs. This provision states:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.⁹⁶

Likewise, the term “peoples” in ILO 169 also does not mean indigenous peoples have the right to self-determination as provided in Article 1 of ICCPR and ICECSR. Article 1 Para 3 of the ILO Convention acknowledges that “the use of the term peoples in this Convention shall not be construed as having any implication as regards the rights which may attach to the term under international law.” It signifies that the concept of ‘peoples’ within ILO 169 limits rights to manage internal affairs merely. It means the term “peoples” under ILO 169 merely focused on being treated equally instead of having the right to seek independence. Dean and Levi assert that the Convention only provides cultural rights but does not provide the first principle of peoples' political rights – the right to secession from the host States.⁹⁷ Hence, the indigenous activists believe that the ratification of ILO 169 and the adoption of the UNDRIP into national

⁹⁶ United Nations, ‘United Nations Declaration on the Rights of Indigenous Peoples’, Pub. L. No. A/RES/61/295 (2007), http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Article 4

⁹⁷ Dean and Levi, *At the Risk of Being Heard*, 33.

law would considerably strengthen indigenous peoples' position without placing the government at a disadvantage.

The further debate about the concept of indigenous and its legal consequence regarding the land rights that were traditionally occupied. Article 14 para 1 of the ILO treaty has obligated the signatory member to recognise and protect indigenous land ownership that is traditionally occupied. The Article stated:

(1) The rights of ownership and possession of the peoples concerned over the lands they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect: (2) Governments shall take steps as necessary to identify the lands the peoples concerned traditionally occupy and to guarantee adequate protection of their rights of ownership and possession: (3) An adequate procedure shall be established within the national legal system to resolve land claims by the people concerned.⁹⁸

This provision not only requires the signatory members to recognise the traditionally occupied land of indigenous peoples but also the state has to apply a particular measurement and policy to protect the land owned by the peoples. In contrast, the Indonesian constitution claims, "The State controls all lands, water and space within the territory of Indonesia."⁹⁹ In addition, land and forest are

⁹⁸ ILO, 'Convention C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)'. Article 14 Para 1-3

⁹⁹ Indonesia, Indonesian Constitutional Law. See Article 33 Para 3

the most critical resources for the Indonesian economic development program.¹⁰⁰ As a result, the government shall secure all land under its sovereignty, including that claimed by indigenous to boost the national economy. The leading national program on land was granted uncultivated land under land concession rights for mining and planting for private sectors, including foreign investors. This economic policy has caused prolonged conflicts across regions in Indonesia. The conflict caused material losses and loss of life for indigenous peoples who defended their ancestral land from expropriation by the state.¹⁰¹ The contest for land and forest resources between national economic development purposes and the rights of indigenous peoples has made the government rejects ratification of the ILO169 into its national legal system.

Indigenous land expropriation in Indonesia has occurred in many parts of the country. In Borneo Island, for example, the Dayak communities have criticised the state's policies regarding the discrimination not only to their identity but also to their ancestral land and territories. Schiller noted, based on her interview with the executive secretary of the Dayak 'Indigenous Peoples' association (*Persatuan Dayak Kalimantan Timur*, PDKT), the secretary remarked that:

¹⁰⁰ Adam D. Tyson, *Decentralization and Adat Revivalism in Indonesia: The Politics of Becoming Indigenous*, *Rethinking Southeast Asia* 9 (London; New York: Routledge, 2010), 5.

¹⁰¹ Herman Hidayat, *Forest Resources Management in Indonesia (1968-2004)* (New York, NY: Springer Berlin Heidelberg, 2015); Anton Lucas and Carol Warren, *Land for the People: The State and Agrarian Conflict in Indonesia* (USA: Ohio University Press, 2013); Kathryn Robinson, 'Mining, Land and Community Rights in Indonesia', in *Land & Development in Indonesia: Searching for the People's Sovereignty*, ed. John F. McCarthy and Kathryn May Robinson, *Indonesia Update Series* (Singapore: ISEAS-Yusof Ishak Institute, 2016); Tyson, *Decentralization and Adat Revivalism in Indonesia*.

