Indonesia

The Indonesian term '*adat*' means 'custom' or 'tradition' and brings forth thoughts of order and harmony.

In recent years, however, the same term has become associated with activism, protest and violence, especially in the movement to champion the rights of indigenous peoples (Davidson et al., 2010).

The indigenous peoples' movement in Indonesia emerged as a response for the accumulation of government negligence through the years, from the issuance of Forestry Basic Laws and Mining Basic Laws in 1967 to the policy on foreign capital investment in 1968 that drove many indigenous peoples away from their land.

In 1999, Aliansi Masyarakat Adat Nusantara (AMAN)/National Alliance of Indigenous Peoples emerged to defend the rights of marginalized indigenous peoples. AMAN stated that, "If the state does not recognize us, then we do not recognize the state" (AMAN, 1999 as cited in Davidson and Henley, 2007).

The movement continues to gather steam, especially following the victory of AMAN and two other IP groups against the use of the phrase 'customary forest' – referring to the ancestral forests of indigenous peoples – as 'state forest'

Condensed from *Scoping Study of Indonesia Indigenous Peoples* by Jaringan Kerja Pemetaan Partisipatif/ Network for Participatory Mapping (JKPP). For more details of the study, contact: erwin_tea@yahoo.com or jkpp@indo.net.id.

that gives the national government superior authority over the land.

More significant victories followed with the House of Representatives now preparing the draft of the Act on the Recognition and Protection of IPs Rights.

But despite these emerging opportunities, indigenous peoples of Indonesia are still struggling to secure full legal recognition.

JKPP notes that, as of December 2013, there were 5,263,058.28 hectares (ha) of participatory mapped area. Of the number, 4,973,711.79 ha are under customary rights. Further, if the data of customary land are overlapped with forest area map data, around 81% or 4,050,231.18 ha overlapped with forest area and around 2,637,953.94 ha overlapped with land permits (concessions, mining, palm oil, and industrial tree forest).

Indigenous people of the Kapuas Hulu in West Kalimantan.

Photo by JKPP.

Such competing claims make it extremely difficult to defend and ensure IPs' rights over managed areas that have been taken over by the government through permits. Thus the struggle to get holistic recognition for indigenous peoples continues and to overcome the challenges will require a great deal of time and effective strategies.

Status of IP lands and resource rights

"This earth is enough to feed any number of people as long as it is fairly managed, but it will never be enough to feed two or three greedy people."

This quote describes the feelings of the Kasepuhan Ciptagelar indigenous peoples in West Java about the unabated exploitation of natural resources. (Suganda, 2009).

For indigenous people, abundant natural resources are God's great gifts to any generation and there should not be any shortage if only humans would take care of them properly. Indigenous peoples know how to do just that due to their belief that there must be a harmonious relationship between man and nature.

The Kasepuhan peoples, for example, do not know the term "production forest," which then makes wood a commodity. For them, a forest is a part of life. They take care of it because it balances the climate; it is home to animals and a source of food and water.

The Haratai South Kalimantan indigenous peoples share the same belief and so do the Guguk rural communities in Jambi, Sumatra. They protect the forest because they believe it should be kept healthy for their children and grandchildren.

Their views on nature are part of their cultural worldview that nature must be protected to ensure their sustainability. Culture is not only seen as a mere collection of rituals but also covers practices regarding the territory and living space that should be preserved and maintained.

Practices of indigenous peoples of Indonesia vary but one thing they have in common is their close relationship with Mother Earth. They have taken care of nature's gifts for generations so they can pass on what they have to their children and grandchildren. Sustainability has always been part of their culture, long before environmental activities and the state had even defined the concept of conservation.

Legal framework related to indigenous peoples' land rights

International laws

ILO Convention 169

ILO Convention 169 is a multilateral convention to address indigenous people issues and it is supposed to be legally binding in countries such as Indonesia that have ratified it.

Among its most significant provisions is Article 5 that states that the Convention respects indigenous/indigenous peoples institutions. It said, for example, that "social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals."

Article 6, meanwhile, states that the government should consult with indigenous peoples through

their representatives regarding policies that affect them.

To apply the provision, governments shall, among other directives under this article, "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."

Then there is Article 7 that states that indigenous peoples "shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development."

Also essential is Article 8 which stipulates that "in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws."

UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is an international human rights instrument that set the minimum standard to guarantee indigenous peoples' collective rights.

In 2007, the UN General Assembly adopted the Declaration and, in the same year, Indonesia ratified the UNDRIP as well. The adoption was the result of years of discussion and negotiation between the government and indigenous people.

The declaration emphasized that indigenous people are equal with other people, despite

"During the Dutch colonial period, inidgenous peoples' rights in Indonesia were actually recognized."

the difference in rights recognition, in seeing themselves, and in the way of obtaining respect.

The UN Declaration includes 24 preamble paragraphs and 46 articles that mention and explain international human rights of indigenous peoples. Some are vital in relation to land tenure, area and resources; that indigenous people should not be detached from their land and area; and that the State should provide legal recognition and protection over IPs' land, area and resources.

The recognition must be implemented with full respect to custom, tradition and land tenure of the indigenous people. Also that indigenous people and each individual own the right not to be a victim of culture annihilation and destruction.

The Declaration is not a legally binding instrument, but it emphasizes the rights in international human rights agreements. Most UN member countries agreed to the content of the Declaration. Thus, the people of a state can employ the Declaration to request the government to fulfill its obligation in recognizing and protecting indigenous peoples' rights as stated in the articles.

National laws, policies, programs, structures, and mechanisms

During the Dutch colonial period, indigenous peoples' rights in Indonesia were actually recognized. In 1829, Article 11 of the *Algemeene*

"Recognition of indigenous peoples' rights over the land was severely eroded by policies on foreign and local investment laid down in the late 1960s to accelerate economic growth in Indonesia."

Bepalingen van Wetgeving (AB) said that customary law would be followed, along with institutions and community customs, as long as these were not contrary to the general principles of justice.

The Dutch East Indies government also regulated land rights, initially restricting the leasing of lands belong to indigenous peoples.

However, after the enactment of *Agrarische Wet* on April 9, 1870, investors from the Netherlands forced the government to take all the lands. Eventually, the Dutch government imposed *Agrarische Besluit* on July 20, 1870, which meant that customary land rights or *hak ulayat* of indigenous peoples were no longer in place and automatically owned by the government.

The passage of the Basic Agrarian Law (BAL) in 1960 provided some relief because it recognized the existence of indigenous communities, particularly in Articles 3 and 5.

Article 3 describes the rights of indigenous and tribal peoples over customary land, while Article 5 describes that the agrarian law that applies to the earth, water and air space is customary law, to the extent that it is not contrary to national and state interests.

There is recognition of the ownership and control over customary lands by indigenous communities and that third parties should secure *recognitie* – or the temporary transfer of customary land rights – each time they use customary lands.

Unfortunately, the tenure system as written in the BAL is very different from the tenure systems that exist in indigenous peoples' communities. BAL recognizes many kinds of rights except communal rights on *hak ulayat*.

Recognition of indigenous peoples' rights over the land was severely eroded by policies on foreign and local investment laid down in the late 1960s to accelerate economic growth in Indonesia. Following the issuance of these policies, the Indonesian government under the New Order regime issued two prominent sectoral policies with grave effects on indigenous peoples and their right to land.

One of these is the *Undang-undang Pokok Kehutanan (UUPK)* or Basic Forestry Law (BFL) No. 5 of 1967 that defined 143 million hectares (ha) of land or about 70% of Indonesia's land as state forests and that all of the resources therein belong to the state.

Also issued was Government Regulation No. 21 of 1970 on Forest Concessions, which sought to regulate the rights of indigenous communities to take forest products so as not to interfere with forest concessions.

Another major policy issuance was the Basic Mining Law No. 11 of 1967, which considered all excavations in Indonesia as legal and that the

resources belong to Indonesia, thus the state can use these for the people's welfare. Those who own land on which a mining concession was given would also have to allow the mining activity but would be entitled to compensation. This provision thus clearly states that the use of the land must be allowed even though the land has been occupied and used by indigenous peoples.

The government replaced the BFL of 1967 with a new forestry law in 1999 that stipulated new terms, 'state forest' and 'community forest.' The law also created a category of customary law although the dfinition was controversial. It said that "customary forest was state forest in indigenous and tribal peoples' territory," which means that customary forests remained controlled by the state.

