



# Mission Sparks

Academic Journal of Asia Region

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16th Edition

THE BEAM IN OUR EYE:  
DISCRIMINATION AND INDIGENOUS  
PEOPLES' RIGHTS



BALIKKAN HAK-HAK  
**TANAH**  
**ADAT**  
**KAMI!!!**  
♥ ♥ ♥



# Mission Sparks

Academic Journal of Asia Region

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## EDITORIAL NOTE

Dear Readers,

The Mission Sparks 16th edition is brought to you with the theme “The Beam in Our Eye: Discrimination and Indigenous People’s Right”.

United Nations Permanent Forum on Indigenous Issues in their Factsheet mentioned: *“Indigenous peoples often have much in common with other neglected segments of societies, i.e. lack of political representation and participation, economic marginalization and poverty, lack of access to social services and discrimination. Despite their cultural differences, the diverse indigenous peoples share common problems also related to the protection of their rights. They strive for recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources.”* ([https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf))

In regard to the injustices and discrimination facing by Indigenous People, we bring to you the articles written by scholars and activist from Asia region.

**Bestian Simangunsong** brought the need of Eco-Theology perspective in Indonesian Context and the call for churches in Indonesia to be the agent of change. He underlined the obligation of churches in Indonesia to show solidarity with the Indigenous People and not to lose the prophetic voice for repentance and Interfaith collaboration.

In the context of the Philippine, **Marcela Lopez** highlighted the history where the church used to become a tool of oppression during colonial era. She encouraged the church of the present context to reflect on that matter and not to involve in any form of colonization but be an agent of denouncing any such act.

**Marko Mahin** elaborated the discrimination against indigenous Dayak communities in Central Kalimantan especially Dayak Tomun

in Laman Kinipan. He argued that the development policies of the government caused injustices and discrimination to the Indigenous Peoples in Laman Kinipan. Marko Mahin appealed that the Church must actively fight for justice for indigenous peoples in the area.

An activist, **Rocky Pasaribu**, shared the experiences of people in Nagasaribu Onana Harbangan in North-Sumatera who lose their lands by companies under the guise of investment and economic development. They are also criminalized because of defending their rights. Rocky Pasaribu argued that the indigenous communities experience discrimination and injustices because of lack government and societies support.

The critics to the state control elaborated by **Tarida Hernawati Elisabeth** on the Struggle of the Indigenous People of Mentawai. She underlined that State control over land and forest in Mentawai has made Mentawai people lose access and control over their natural resources and destroys the meaning and symbolic relationship of Mentawai people with their forest.

Enjoy Reading!  
Dr. Dyah Ayu Krismawati – Chief Editor



# **DISCRIMINATION AND INDIGENOUS PEOPLE'S RIGHTS: PERSPECTIVE OF ECOLOGICAL THEOLOGY IN THE INDONESIAN CONTEXT**

*Bestian Simangunsong*

## **INTRODUCTION**

The existence of indigenous peoples is an integral part of the global community. Indigenous peoples live for generations in a geographical area or communal land. They share a common cultural identity, language, spirituality, and a spirit of living in harmony with nature. Indigenous peoples comprise about 370 million people spread across various countries. That number is equivalent to 5% of the world's population. Indonesia is known as a pluralistic country, having a vast territory, stretching from Sabang to Merauke. The people in each region have diverse characteristics and cultural wealth. This diversity is united in the national motto of *Bhinneka Tunggal Ika*. Indonesian law recognises that all people have rights and obligations as citizens.

Indonesia consists of various ethnic groups spread across the archipelago. Indonesian society recognises several terms that refer to the definition of Indigenous people. The terms are interpreted as indigenous people, customary law communities, indigenous communities, traditional communities, etc. According to the Declaration on the Rights of Indigenous Peoples (2007), indigenous communities in Indonesia can be categorised as Indigenous peoples. In addition to this declaration, there is an International Covenant on Economic, Social, and Cultural Rights that regulates the economic, social, and cultural rights of the global community including indi-



genous peoples. This means that the three rights in the covenant guarantee the existence of indigenous peoples. Chairul Fahmi asked 2 questions in identifying indigenous people in the context of rights in Indonesia. 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.<sup>1</sup>

The rights of indigenous peoples in the Indonesian context are regulated in various regulations, such as: Firstly, the 1945 Constitution (UUD 1945) article 18, point B, paragraph 2: ‘The state recognizes and respects customary law units and their traditional rights as long as they are still alive and in accordance with the development and principles of the Unitary Republic of Indonesia as regulated by law.’ Second, the 1945 Constitution chapter X, A on Human Rights, article 28 paragraph 3 reads: ‘the cultural identity and rights of traditional communities shall be respected in harmony with the development of the times and civilization.’ Third, Law No. 39 of 1999 on Human Rights, article 6 paragraphs 1-2, which reads: “In the context of upholding human rights, the differences and needs of customary law communities must be considered and protected by law, society and government. The cultural identity of indigenous peoples, including the right to customary land, is protected, in line with the times.” The existence of indigenous peoples in Indonesia has been recognized after the reformation. The amendment to the 1945 Constitution, article 18.B, paragraph 2 contains regulations on the rights of indigenous peoples to manage their natural resources. Article 28 paragraph 3 talks about cultural identity and traditional rights.