Dayaks have been ignored. The Dutch had a policy of divide and conquer, but in the New Order, with all of its centralisation, the situation was just as bad. Our people have colonised us Dayaks – although it is unfortunate to say this, you know it is true. However, do not believe any reports that Dayaks want to be free (from Indonesia) or that we are not unified. We want to be free from ignorance and free from being ignored...¹⁰²

For indigenous, lands are not merely the source of their livelihood but also their cultural identities. According to Gilbert, the land rights of indigenous peoples have to be viewed as an expression of identity and heritage of the peoples, and thus the recognition of the land is essential to ensure indigenous people's cultural survival.¹⁰³ This right, as insisted by Gilbert, has become the concern of international law, either from the human rights perspective or on the specific instrument UNDRIP that has recognised specific indigenous peoples' rights.¹⁰⁴ Finally, the interpretation of the 'Indigenous Peoples' within the UNDRIP to the context of Indonesia is applicable due to the similarities in the current experiences, such as the groups that have been discriminated to their identity, culture, and property.

CONCLUSION

The discourse on indigenous peoples has been widely debated for several decades. However, the lack of clarity on the definition of

¹⁰² Anne Schiller, 'Activism and Identities in an East Kalimantan Dayak Organization', *The Journal of Asian Studies* 66, no. 1 (February 2007): 63–95, <https://doi.org/10.1017/S002191180700006X>.

¹⁰³ Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors. Second Revised Edition* (The Hague: BRILL, 2016).

¹⁰⁴ Gilbert, xviii.

indigenous peoples among international scholars in formulating a universal definition has led host countries around the world to oppose the ILO Convention and UNDRIP. In the Indonesian context, the definition of indigenous people has also been defined in various terms, including *Masyarakat Hukum Adat* (Adat law communities), *Masyarakat Adat* (Adat communities), *Pribumi* (Indigenous people), *Masyarakat Tradisional* (Traditional communities), *Orang Suku* (Tribal people), *Suku Terpencil* (Remote tribes), and so on. All these terms are interchangeable for the indigenous peoples of Indonesia. Nevertheless, Article 8 of the UNDRIP has mentioned that indigenous peoples have the right to self-identify on the basis of their specific characteristics. The UNDRIP has also insisted that indigenous peoples have rights to the lands they have traditionally occupied. Article 26 of the Declaration affirms that indigenous peoples have the right to the lands, territories and resources they have historically owned, occupied, used or acquired. But the Indonesian government has rejected this norm, arguing that any land that cannot be legally proven under the agrarian law is controlled by the state. As a result, their traditional land rights were often expropriated by the state and granted to third parties. In this particular case, there is an urgent need to develop specific legislation for indigenous peoples in Indonesia that is in line with the concepts and principles of international law. This measure is crucial for the effective protection of their natural rights.

REFERENCES

Affairs, United Nations Department of Economic and Social, and United Nations. *State of the World's Indigenous Peoples*. USA: United Nations Publications, 2009.