This definition was challenged in March 2012, following the court petition of AMAN, the Indigenous People Union of *Kanagarian Kuntu*, *Kampar* district, along with the Indigenous People Union of *Kesepuhan Cisitu*, *Lebak Banten* to review Law No. 41 on Forestry, which provides that all forests within Indonesia and their resources belong to the state.

The test application involved two issues – the existence of customary forests and the recognition of the existence of indigenous peoples. The Constitutional Court ruled, among others, that while the state has full authority over state forest management, its control over customary forests is limited. Importantly, there was confirmation that indigenous peoples are rights owners. In essence, the Constitutional Court emphasized that indigenous peoples indeed have rights and obligations.

Trends

The process of marginalizing Indonesia's indigenous peoples started as early as 1870 when the Dutch government imposed *Agrarische Besluit*, stating that *hak ulayat* of indigenous peoples over their lands were no longer in place in favor of the government.

Accelerating the process were government policies that favored intense agricultural expansion and unabated entry of foreign investors that were attracted to Indonesia's vast land and natural resources, a good portion of which, however, are in lands occupied by indigenous peoples.

The years 1950 to 1975, for example, saw the expansion of agriculture development to forest lands to increase national output. Logging concession permits were likewise granted to companies to further boost the national economy. This expansion picked up pace after the Asian economic crisis of 1997/1998 that saw large-scale land grabbing or the taking over of land – including customary land – for commercial interests such as the establishment of extensive palm oil plantations.

The government facilitated the process by allowing the leasing of state lands to foreign corporations. Unfortunately for the indigenous peoples, part of the land that was dedicated to palm oil plantation expansion was on their land. Palm oil is considered one of Indonesia's major export products.

Based on the data on national plantation areas, the area dedicated to national palm oil plantations as of 2000 was 4,158,079 ha (MoA 2009). In 2012, this increased to 9,560,000 ha (Palm Plantations, 2012).

Based on the allocation of forest use for production in 2010, 97.5% or about 34.3 million ha are managed by private companies. The remaining 2%, or about 678,414 ha, are managed by the community (Resosudarmo et al., 2012).

Of the concession areas for large plantations throughout Indonesia, palm oil plantations accounted for 79% as of 2008 or about 4.5 million ha. Of this total area for palm plantations, 61% are owned by large estates with the rest held by farmer-households (Booth, et, al., 2012).

This unequal distribution is one cause of lingering poverty in Indonesia. Clearly, such government policies that provide control of a large portion of resources by a select few is a major cause of agrarian conflicts today and the continued marginalization of indigenous peoples.

Mining is another sector that has trampled on indigenous peoples' rights. Since 2000, mining activities in Indonesia have increased rapidly, with the contribution of coal and minerals to total government revenue doubling from 3% in 2000 to 6% in 2009 (Resosudarmo, 2012).

In 2007, Indonesia became the world's largest producer and exporter of coal. The sector quickly filled government coffers but unfortunately at the expense of increasing conflict over land (US Commercial services, 2007 as cited in Resosudarmo 2012.

The pace of growth of large-scale agricultural production will likely accelerate even more with the continued implementation of the Master Plan for the Acceleration and Expansion of the Indonesian Economy (MP3EI), issued in 2011 by the Coordinating Minister of the Economy.

The MP3EI is supposed to be the blueprint for the Indonesian economy from 2011 to 2025, but is also regarded as a systemic process of large-scale land grabbing with the state as a principal facilitator.

This policy is described as one way of accelerating Indonesia's economic growth. But for indigenous peoples, MP3EI is an acceleration of the systematic exclusion process that has long hounded them.

Key actors who promote/ impede IPs' land rights

There are many government agencies involved in land policy in Indonesia.

Among these is the Ministry of Forestry, which, however, has declared that it would not move on indigenous people's concerns if there is no response or demand from the region or province.

The Ministry also requires local regulations or decrees from the Governor or Regents on the status of indigenous territories and indigenous people's including the official map delineating the coverage of so-called indigenous territories.

Then there is the Ministry of the Interior, which if it acts positively on concerns of indigenous peoples, can actually assign customary territory.

The Ministry of Environment initiated the implementation of the Indigenous and Tribal Peoples' strengthening through: an inventory of Indigenous and Tribal Peoples, determination of indigenous and tribal peoples and environmental wisdom owned, and then strengthening of indigenous and tribal peoples' capacity through natural resource-based creative businesses.