These regulations are not enough to guarantee and protect indigenous people in Indonesia. Indigenous peoples are currently awaiting the ratification of the Draft Law on Indigenous Peoples. Sri Endah Kinasih expressed her concern that the draft law on indigenous peoples has not yet been passed. She explained that the state should protect and maintain the existence of indigenous

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<sup>1</sup> Chairul Fahmi, “Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People’s Rights,” *Journal of Indonesia Legal Studies* 8, no. 2 (2023): 1019–64.

peoples. Indonesia's indigenous population is decreasing. It needs to be realized that not everything is for state development, there is local wisdom that must be preserved.<sup>2</sup> Observers of indigenous peoples encourage this bill to be passed immediately. Indigenous communities in various regions and in Jakarta held demonstrations. They demanded that the government ratifies the draft law.

Discussions about indigenous peoples are always related to their right to land as cultural identity. Indigenous people are proven to have a harmonious relationship with the universe. Anisa Eka Pratiwi stated that around 80% of biodiversity thrives in indigenous peoples' territories.<sup>3</sup> This means that maintaining the existence of indigenous people is a hope for the preservation of the earth. Therefore, discrimination and seizure of indigenous people's territories is a loss, which can threaten the preservation of nature. Indeed, the threat of climate destruction such as: severe ecological damage, small islands potentially sinking, clean water difficulties, crop failure, and health is a call for all to do ecological repentance.<sup>4</sup> The church is expected to contribute to the fight for ecological justice through ecological restoration actions at the local, national and global levels. The involvement of the church together with indigenous people is expected to design various ecological restoration programs in order to realize sustainable life.

The author captures several previous studies to show the novelty of this research. First, Renemsongka Ozukum pointed out that the ecological spirituality of indigenous people needs to be promoted towards sustainable livelihoods.<sup>5</sup> Second, Siegfried Wiessner proposed an idea about efforts to realise the cultural rights of indigenous people from a law enforcement perspective. He emphasised that the achievements and challenges of realising the rights of indigenous

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<sup>2</sup> Muhammad Naqsyah Riwanisa, "14 Tahun RUU Masyarakat Adat Tak Disahkan, Begini Tanggapan Pakar UNAIR," Unairnews, accessed October 30, 2024, <https://unair.ac.id/14-tahun-ruu-masyarakat-adat-tak-disahkan-begini-tanggapan-pakar-unair/>.

<sup>3</sup> Anisa Eka Pratiwi, "Eksistensi Masyarakat Adat Di Tengah Globalisasi," Jurnal Civics Media Kajian Kewarganeraan 15, no. 1 (2018): 95-102.

<sup>4</sup> Pope Francis, *Encyclical Letter Laudato Si On Care for Common Home* (Bangalore: Claretian Publications, 2015).

<sup>5</sup> Renemsongka Ozukum, "Toward a Viable Living in the Context of Climate Justice: Indigenous Community-Based Seed Conservation for Agro-Biodiversity and Food Security," *Journal of Asian Women's Resources Centre for Culture and Theology* 38, no. June and December Combined Issue (2019): 21-26.

people will continue.<sup>6</sup> Third, Melinda Siahaan explored the theology of *marorot* (nurturing) that was born from the struggles of indigenous people, especially women in Tanah Batak. An ecofeminist theology orientated towards Batak women's efforts to reclaim water, land and forests from ecological predators. This theology of care emerges from the perspective of Batak women so that nature is not destroyed.<sup>7</sup>

The novelty of this study lies in showing the struggle to restore the rights of indigenous people as an effort to preserve the universe. Indigenous people have ecological virtues that can be implemented in carrying out ecological restoration. According to Renemsongka Ozukum: "Indigenous people around the globe, despite their different geographical locations and landscapes share/possess similar knowledge systems and practices that speak directly to the agenda of the Sustainable Development Goals (SDGs)."<sup>8</sup>

## **INDIGENOUS PEOPLES AS THE VICTIMS OF DISCRIMINATION**

Economic growth is often the main consideration in natural resource management. Rulers and corporations take dominant actions against indigenous peoples and nature. The sustainability of the earth and indigenous peoples who have lived in certain areas for generations is often ignored. Natural resource management should make nature itself and local communities the stakeholders. Such policies leave indigenous peoples as victims, as they are forced to leave their ancestral lands where they were born, work and live.

Nature is colonized by environmental predators, through development projects that destroy natural resources and the indigenous peoples who inhabit them. Women and the poor are especially vulnerable to severe ecological damage.<sup>9</sup> A.C. Thomas

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<sup>6</sup> Siegfried Wiessner, "The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges," *The European Journal of International Law* 22, no. 1 (2011): 121–40.

<sup>7</sup> Melinda Siahaan, "Marorot: Alam Mengasuh Kehidupan Teologi Ekofeminis Dan Desa Sipituhuta Dalam Memperjuangkan Tombak Haminjon," in *Relasi Perempuan Dan Alam Ekofeminis Dari Konteks Indonesia*, ed. Asnath N. Natar dan Andreas Kristianto (Jakarta: BPK Gunung Mulia, 2022), 1–21.

<sup>8</sup> Ozukum, "Toward a Viable Living in the Context of Climate Justice: Indigenous Community-Based Seed Conservation for Agro-Biodiversity and Food Security."