- Åhrén, Mattias. *Indigenous Peoples' Status in the International Legal System*. Oxford: Portland, Or: Oxford University Press, 2016.
- Akhmad Muslih. 'Legal Political Thought of Christian Snouck Hurgronje in Indonesia Legal System Development'. *South East Asia Journal of Contemporary Business, Economics and Law* 10, no. 4 (August 2016): 7–11.
- Allen, John. *Apartheid South Africa: An Insider's View of the Origin and Effects of Separate Development*. New York, NY: iUniverse, Inc, 2005.
- AMAN. 'Profil Aliansi Masyarakat Adat Nusantara (AMAN)'. Tentang Aman, 2001. <http://www.aman.or.id/profil-aliansi-masyarakat-adat-nusantara/>.
- Amend, Allison. *Hispanic-American Writers. Multicultural Voices*. New York: Chelsea House, 2010.
- Ariel Heryanto. 'Ethnic Identities and Erasure Chinese Indonesians in Public Culture'. In *Southeast Asian Identities: Culture and the Politics of Representation in Indonesia, Malaysia, Singapore, and Thailand*, edited by Joel S. Kahn. London ; New York: I.B.Tauris, 1998.
- Arizona, Yence, and Erasmus Cahyadi. 'The Revival of Indigenous Peoples: Contestations over a Special Legislation on Masyarakat Adat'. In *Adat and Indigeneity in Indonesia: Culture and Entitlements between Heteronomy and Self-Ascription*, edited by Brigitta Hauser-Schäublin. Göttingen Studies in Cultural Property 7. Göttingen: Univ.-Verl. Göttingen, 2013.
- Arthur Schiller. 'Native Customary Law in the Netherlands East Indies'. *Pacific Affairs, University of British Columbia* 9, no. 2 (June 1936): 254–63. www.jstor.org/stable/2751411.
- Aspinall, Edward. *Islam and Nation: Separatist Rebellion in Aceh, Indonesia*. United Kingdom: Stanford University Press, 2009.
- Aspinall, Edward. 'Place and Displacement in the Aceh Conflict'. In *Conflict, Violence, and Displacement in Indonesia*, edited by Eva-Lotta E. Hedman. USA: Cornell University Press, 2018.

- Ballard, John R. *Triumph of Self-Determination: Operation Stabilise and United Nations Peacemaking in East Timor*. USA: Greenwood Publishing Group, 2008.
- bedner, adriaan. 'Indonesian Land Law: Integration at Last? And for Whom?' In *Land and Development in Indonesia: Searching for the People's Sovereignty*, edited by John F. McCarthy and Kathryn Robinson. Singapore: ISEAS-Yusof Ishak Institute, 2016.
- Benedict R. O'G. Anderson. 'Old State, New Society: Indonesia's New Order in Comparative Historical Perspective'. *The Journal of Asian Studies* 42, no. 3 (1983): 477–96. <https://doi.org/10.2307/2055514>.
- Berg, L. W. C. van den. *De beginselen van het Mohammedaansche recht ...* Batavia: Ernst & Company, 1878.
- Bourchier, David. 'Positivism and Romanticism in Indonesian Legal Thought'. In *Indonesia, Law and Society*, edited by Timothy Lindsey, 2nd ed. Leichhardt, N.S.W., Australia: [Singapore]: Federation Press ; Distributed by ISEAS in Asia, 2008.
- C. Fasseur. 'Colonial Dilemma: Van Vollenhoven and the Struggle between Adat Law and Western Law in Indonesia'. In *The Revival of Tradition in Indonesian Politics*, edited by Jamie Davidson and David Henley. New York: Routledge, 2007.
- Christoph Antons. 'Ethnicity, Law and Development in Southeast Asia'. In *Reading Asia: New Research in Asian Studies*, edited by Frans Husken Huskin and Dick van der Meij. London ; New York: Routledge Curzon, 2004.
- Chua, Christian. *Chinese Big Business in Indonesia: The State of Capital*. London ; New York: Routledge, 2008.
- Coates, Kenneth. *A Global History of Indigenous Peoples: Struggle and Survival*. Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2004.
- David Henley and Jamie S. Davidson. 'Radical Conservatism - the Protean Politics of Adat'. In *The Revival of Tradition in Indonesia Politics: The Deployment of Adat from Colonialism to Indigenism*. New York: Routledge, 2007.

