

EDITORIAL

THE REVIVAL OF INDIGENOUS IDENTITY IN INDONESIA

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Indonesia's recognition, or lack thereof, of the status of indigenous peoples has led to the depiction of a nation of frequent repression and criminalization. Recognition of the status of indigenous people to have their rights be protected allows them to be able to have a standing when problems that the dominant sector of the state government in which they reside start making decisions that negatively affect them. However, due to the fact that Indonesia's entire population at the time of colonization remained the same, the government of Indonesia is of the view that the concept of indigenous peoples is not applicable in Indonesia as all Indonesians, with the exception of the ethnic Chinese, are indigenous and thus are entitled to the same rights. This raises a complex issue since there are more groups beyond those identified by the Ministry who self-identify themselves or are considered as indigenous people. Yet, with the absence of a clear definition, it prevented the clear understanding of the peoples to whom legal protection would apply to.

What frequently occurs is the violation of indigenous peoples' land rights. Because of the vague definition, very few indigenous peoples have gained official recognition. The lack of recognition of the status of indigenous peoples does not impose on the government the laws that they also must take into account when trekking into indigenous peoples' territories. It gives the government the liberty to arbitrarily declare any forest, for instance, as 'state forest' and do with it what they want, whether that is for infrastructure, or other things on their agenda. Lack of legal recognition denies respect and protection of indigenous peoples' rights to their land and natural resources, which is more often than not, is a link to their cultural, social and economic development.

In 2014, KOMNAS HAM launched the final report of a "*National inquiry on the Rights of Indigenous Peoples to their Territories in Forest Zone.*" It shows 40 selected cases from across Indonesia, through data and information gathering, study and examination of cases, public hearings and dialogues with the Government and company officials, of individual and collective rights of indigenous peoples violated with women and children put in the most vulnerable conditions. The report includes a set of immediate actions and policy recommendations for the Indonesian President, House of Representatives, Ministry of Environment and Forestry and other concerned agencies, including a security force which was responded with lack of action taken for implementation of the recommendations. It only displays significant internal conflicts fostered by companies and governments in order to take advantage of community divisions.

Moreover, the Committee on the Elimination of Racial Discrimination ('**CERD**') has repeatedly written to the government of Indonesia on four representative cases of violations of indigenous rights reported to the Committee between 2009 and 2015. These include violations of indigenous rights over their traditional lands, among others, for example is the implementation of Kalimantan Border Oil Palm Mega Project, the implementation of procedures for reducing emissions within the frame of UN Framework Convention for Climate Change ('**UNFCCC**'), and many other cases related to land. However, the Indonesian Government has not responded to any of these early warnings from the CERD. The violations to indigenous peoples' rights also arise out in the matter of National Human Rights Institution. The objectives of Indonesia's National Human Rights Institutions ('**Komnas HAM**') and

Cooperation with Indigenous Peoples is to protect the rights of indigenous people. However, up until the year 2016, reports show that in 40 selected cases, individual and collective rights of indigenous peoples were violated, with indigenous women and children put in the most vulnerable conditions. The report noted that all cases also contain significant internal conflicts fostered by companies and governments in order to take advantage of community division.

National laws such as the Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and Indonesia's Legislative MPR Decree No. X/2001 on Agrarian Reform referred to the indigenous people as *masyarakat adat*. The consequences of such referral are associated with only implicit recognition of rights that they have but could not be protected.

It is arguable that in light of the Constitutional Court Decision No. 35/PUU-X/2012 of May 2013, Indonesia has moved forward toward the affirmation of the constitutional right of indigenous peoples to their lands and territories. However, even after said Constitutional Court decision was issued, violations still ensued, causing the number of land disputes cases to continue to grow. The violations of indigenous peoples' rights are not limited to land disputes but also, in regards to KOMNAS HAM, discrimination, and protection. This fact identified the need for an independent institution with adequate mandate and resources to resolve land conflicts. Reports show that cases regarding indigenous peoples' protection and rights are often unresolved due to laws and regulations contrasting the 2013 Constitutional Court Decision.