Key opportunities and strategies to advance indigenous peoples' customary rights

The decision of the Constitutional Court to remove the phrase "customary forest as state forest" from the Forestry Act No. 41/1999 and replace it with "customary forest is forest located inside indigenous peoples' area" is a big victory in the campaign to get indigenous peoples' land rights recognized. Such a decision provides some room for indigenous peoples to get recognition for their rights over the land where they live and with which they have close cultural ties.

Realizing that more has to be done, the IP community continues to work hard for the passage of an Act that recognizes and protects IP rights.

Also providing a ray of hope is the Indonesian Constitutional Court Decision No.45/PUU-IX/2011 on forest area. It pushed the government to accelerate the forest area establishment processes.

Likewise cheered was the issuance of the One Map Policy to come up with integrated spatial data from different stakeholders including indigenous communities. Through this policy, community data will be included in the base maps to be integrated into the One Map.

In line with this policy, indigenous peoples and AMAN in particular, together with JKPP, stepped up participatory mapping in IP areas.

JKPP notes that, as of December 2013, the participatory mapped area covered 5,263,058.28 ha. Of the number, 4,973,711.79 ha are under customary right. Further, if the data of customary land are overlapped with forest area map data,

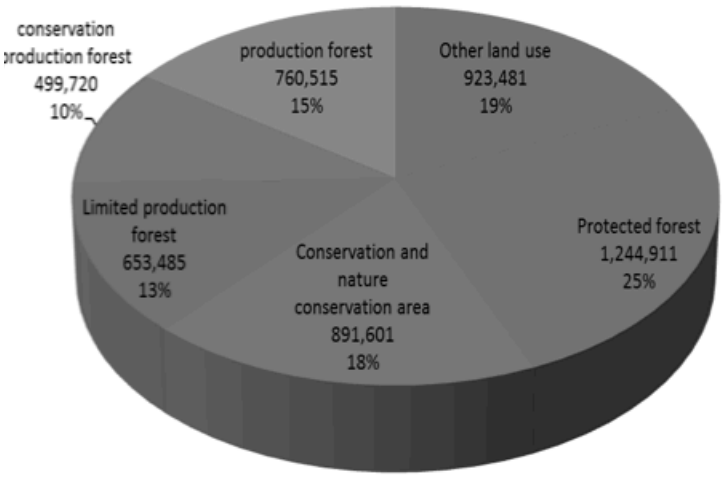

Figure 1. Land uses within the indigenous territory (JKPP.2013)

approximately 81% or 4,050,231.18 ha forest area are located inside customary land.

It means that only 19% of the area is left for the IPs to control as their customary areas.

It is also worth noting that close to half of the customary area is covered by permits given to the forestry, mining and palm oil sectors (Widodo, 2014).

The major challenge left following the spread and acceleration of participatory mapping is the recognition of those maps by the government.

Another problem still faced today in the establishment of forest areas and in solving the overlap in Land Cultivation Rights Titles is the need for matching spatial information that can be the common basis for argument of the different stakeholders.

There is also difficulty in getting the participatory mapping of customary areas inputted in the *Jaringan Data Spasial Nasional* (JSDN) or the National Spatial Data Network. Thus, to accelerate the process of recognizing customary

areas of indigenous peoples, Presidential Decree No.85/2007 that paved the way for the JSDN should be withdrawn and replaced with the Geospatial Information Act No. 4/2011.

This Geospatial Information Act states that people have the right to produce thematic maps or geospatial information. In this way, a customary area participatory map can be taken as a thematic map and thus becomes a vital reference in managing Indonesian forests.

Another approach to getting indigenous peoples' areas recognized at the national level is going through the Indigenous People and Community Conserved Territory and Area (ICCAs). These ICCAs are composed of IP organizations, community-based organizations and civil organizations that support indigenous communities. They get support from the ICCA Consortium, an international association dedicated to promoting the appropriate recognition and support to ICCAs.

During a 2013 workshop in East Kalimantan, the importance of winning legal recognition of the existence of indigenous peoples and their areas was reiterated. Thus, every requirement and procedure to obtain it must be secured.

Such legal recognition is encouraged in the form of provincial government regulations, forest management certifications, village/*kampong* regulations and decision letters from the Ministry of Forestry.