- Dean, Bartholomew, and Jerome M. Levi. *At the Risk of Being Heard: Identity, Indigenous Rights, and Postcolonial States*. USA: University of Michigan Press, 2003.
- ECOSOC. 'Draft U.N. Declaration on the Rights of Indigenous Peoples UN Doc.E/CN.4/Sub.2/1994/2/Add.1 -', 1994.
- Elson, R. E. *The Idea of Indonesia: A History*. Cambridge, UK; New York: Cambridge University Press, 2008.
- Fahmi, Chairul. 'The Dutch Colonial Economic's Policy on Natives Land Property of Indonesia'. *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah (PJKIHdS)* 5, no. 2 (2020): 105. <https://doi.org/10.22373/petita.v5i2.99>.
- Fahmi, Chairul. 'The Snouck Hurgronje's Doctrine in Conquering the Holy Revolts of Acehnese Natives'. *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 10, no. 2 (20 December 2021): 248–73. <https://doi.org/10.31291/hn.v10i2.628>.
- Fahmi, Chairul, and Muhammad Siddiq Armia. 'Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms'. *Journal of Southeast Asian Human Rights* 6 (2022).
- Fitzmaurice, Malgosia. 'The Question of Indigenous Peoples' Rights: A Time for Reappraisal?' In *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, edited by Duncan French. Cambridge: Cambridge University Press, 2013.
- Gilbert, Jérémie. *Indigenous Peoples' Land Rights under International Law: From Victims to Actors. Second Revised Edition*. The Hague: BRILL, 2016.
- Hallaq, Wael B. *An Introduction to Islamic Law*. United Kingdom: Cambridge University Press, 2009.
- Hidayat, Herman. *Forest Resources Management in Indonesia (1968-2004)*. New York, NY: Springer Berlin Heidelberg, 2015.
- Higgins, Noelle. *Regulating the Use of Force in Wars of National Liberation: The Need for a New Regime: A Study of the South Moluccas and Aceh*. The Netherlands: BRILL, 2009.
- Hooker, M. B. *Adat Law in Modern Indonesia*. England: Oxford University Press, 2008.

- Hurgronje, Christian Snouck. *The Achehnese*. Vol. I. Leiden: E.J.Brill, 1906.
- ILO, UN. 'Convention C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)', 27 June 1989. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.
- Indonesia, Presiden. 'Instruksi Presiden No.26 Tahun 1998 Tentang Menghentikan Penggunaan Istilah Pribumi Dan Non-Pribumi', 30 November 1998. <http://itjen.kemenag.go.id/sirandang/peraturan/155-26-instruksi-presiden-nomor-26-tahun-1998-tentang-mengentikan-penggunaan-istilah-pribumi-dan-non>.
- Indonesia, Republic. Indonesian Constitutional Law, Pub. L. No. 1945 (1945).
- IWGIA. 'Indigenous Peoples in Indonesia'. Accessed 2 September 2018. <https://www.iwgia.org/en/indonesia>.
- IWGIA, AIPP, and Forum-Asia. 'ASEAN'S Indigenous Peoples', 2006.
- Jemma, Purdey. 'Anti-Chinee Violence and Transitions in Indonesia: June 1998-October 1999'. In *Chinese Indonesians: Remembering, Distorting, Forgetting*, edited by Tim Lindsey and Helen Pausacker. Singapore: Institute of Southeast Asian Studies, 2005.
- Jose R. Martinez Cobo. 'Study of the Problem of Discrimination Against Indigenous Populations'. United Nations Economic and Social Council, 30 July 1981. http://www.un.org/esa/socdev/unpfii/documents/MCS_i_en.pdf.
- Kapoor, D., and E. Shizha. *Indigenous Knowledge and Learning in Asia/Pacific and Africa: Perspectives on Development, Education, and Culture*. United Kingdom: Springer, 2010.
- Kimura, Ehito. *Political Change and Territoriality in Indonesia: Provincial Proliferation*. London & New York: Routledge, 2013.
- Klenner, Hermann. 'Savigny's Research Program of the Historical School of Law and Its Intellectual Impact in 19th Century Berlin'. *The American Journal of Comparative Law* 37, no. 1 (1989): 67–80. <https://doi.org/10.2307/840441>.