It was only in December 2016 and October 2017 that marked the first implementation of the 2013 Constitutional ruling in which Current President Joko Widodo has granted *hutan adat* (customary forest) ownership certificates, removing customary forests from state control as well as the formalization of local peoples' ownership. This has set a becoming precedent as previous legal

frameworks for indigenous people have not been responsive to the circumstances that the indigenous peoples have been left with at the hand of legal enforcements and other members of the civil society. It is not to be negated though, in spite of this development, the scope of land that the President has covered is still too little and it is thus, premature to call successful implementation.

In the international sphere, although problems still often arise, the indigenous community movement has come a long way. The Indigenous and Tribal Peoples Convention ('ILO Convention 169') has placed greater emphasis on indigenous peoples and culture, moving from an assimilationist approach to placing greater emphasis for special measures in recognizing and respecting the relationship indigenous peoples have with their lands or territories. While acknowledging the fact that though Indonesia supports the promotion and protection of indigenous people worldwide, it does not support the application of indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples ('UNDRIP') in the country. Indonesia has not taken into consideration the definition of indigenous and tribal peoples set out in ILO Convention 169 and does not envisage ratifying the instrument. Reports suggest lack of coordination among state institutions as one of the main problems for formal recognition of indigenous communities and their customary rights.

This indicates why positive laws are currently ineffective. Though Indonesia supported a number of recommendations, no action has been taken for implementation of these recommendations. One of the key recommendations in the Komnas HAM inquiry report is for the Indonesian President to create an independent institution, which could be the first step towards reconciliation of differences between the indigenous people and other members of civil society. However, the Government has been agonizingly slow in the formation of the Task Force, as set forth in the recommendation. The Bill on Recognition

and Protection of Indigenous Peoples' Rights, a key recommendation, include provisions on the protection of the rights of indigenous peoples in Indonesia, which covers the rights over land, territories and resources, rights to religion and belief, as well as other rights of protection and recognition of indigenous people. This process of implementation with specific dates for publication and discussion on the draft law is also yet to be certain. While the State failed to list the Bill as a legislative priority, reports show that indigenous peoples continue to face restrictions to exercise their rights until today. For instance, contrary to one of the guaranteed fundamental human rights in the Indonesian Constitution, the recommendation has not been implemented fully, if at all, to enforce the freedom of religion and equality. Indigenous peoples continue to face restrictions to exercise their indigenous religion and belief as laws and practices remain discriminatory against persons and families. This instance is exemplified in the *Sedulur Sikep* children facing discrimination during religion lesson in school by being forced to learn Islam.

Pursuant to the recommendation, Indonesia should take immediate steps to strengthen the mandate and functioning of KOMNAS HAM, including provisions of adequate resources for KOMNAS HAM to effectively deal with cases of Human Rights abuses and its engagement with civil society, law enforcement agencies, officers, and personnel.

Besides immediate ratification of the Bill on Recognition and Protection of Indigenous Peoples' Rights to create an independent institution to deal with the recognition, respect, protection and promotion of the rights of indigenous peoples, the government should also strengthen coordination among state institutions for formal recognition of indigenous communities and their customary rights.

Therefore, Indonesia should, without further delay, promote and facilitate the adoption of necessary local laws and guidelines in other relevant provinces to recognize and protect the rights of

indigenous peoples through enhancement of coordination among relevant state institutions for recognition of indigenous peoples and their rights to be in line with UNDRIP and other international legal instruments. Not only should Indonesia be signatory to the treaties regarding Indigenous People, but also monitor the effective implementation of those laws in its territories. The Indonesian government has a lot to do to make up for what the UN Special Rapporteur on the Rights of Indigenous People Victoria Tauli-Corpuz described as its “[lack of] commitment to indigenous peoples.”