<sup>9</sup> Bestian Simangunsong, "Dunamis : Jurnal Teologi Dan Pendidikan Kristiani

argued: “The development projects destroyed women’s productivity by removing the land, water, and forests from their management and control.<sup>10</sup> Some groups of Indigenous people in Indonesia are struggling because their rights to life and customary land have been taken away, and they have become marginalised in their own land. Indigenous people with all their limitations continue to fight for their rights.

The author will narrate three cases of land conflicts involving indigenous peoples in Indonesia. First, the criminalization of indigenous land fighters in Tanah Batak. Sorbatua Siallagan (65 years old) is the head of the Ompu Umbak Siallagan indigenous community in Simalungun, North Sumatra. He was charged with allegedly destroying and controlling land in the concession area of PT Toba Pulp Lestari. Sorbatua Siallagan was sentenced by the Simalungan District Court to 2 years in prison and a fine of Rp. 1 billion in lieu of 6 months imprisonment.<sup>11</sup> Second, the Sunda Wiwitan indigenous people in Kuningan were evicted from their own customary land. Rachel Farakhiah argues that the land conflicts affecting the Sunda Wiwitan indigenous people in West Java add to the long list of state discrimination against indigenous peoples. The court sees conflicts and land disputes in the frame of colonial inheritance law, not in the frame of local customary law. This means that the state’s recognition of customary law is still not serious.<sup>12</sup> The third is the forest land conflict between the provincial government of East Nusa Tenggara (NTT) and indigenous communities in Pubabu, South Amanuban, NTT. Pubabu forest is an area of customary forest or forbidden forest with an area of 2,674.4 hectares. This forest area was later designated as a state forest with a protected forest function managed by the Forestry Service in the framework of the National Forest and Land

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Kemitraan Human Dan Non-Human : Kebajikan Ekologis Dalam Pelestarian Rumah Kita Bersama” 7, no. 1 (2022): 366–83, <https://doi.org/10.30648/dun.v7i1.875>.

<sup>10</sup> A.C. Thomas, “Ecological Degradation and Woman,” *Journal of Asian Women’s Resources Centre for Culture and Theology* 38, no. June & December Combined Issue (2019): 4–14.

<sup>11</sup> Diva Lufiana Putri, “Sorbatua Siallagan Divonis 2 Tahun Penjara, Disebut Bentuk Kriminalisasi Pejuang Tanah Adat,” *Kompas.com*, 2024, <https://www.kompas.com/tren/read/2024/08/15/143000265/sorbatua-siallagan-divonis-2-tahun-penjara-disebut-bentuk-kriminalisasi?page=all>.

<sup>12</sup> Rachel Farakhiah, “Eksistensi Masyarakat Adat Tergerus Oleh Krbutuhan Zaman,” *Kolaborasi Resolusi Konflik* 1, no. 1 (2019): 44–51.

Rehabilitation Movement Program which began in 2007. The conflict started in 1982 and continues to this day. According to Amanda Stivani Emilia Tanabeth, the Kio indigenous community maintains the existence of this forest as a place for wildlife and a buffer for the lives of people living around the forest, including to maintain the availability of clean water. Unfortunately, the Kio indigenous people still experience repressive actions from law enforcement officials. National Human Rights Commission and the Indonesian Forum for the Environment (Komnas HAM and Walhi) NTT have participated in assisting the indigenous community, but until now the conflict is still ongoing.<sup>13</sup>

Another concern about Indigenous people in NTT was explained by Siti Maemunah that the presence of corporations that make forests as industrial forest objects, adds to the long list of discrimination against indigenous peoples in Indonesia. The story of the Mollo community in East Nusa Tenggara shows resistance to industrial forest plantation concessions, because the forestry service discriminates against the Mollo indigenous people as customary owners, by depriving them of land rights, and changing the access structure that drastically degrades their welfare.<sup>14</sup> These three conflicts and land disputes in the three regions show the process of discrimination and marginalization experienced by indigenous peoples in Indonesia.

The long list of discrimination and the lack of protection for the rights of indigenous people in Indonesia has worsened the portrait of deforestation in Indonesia. Deforestation is a form of discrimination against indigenous people. Deforestation threatens the survival of indigenous people. Most indigenous peoples have developed highly specialized livelihood strategies and occupations, which are adapted to the conditions of their traditional territories and are thus highly dependent on access to lands, territories and resources.<sup>15</sup> Discrimination and the lack of protection of indigenous

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<sup>13</sup> Amanda Stivani Emilia Tanabeth, "Relasi Perempuan Dengan Alam Analisis Kerusakan Ekologi Di NTT Dalam Perspektif Ekofeminisme Vandana Shiva," in *Relasi Perempuan dan Alam Ekofeminis Dari Konteks Indonesia* (Jakarta: BPK Gunung Mulia, 2022), 297–318.

<sup>14</sup> Siti Maemunah, *Mollo, Pembangunan dan Perubahan Iklim* (Jakarta: Penerbit Buku Kompas, 2015), xiii.