- La Ode, M. D. *Trilogi Pribumisme: Resolusi Konflik Pribumi Dengan Non Pribumi Di Berbagai Belahan Dunia*. Jakarta: Komunitas Ilmu Pertahanan Indonesia, 2018.
- Lev, Daniel S. 'Colonial Law and the Genesis of the Indonesian State', Indonesia'. In *Law and Society in East Asia*, edited by Christoph Antons, 57–74. London and New York: Routledge, 2017.
- Lightfoot, Sheryl. *Global Indigenous Politics: A Subtle Revolution*. England and New York: Routledge, 2016.
- Lucas, Anton, and Carol Warren. *Land for the People: The State and Agrarian Conflict in Indonesia*. USA: Ohio University Press, 2013.
- Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. London: Routledge, 2013.
- Mahkamah Konstitusi, Ringkasan Putusan Mahkamah Konstitusi Nomor 31/PUU-V/2007, 31/PUU-V/2007 § 3 (2008).
- Massier, Ab. *The Voice of the Law in Transition: Indonesian Jurists and Their Languages, 1915-2000*. Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde 235. Leiden: KITLV Press, 2008.
- Matsuno, Akihisa. 'The 30 September Movement and Its Aftermath in Bali, October - December 1965'. In *The Indonesian Genocide of 1965: Causes, Dynamics and Legacies*, edited by Katharine McGregor, Jess Melvin, and Annie Pohlman. Germany: Springer, 2018.
- Max Gluckman. 'Adat Law in Indonesia'. *Journal of Comparative Legislation and International Law* 31, no. 3–4 (1949): 61.
- Moniaga, Sandra. 'Emerging Indigenous Peoples Movement in Indonesia | ヒューライツ大阪'. *Asia-Pacific Human Rights Information Center*, June 2004, 36 edition. <https://www.hurights.or.jp/archives/focus/section2/2004/06/emerging-indigenous-peoples-movement-in-indonesia.html>.
- Mustari Pide, A.Suriyaman. *Hukum Adat Dahulu, Kini, Dan Akan Datang*. Jakarta: Prenada Media, 2017.
- Muzayyin, Arif Hulwan. 'Inpres Habibie Larang Istilah Pribumi, Anies Tak Melek Aturan'. *nasional*, 17 October 2017. <https://www.cnnindonesia.com/nasional/20171017084917-32->

- 248920/inpres-habibie-larang-istilah-pribumi-anies-tak-melek-aturan.
- Nurlaelawati, Euis. *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*. Amsterdam: Amsterdam University Press, 2010.
- Office, International Labour. *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual*. Geneva: International Labour Organization, 2003.
- Perera, Jayantha, and Asian Development Bank, eds. *Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia*. Mandaluyong City, Metro Manila, Philippines: Asian Development Bank, 2009.
- Pinto, Paulo Jorge De Sousa. *The Portuguese and the Straits of Melaka, 1575-1619: Power, Trade and Diplomacy*. Singapore: NUS Press, 2012.
- Presiden Republik Indonesia. Undang-Undang Republik Indonesia tentang Warga Negara dan Penduduk Negara, Pub. L. No. No.3 Tahun 1946 (1946). <http://www.dpr.go.id/dokjdi/document/uu/816.pdf>.
- President, Ian Martin Vice, and Alexander Mayer-Rieckh. 'The United Nations and East Timor: From Self-Determination to State-Building'. *International Peacekeeping* 12, no. 1 (1 March 2005): 125–45. <https://doi.org/10.1080/1353331042000286595>.
- Purdey, Jemma. *Anti-Chinese Violence in Indonesia: 1996 - 99*. Hawaii: University of Hawaii Press, 2006.
- Reid, Anthony. *A History of Southeast Asia: Critical Crossroads*. United Kingdom: John Wiley & Sons, 2015.
- Reid, Anthony. *Verandah of Violence: The Background to the Aceh Problem*. Singapore: NUS Press, 2006.
- Renteln, Alison Dundes, and Alan Dundes. *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*. Univ of Wisconsin Press, 1995.
- Republik Indonesia, Presiden. Rancangan Undang-Undang tentang Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat (2019). <http://ditjenpp.kemenkumham.go.id/pembahasan->

ruu/63-rancangan-peraturan/rancangan-peraturan-pemerintah/2453-rancangan-undang-undang-tentang-pengakuan-dan-perlindungan-hak-masyarakat-hukum-adat.html.