It was also agreed that participatory mapping/documentation should be continued to accelerate recognition, especially on the issue of people-based natural resources.

Meanwhile, efforts to strengthen areas managed by indigenous peoples in Indonesia have emerged in the last decade in the political process of natural resources management.

One of them is the AMAN initiative to encourage the development of regulation on IP management areas at the national and regional levels.

At the national level, the Indonesian House of Representatives is preparing the draft Act on Recognition and Protection of IP Rights. The draft cannot be separated from the political efforts of IPs in the whole country to attain the constitutional recognition and protection that have not been provided by the government.

Parallel efforts for regulation and recognition of indigenous peoples' land rights are also happening at the regional level.

Lebak, Kampar, Malinau Regency in North Kalimantan Province have taken initiatives to give recognition and protection to indigenous peoples.

The Malinau Regency, for example, has issued a regional regulation to legalize IPs' areas. Through the Malinau Regional House of Representatives, IPs Groups and AMAN's initiatives, Regional Regulation No.10/2012 on Recognition and Protection of IPs Rights in Malinau Regency was issued at the end of 2012.

The Regional Regulation contains:

1. the principle in recognizing and protecting IPs' rights
2. instituting the position of IPs and their rights of origin
3. IPs' rights over land, area and resources
4. rights in development, spirituality and culture, environment, autonomy, and rights to exercise their customary law and court

5. the process and form of legal recognition for IPs started from the IP identification and verification process, including their rights, with the stakeholders who assist the process ensuring that there are recognition and protection procedures that promote IPs
6. the form of government responsibility in developing and protecting IP existence, the rights fulfillment and the strengthening of IPs identity, assistance for IPs in defending their customary rights, both through litigation and non-litigation processes, and
7. government support in the form of facilities and funding for the efforts to recognize and protect customary rights.

To strengthen the regional regulation on the Protection of IPs Rights, AMAN has proposed two regional regulation drafts to the Malinau Regency House of Representative, again as part of the effort to engage government institutions to officially recognize and advance the rights of indigenous peoples.

Similar efforts can be replicated in other local governments to contribute to the fight for recognition of indigenous peoples' rights over their land. ■

References:

Basic Forestry Law No. 5/1967. *Undang-Undang No. 5/1967 tentang Ketentuan-Ketentuan Pokok Kehutanan*. May 1967.

Basic Mining Law No. 11/1967. *Undang Undang No. 11/1967 tentang Ketentuan-Ketentuan Pokok Pertambangan).* November 1967.

Booth, A., Manning, C., and Thee, K. W. (Eds). (2012). Land, livelihood, the economy, and the environment in Indonesia : essays in honour of Joan Hardjono. Jakarta: Yayasan Pustaka Obor Indonesia.

Davidson, J. and Henley, D. (2007). Introduction: radical conservatism – the protean politics of adat. In *The revival of tradition in indonesian politics: The deployment of adat from colonialism to indigenism.* USA: Routledge.

Davidson, J., Henley, D., and Moniaga, S. (Eds). (2010). *Adat dalam Politik Indonesia.* Jakarta: Yayasan Pustaka Obor Jakarta & KITLV Jakarta

ILO Convention No. 169. *Indigenous and Tribal Peoples Convention, 1989 (No, 169).* June 27, 1989.

Ministry of Agriculture (MoA) Republic of Indonesia, 2009.

Resosudarmo, B., Resosudarmo, I. A., and Subiman, N. (2012). *Forest land use dynamics in Indonesia.* [Working Paper]. Canberra, Australia: Australian National University (ANU).

Suganda, K. I. (2009). The Ciptagelar indigenous community, West Java: Developing a bargaining position over customary forest. In *Forest for the future: Indigenous forest management in a changing world.* Jakarta: AMAT and Down to Earth.

United Nations (UN). (2008). *United Nations Declaration on the Rights of Indigenous Peoples.* Retrieved from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

Wet algemeene bepalingen. *Wet van 15 mei 1829, houdende algemeene bepalingen der wetgeving van het Koningrijk (English Law from 15 may 1829, holding general decrees from the legislation of the Kingdom).* May 15, 1829.

Widodo K. (2014). *Hutan Adat dalam Tumpukan Penguasaan Hutan*. Kertas Posisi. JKPP.

For the complete list of references, please contact the authors of this study as indicated at the beginning of this article.