<sup>15</sup> ILO, *Indigenous and Tribal Peoples' Rights in Practice* (Geneva: International Labour Standards Departement, 2009).

peoples' rights are out of sync with current global concerns about severe ecological damage. Climate change, which threatens the sustainability of the earth as a common home, is further disrupted by the destruction of indigenous people's forests. This fact should build awareness that deforestation as a climate justice issue must be addressed. This condition is the responsibility of all parties. The church needs to show its seriousness through ecological restoration studies and actions to answer the problems surrounding the rate of climate change.

## **THE STRUGGLE FOR LAND RIGHTS AS A DISCOURSE ON ECOLOGICAL THEOLOGY**

The earth is not doing well. The earth as our common home is being destructively exploited. Indeed, the earth is screaming because of the suffering inflicted upon it.<sup>16</sup> This reality inspires the author to show that the damaged and destroyed earth is a picture of God's suffering face. According to Larry L. Rasmussen, God enters into the suffering of creation itself, the suffering of the earth, and ecological degradation, winning space for new life.<sup>17</sup> According to Larry L. Rasmussen, God enters into the suffering of creation itself, the suffering of the earth, and ecological degradation, winning space for new life. The discourse of ecological theology is very reliably developed based on these three ideas. Coan Seng Song speaks of a suffering Messiah. It is the suffering Messiah who can bear the suffering of the world and He brings hope.<sup>18</sup> The suffering of the earth is part of the suffering of God. The suffering that makes God the one who gives hope and salvation to the world and everything in it.

Ecological theology is the church's contribution in responding to life-threatening climate change. Emmanuel Gerrit Singgih said an

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<sup>16</sup> Bestian Simangunsong, "Spiritualitas Eco-Kenosis: Mempertemukan Kajian Ekologis Sallie McFague dan Agama Malim dalam Konteks Pemulihan Danau Toba" (Universitas Kristen Duta Wacana, 2021).

<sup>17</sup> Larry L. Rasmussen, *Komunitas Bumi: Etika Bumi, Merawat Bumi Demi Kehidupan yang Berkelanjutan Bagi Segenap Ciptaan* (Jakarta: BPK Gunung Mulia, 2010).

<sup>18</sup> Choan Seng Song, *Allah Yang Turut Menderita* (Jakarta: BPK Gunung Mulia, 2012), 160-164.

ecological theology can encourage humans to love the universe.<sup>19</sup> Living in harmony with nature is a lifestyle that must be practiced for the sake of the earth's sustainability. In order to build awareness and nature-friendly actions, Timothy A. Middleton explains the similarity in structure between ecological suffering and trauma or disease experienced by humans. Jesus Christ bore the ecological trauma and wounds of the world.<sup>20</sup> Middleton's ideas encourage the church to make ecological restoration an integral part of the church's transformative diakonia. Transformative diakonia is driven by the spirit of liberation for the integrity of creation. Liberation for the oppressed is an act of solidarity and the basis of transformative diakonia.

The struggle of indigenous people to reclaim their rights to water, land and customary forests is a proclamation of the gospel to all creation (Mark 16:15). The presence of nature-unfriendly corporations is a form of disregard for their rights. Indigenous people resist and continue to struggle to escape the clutches of ecological predators. The church as an ecological community is expected to participate in the struggle with indigenous people. The church's involvement in restoring the rights of indigenous people is an important agenda in the effort to preserve the universe (Gen. 2:8-25). God gave a cultural mandate for humans to protect and maintain the Garden of Eden. God also calls mankind to preserve the beauty of the earth because God is compassionate towards mankind and through His providence wants to see His creation remain in good condition.

The idea of God's care for the universe is seen through the understanding of the cosmic Christ. Jesus Christ lives with all of creation in harmony. The New Testament shows the risen, glorified, and present Jesus in all creation and the Christ who reconciled all things to himself, both those on earth and those in heaven, after he had made atonement by the cross of Christ (Col. 1:17-19).<sup>21</sup> God's care for the world is the theological inspiration that encourages human beings to behave and act as friends to other creatures.

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<sup>19</sup> Emanuel Gerrit Singgih, *Pengantar Teologi Ekologi* (Jakarta: BPK Gunung Mulia, 2021), 1-5.

<sup>20</sup> Timothy A. Middleton, "Christic Witnessing: A Practical Response to Ecological Trauma," *Practical Theologu* 15, no. 5 (2022): 420-31.

<sup>21</sup> Francis, *Encyclical Letter Laudato Si On Care for Common Home*.

Humans have failed in their duty to preserve the earth. Advances in science and technology have led to radical changes in the world. Anthropocentrism is a form of change that gives birth to exploitative-destructive behavior towards the universe. Lynn White accuses the anthropocentric understanding that grew and developed in the Christian tradition of contributing to ecological damage, therefore Christianity is responsible for ecological damage.<sup>22</sup> Oinike Natalia Harefa said God and the universe are not separate. Unfortunately, today nature is no longer seen as something divine so humans feel free to exploit nature.<sup>23</sup> Consumerist anthropocentrism and hedonistic behavior encourage humans to view nature as instrumental and ignore its intrinsic value. This understanding gives birth to oppressive actions without compassion towards the universe.