- Robinson, Kathryn. 'Mining, Land and Community Rights in Indonesia'. In *Land & Development in Indonesia: Searching for the People's Sovereignty*, edited by John F. McCarthy and Kathryn May Robinson. Indonesia Update Series. Singapore: ISEAS-Yusof Ishak Institute, 2016.
- Rosy Antons-Sutanto and Christoph Antons. 'The Construction of Ethnicity in Colonial Law and Its Legacy: The Example of the Peranakan Chinese in Indonesia'. In *Routledge Handbook of Asian Law*, 389–416. London New York: Routledge, 2017.
- Samson, Colin, and Carlos Gigoux. *Indigenous Peoples and Colonialism: Global Perspectives*. Cambridge: Polity Press, 2017.
- Schiller, Anne. 'Activism and Identities in an East Kalimantan Dayak Organization'. *The Journal of Asian Studies* 66, no. 1 (February 2007): 63–95. <https://doi.org/10.1017/S002191180700006X>.
- Siringoringo, Jakob, and Mambor Victor. 'The Indigenous World 2021: Indonesia - IWGIA - International Work Group for Indigenous Affairs', 18 March 2021. <https://www.iwgia.org/en/indonesia/4224-iw-2021-indonesia.html>.
- Tan, Mely G. *Etnis Tionghoa Di Indonesia: Kumpulan Tulisan*. Jakarta: Yayasan Obor Indonesia, 2008.
- Tesón, Fernando R. *The Theory of Self-Determination*. United Kingdom: Cambridge University Press, 2016.
- Tyson, Adam D. *Decentralization and Adat Revivalism in Indonesia: The Politics of Becoming Indigenous: Rethinking Southeast Asia* 9. London New York: Routledge, 2010.
- UN, General Assembly. United Nations Declaration on the Rights of Indigenous Peoples, 61/178 of 20 December 2006 § (2007). https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

- United Nations. United Nations Declaration on the Rights of Indigenous Peoples, Pub. L. No. A/RES/61/295 (2007). http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- Vollenhoven, Cornelis van, and J. F. Holleman. *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht van Nederlandsch-Indië (Vol. 1, 1918, Vol. 2, 1931)*. Koninklijk Instituut Voor Taal-, Land- En Volkenkunde <Leiden>: Translation Series 20. The Hague: Nijhoff, 1981.
- Wardana, IG. 'Access to Justice for Indigenous Peoples In International Law'. *Indonesian Journal of International Law* 9, no. 2 (2 January 2012): 309–25. <https://doi.org/10.17304/ijil.vol9.2.349>.
- William H. Frederick and Robert L. Worden. 'Indonesia: Country Profile'. In *Indonesia: Issues, Historical Background and Bibliography*, edited by William C. Younce. New York: Nova Publishers, 2001.
- Willmott, Donald Earl. *The National Status of the Chinese in Indonesia 1900-1958*. Jakarta Indonesia: Equinox Publishing, 2009.
- Ziegenhain, Patrick. 'The Aceh Conflict During the New Order and the Following Democratization Process'. In *Aceh: History, Politics and Culture*, edited by Arndt Graf, Susanne Schroter, and Edwin Wieringa. Singapore: Institute of Southeast Asian Studies, 2010.

*“If you are not
indigenous, you are an
immigrant.”*

Abhijit Naskar

Tum Dunya Tek Millet:

Greatest Country on Earth is Earth

Acknowledgment

Authors would like to thank to all parties involved on this research, especially to the Department of International Economic and Environmental Law and librarians of Institute of International and European Law of Gottingen University, Department of Islamic Economic Law, Universitas Islam Negeri Ar-Raniry Banda Aceh Indonesia.

Declaration of Conflicting Statements

The author(s) stated that this work is original and has not been previously published in another journal or publication. The author(s) also declared that there is no conflict of interest in the publication of this article.

Funding Statement

None

Open Data Statement

All data and information in this article were available without any restriction

Reproducibility Statement

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