The church needs to develop ecological theology ideas that are friendly to the earth. How can theological ideas be constructed in the context of discriminatory treatment and deprivation of indigenous people's rights? Harefa offers three important things about church proclamation in the context of earth preservation, namely: Firstly, proclamation with a sense of crisis. Hope in the midst of an ecological crisis calls the church to anticipate the future through the care of the earth. Second, a sense of duty that includes the care of the earth and everything in it. Thirdly, soteriology is no longer understood in an anthropocentric way, because salvation is not only addressed to humans, but also to the universe.<sup>24</sup> Coan Seng Song emphasised that the church is responsible for seeking the fellowship of love in the world.<sup>25</sup> Indeed, God is moved by compassion for all creation and He is always present in the world, because "God's dwelling place is now among the people, and he will dwell with them. They will be his people, and God himself will be with them and be their God" (Rev. 21:3). This text emphasises God's presence in the midst of the earth with all its sufferings and struggles.

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<sup>22</sup> Lynn White, *The Historical Roots of Our Ecological Crisis* (New York: Harper and Row Publisher, 1967), 30.

<sup>23</sup> Oinike Natalia Harefa, "Teologi Pengharapan Dan Ekoteologi," in *Bumi, Laut, dan Keselamatan Refleksi- Refleksi Ekoteologi Kontekstual*, ed. Hans A. Harmakaputa (Jakarta: ATI dan BPK Gunung Mulia, 2022), 142-43.

<sup>24</sup> Harefa.

<sup>25</sup> Song, *Allah Yang Turut Menderita*.



## **RESTORATION OF INDIGENOUS PEOPLES' RIGHTS: A CALL TO PUBLIC WITNESS**

Indigenous peoples are being discriminated against and deprived of their customary land rights. These actions not only harm indigenous peoples but increase the rate of global warming that threatens sustainable communities. J.B. Banawiratma explains that ecological justice is closely related to social justice.<sup>26</sup> This means that discrimination and deprivation of indigenous peoples' customary rights is a failure of all elements of society in realising social justice. This condition is a call for all parties in society, especially the church, to show solidarity to liberate them. The church is called to do public witness for the common good. This witness must manifest in the task of proclamation and church teaching that is orientated towards the integrity of creation. Everyone is responsible for making this happen. Community and religious organisations can collaborate to realise the earth as a common home. A willingness to listen to the cries of creation, especially marginalised communities, is needed. Siegfried Wiessner argues that in order to accommodate the aspirations of indigenous peoples, the global community must listen to the demands made by indigenous peoples. Then formulate a response as a form of respect for their demands.<sup>27</sup> Wiessner's ideas encourage individuals and groups to listen to and embrace indigenous peoples.

The church as an agent of change needs to hear the cries and sufferings of indigenous peoples. Indigenous peoples experience various processes of marginalisation and discrimination. Various indigenous communities are treated unfairly, even evicted from their own customary lands. Their customary forests are commoditised and exploited without limits. The earth is destructively exploited,<sup>28</sup> Borrong even asserts that the earth is being managed without ethics

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<sup>26</sup> J.B. Banawiratma, *10 Agenda Pastoral Transformatif: Menuju Pemberdayaan Kaum Miskin dengan Perspektif Adil Gender, HAM, dan Lingkungan* (Yogyakarta: Kanisius, 2002), 76.

<sup>27</sup> Wiessner, "The Cultural Rights of Indegenous Peoples: Achievements and Continuing Challenges."

<sup>28</sup> Simangunsong, Bestian & Aritonang, Hanna & Sembiring, Resmalem & Zebua, Sisga & Nadeak, "Indonesian Eco-Ecclesiology: Defending Earth Against Ecological Damage in Batak Land. *Pharos Journal of Theology.*," *Pharos Journal* 105, no. 1 (2024): 1-13.

and conscience.<sup>29</sup> Humans became the cunning enemy that caused severe ecological damage.<sup>30</sup> Then James A. Nash argued that the ecological crisis was caused by human character.<sup>31</sup> The ideas of these ecologists show that human intervention on the earth has caused ecological imbalances that potentially threaten sustainability.

The church as an individual or communion is called to witness its faith in the midst of the world with all its struggles. Buce Ranboki argues that humans have a liberative responsibility to minimise the rate of destruction of the earth and empathise with poverty. Liberation theology aims to address the oppression of society due to the structural supremacy of political policies that do not favour the poor and nature.<sup>32</sup> Transformative diakonia promoted by the church is a liberation agenda for the oppressed. Josef Widyatmaja said there is no way sustainable development can exist if human beings are threatened.<sup>33</sup> The church needs to provide assistance to indigenous peoples to obtain their rights to their customary lands. Julianus Mojau said that spontaneity in protest is important, because it is not uncommon for indigenous communities to be manipulated for the benefit of certain political elites.<sup>34</sup> That is why any oppressive and discriminatory actions against indigenous people must be stopped.

The restoration of indigenous peoples' land management rights needs to be supported as an effort to protect human rights. Longgene Ginting said that the church needs to take a stronger position in promoting and strengthening human rights issues

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<sup>29</sup> Robert P. Borrong, *Etika Bumi Baru* (Jakarta: BPK Gunung Mulia, 1999).

<sup>30</sup> Sallie McFague, *The Body of God an Ecological Theology* (Minneapolis: Fortress Press, 1993), 3.

<sup>31</sup> James A. Nash, *Loving Nature: Ecological Integrity and Christian Responsibility* (Nashville: Abindon Press, 1991), 89.

<sup>32</sup> Buce Ranboki, "Tangisan Alam, Tangisan Kemiskinan Menyikapi Tren Pembangunan Di NTT yang Berdampak Terhadap Ekologi dan Ekonomi dari Perspektif Pembebasan," in *Bumi, Laut, Dan Keselamatan Refleksi- Refleksi Ekoteologi Kontekstual* (Jakarta: BPK Gunung Mulia dan Asosiasi Teologi Indonesia, 2022), 26.

<sup>33</sup> Yosef Widyatmaja, *Yesus Dan Wong Cilik: Praksis Diakonia Transformatif Dan Teologi Rakyat Di Indonesia* (Jakarta: BPK Gunung Mulia, 2010), 76.

<sup>34</sup> Julianus Mojau, "Tanah Pesisir Pantai, Tubuh Erotis Allah? Pergulatan Komunitas Iman Maritim Bersama Tanah Merdeka Mereka," in *Teologi Tanah Perspektif Kristen Terhadap Ketidakadilan Sosio-Ekologis di Indonesia*, ed. Zakaria J. Ngelow (Jakarta dan Makasar: BPK Gunung Mulia dan Oase Intim, 2022), 111.

caused by climate change.<sup>35</sup> In this sense, the author encourages the church as a sustainable creative community to play its role in encouraging the government to create nature-friendly political policies and indigenous peoples. This means that the church still maintains its emancipatory spirit in fighting for the interests of the people. Freeing indigenous peoples and the universe from the clutches of ecological predators. The church is responsible for building a collective procession for the restoration of the rights of indigenous peoples as a form of witness to its faith in the world. The author ends this article quoting Michael Jackson's song lyrics: "Heal the world, make it a better place for you and for me and entire human race."

## SUMMARY

Indigenous peoples are communities that have lived in a geographical area for generations. Generally, they have ancestors, cultural identity, language, value system, spirituality, and the ability to protect and preserve nature. Indigenous peoples have ecological virtues that can be referred to as a way of living in harmony with nature. Indigenous people have collective and individual rights in fighting for and maintaining the existence of their identity and uniqueness. Discrimination is a reality experienced by indigenous peoples in Indonesia to this day. Forests are interpreted as a source of life for indigenous peoples, but they are often sacrificed and ignored to pursue economic growth and development interests.

Discrimination against indigenous peoples must stop. The rights of indigenous peoples must be restored as they are part of the global community protected by law. The church as a peacemaker is also responsible for realising justice for all creation, especially marginalised groups. Discrimination and the weakening of the rights of indigenous peoples are the field of service of the church. Church solidarity with the struggle for the rights of indigenous peoples can be realised through: First, church teaching that encourages siding with the oppressed. Second, prophetic voices to encourage repentance for perpetrators of oppressive acts against indigenous

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<sup>35</sup> Longgena Ginting, "A Reflection on the Future of UEM: Internationalization on Climate Justice and Te Role of Churches," *Mission Sparks Academic Journal of Asia Region 9*, no. 1 (2021): 26-33.

peoples. Third, interfaith collaboration to fight for social justice and realise the restoration of indigenous people as a public witness.

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# DISCRIMINATION IN THE CHURCH AND INDIGENOUS PEOPLE'S RIGHTS.

*Marcela Sacayle Lopez*

## Introduction

One of the *mambunong* (traditional elder) said, "I can't understand because when Christians grew in number in our place, our big trees are gone. It was so easy for them to cut down the big trees. They just stand in front of huge trees, pray, and then fell them. But when they weren't here, we didn't just do that because there were unseen guardians (*adi-kaila*) watching over them. We would have been in trouble if we had done that." (Anongos Santiban, February 21, 1996)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) although legally non-binding resolution is a commitment of respect by 143 countries who adopted it in the UN General Assembly. These contain a number of provisions for the indigenous peoples on their rights to self-determination, territorial rights, cultural rights, spiritual rights, free prior and informed consent. This shows that the Philippine government who voted for approval of this declaration is aware of the set of standards and principles that needs to be applied for the indigenous communities.<sup>1</sup>

The Discrimination among indigenous peoples in the Philippines is relatively not new to our knowledge. Historically, Indigenous peoples have been subject not only to discrimination but as well as marginalization politically, economically and spiritually. The isolation is reflective of their social exclusion within the church itself and the wider society. The reflection of these issues was instigated

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<sup>1</sup> Cf. [https://en.wikipedia.org/wiki/Declaration\\_on\\_the\\_Rights\\_of\\_Indigenous\\_Peoples](https://en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples)



even in the well-known Filipino novels “Noli Mi Tangere” and “El Filibusterismo” by Dr. Jose P. Rizal.

<sup>2</sup>According to KAMP, The Philippines enacted the Indigenous Peoples Rights Act (IPRA) in 1997, an Act recognized by the international community as among the very few progressive laws protecting the rights of indigenous peoples. Despite the enactment of the IPRA, indigenous peoples all over the country continue to be subjected to various forms of human rights violations, as individuals and as collective peoples.

## **UNDERSTANDING THE INDIGENOUS PEOPLES FROM THE WRITER’S SOCIAL CONTEXT**

As one of the Indigenous People from Cordillera, Philippines who came from one of the Igorot tribes and as a pastor who has been mostly assigned in the Local churches in areas of the IPs, the people’s lives and way of survival dependent to land is clearly witnessed. Land is their life, their abode and their source of living. The land is the first thing they see in the morning when they wake up and the last thing they see in the evening before they close their eyes to sleep. Their houses are built around the garden/fields. When one dies, the final resting place is right there within the perimeter of the land that they till. IPs are the stewards of the land. The land is embedded in their life. To drive them away, destroy and abuse the land is an act of violation to their rights and against the will of God who created it.

The Bible teaches, “The Lord God took the man and put him in the Garden of Eden to work it and take care of it” (Gen. 2:15, NIV). The IPs are defenders of the land. They till, protect, preserve and develop the land for the welfare of their family and community. When young people leave for college, they often return back home after graduating. They prefer to return home and work their land as their parents/forefathers did. They are very attached to their legacy. Land is their rightful inheritance from their forefathers. The land is a continuing presence of the ancestors’ life, and tilling of the soil means a provision of their ancestors from the past to the present.

<sup>3</sup>Macliing Dulag said, “what is the most precious thing to man? Life. If

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<sup>2</sup> Cf. <https://upr-info.org/sites/default/files/documents/2013-10/kampurphls132012kalipunannngmgakatutubongmamamayanngpilipinase.pdf>,2

<sup>3</sup> IP Situationer, Cordillera People’s Alliance (CPA) (pp slide 50)

life is threatened, what ought a man do? Resist! ... If we fight, we die honorably. Because we are willing to fight now, our children may live and keep this land; and the land shall become even more precious when nourished by our sweat and blood.” In times of dire financial needs, the land is typically leased or sold to an immediate family member or relative(s). They practice the teachings of the Bible, “The land must not be sold permanently, because the land is mine and you reside in my land as foreigners and strangers” (Lev. 25:23, NIV).

## **INDIGENOUS PEOPLES, COLONIZATION AND CHRISTIANITY IN THE PHILIPPINES**

<sup>4</sup>Indigenous communities, peoples, and nations are those with historical continuity to pre-invasion and pre-colonial societies. They identify as distinct from the dominant sectors of society and are dedicated to the preservation and transmission of their ancestral territories, ethnic identity, and cultural patterns to future generations.

Indigenous people are found in different parts of the world.

<sup>5</sup>There are more than 5,000 different Indigenous Peoples comprising 476 million people—around 6.2% of the global population. They are spread across more than 90 countries in every region and speak more than 4,000 languages. <sup>6</sup>In the Philippines, there are One Hundred Ten (110) identified ethno-linguistic groups located in Sixty-Five (65) of the country’s provinces namely: 61% in Mindanao, 33% in Luzon, 6% in Visayas. They are composed of 12-15 million or 15% of the total population. The collective territory is Five million in the entire country. Before the arrival of the colonizers, small and independent communities had their respective socio-cultural, political, and economic systems corresponding to different stages of development.

**The Moros of Mindanao:** They practice the Feudal system  
(<sup>7</sup>characterized by a hierarchical structure in which land is owned

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<sup>4</sup> Cf. <https://www.google.com/search?q=indigenous+people+meaning&rlz=,> (retrieved 24 October 2024)

<sup>5</sup> Cf. <https://www.amnesty.org/en/what-we-do/indigenous-peoples/> (last retrieved 10.24. 2024)

<sup>6</sup> Cf. <https://www.cpaphils.org/pantatavalan.html,>(last retrieved 10.23.2024)

<sup>7</sup>Cf. <https://www.google.com/search?q=characterized+by+a+hierarchical+structure+in+which+land+,>(last retrieved 10.24.2024)

by a small ruling class and is worked by peasants in exchange for protection and other services).

**The Igorots of the Cordillera:** They lived with the semi-primitive communal in which communism is a way of describing the way of life. Resources and properties are seen as a gift from the Highest unseen spirit (adi-kaila), it should be shared in accordance with the individual's needs; it's the accountability of everyone to take care of the community as well as to the properties that need to be shared to the members of the community.

**The Aetas:** They are the hunter gatherer population. Their customary concepts and practices of land use and land ownership are on "collectivism" and "caretaker of their resources."

The three centuries of <sup>8</sup>Spanish colonial rule resulted in the formation of a distinct majority and minority within the Filipino population. The majority, subjected to similar experiences of exploitation and oppression, gradually integrated into a mainstream culture. The minority, however, resisted integration and preserved their indigenous lifestyles and institutions, evolving into the Indigenous Peoples of the Philippines. Spanish colonization laid the foundation for the Filipino nation. Shared experiences of exploitation and oppression fostered a sense of unity among the colonized population. Factors such as the spread of Christianity, the establishment of a centralized state, and the growth of a local bourgeoisie contributed to the integration of diverse communities and the emergence of Filipino nationalism.

The Spanish colonization had a profound impact on the lives of Filipinos, affecting economic, political, cultural, and spiritual aspects. <sup>9</sup>The Regalian Doctrine, which declared Spanish ownership over the Philippines, dispossessed Indigenous Peoples of their lands and resources. Religion was used to suppress the Natives. <sup>10</sup>The Church, through the Friars, acquired vast tracts of land, further displacing Indigenous communities.

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<sup>8</sup> Cf. <https://www.sciencedirect.com/topics/social-sciences/feudal-society#:~:text=Feudal%20society%20refers%20to%20a,for%20protection%20and%20other%20services> (last retrieved 10.24. 2024).

<sup>9</sup> IP situationer, Cordillera Peoples Alliance (CPA) (pp.slide 17).

<sup>10</sup> Cf. [https://www.classace.io/answers/write-an-essay-about-kasaysayan-ng-friar-lands#google\\_vignette](https://www.classace.io/answers/write-an-essay-about-kasaysayan-ng-friar-lands#google_vignette) (last retrieved 11.12.24).

These injustices, coupled with military expeditions and religious missions, fueled Filipino nationalism and led to various uprisings and revolutions.<sup>11</sup> While Spanish people were intrigued by Indigenous cultures, they often demonized practices that differed from their own beliefs. They documented indigenous clothing and jewelry and studied native languages. However, their primary interest was in spreading Christianity. They viewed language acquisition and learned about the religion of the natives as a tool for religious conversion. The use of the cross not only the sword as part of the colonization has justified the cruelties and unjust treatment.

<sup>12</sup>During the American colonization of the Philippines, Dispossession of land, Institutionalized discrimination, Cultural alienation, Socioeconomic challenges, Armed conflict and Deception and threats had a significant impact in the lives of indigenous peoples. On the spiritual side, Protestantism Christianity was introduced using education as a means to present a new faith orientation of which Filipinos easily embrace it.

<sup>13</sup>Throughout the Japanese occupation in the Philippines, sexual slavery was rampant, economic decline and destruction of capital were the effect of colonization. While, the influence on religion was not remarkable.

## **SUPPRESSION THROUGH CHURCH**

The Church has historically been blended with colonial powers, it has become an instrument of repression. During the period of colonization, the Church was used to inflict religious beliefs, subdue indigenous cultures, and justify the exploitation of the colonizers. This unjustified acts continued in many forms, it includes the control of education, ownership of the land, and the influence of politics. As the Church is moving forward, it struggles on her historical role and the on-going impact to the marginalized communities. This has resulted in the rise and defend for the rights of the Filipino people.

Unfair experiences of the Filipinos and IPs in the Philippines are also similar to other countries, in different manners, like the

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<sup>11</sup> Cf. [https://www.calstatela.edu/sites/default/files/hidden\\_voices.pdf](https://www.calstatela.edu/sites/default/files/hidden_voices.pdf) (last retrieved 11.5.2024), 70.

<sup>12</sup> Cf. [https://www.google.com/search?q=american+colonization+and+the+indigenous+peoples+in+the+philippines&sca\\_esv=](https://www.google.com/search?q=american+colonization+and+the+indigenous+peoples+in+the+philippines&sca_esv=) (last retrieved 11.12.2024).

<sup>13</sup> Cf. [https://www.google.com/search?q=japanese+colonization+in+the+philippines+and+\(last+retrieved+11.12.2024\)](https://www.google.com/search?q=japanese+colonization+in+the+philippines+and+(last+retrieved+11.12.2024)).

stolen generation in Australia and “cultural genocide” in Canada.<sup>14</sup>“In Australia, the Aboriginal and Torres Strait Islander children were taken forcibly from their parents because of assimilation policies. This policy proposed that these children/people should be allowed to “die out” through a process of natural elimination or where possible, assimilated into the white community. This happened in 1910 and 1970s based on the assimilation policies of the governments, churches and welfare bodies.” The same is true with the Canadian experience.<sup>15</sup>The so called “cultural-genocide” in which children were forcibly separated from their families and were sent to government funded, church-run schools with the aim to “kill the Indian in the child” to assimilate them into Canadian culture. Many suffered, malnourished, some did not return back to their parents and many died to the schools where they were kept.

Literally, the colonization in the Philippines is finished but its essence has not been concluded. It shifted to other forms. Everyone should carefully analyze that its concept is still evolving and given flesh by different appearances. Indigenous culture and traditions like indigenous ceremonies, traditional dance, traditional clothe and musical instruments such kalaleng, gangza, bamboo flute, tungatong, sulibao, kullibao were considered a form of paganism and for some an evil practices and not recognized by other churches. The traditional way of healing, unique beliefs and practices existed among IPs even before and after the colonization period is deep-rooted in their connection to nature, spiritual beliefs and ancestral lands but are stigmatized as sorcerers by cultures unfamiliar with their traditions.

The irony is even “some” fundamental churches e.g. Ptr. Apollo Quiboloy, the leader of the Kingdom of Jesus Christ who owns SMNI tv station is instrumental in red-tagging,<sup>16</sup>“On several occasions, SMNI News has been used as a platform to attack journalists and red-tag government critics.” Red-tag government critics are also individual or groups that are IP advocates.

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<sup>14</sup> Cf. <https://australianstogether.org.au/discover-and-learn/our-history/stolen-generations> (last retrieved 11.2. 2024).

<sup>15</sup>Cf. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)01432-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)01432-X/fulltext) (last retrieved 11.4. 2024).

<sup>16</sup> Cf. <https://www.rappler.com/technology/social-media/apollo-quiboloy-shine-media-network-disinformation-attacks-government-critics>. (retrieved 10.26.2024).

“Red-tagging” and other forms of threats and violence to IP activists and defenders by “other para-military groups” could also be a form of colonization in the present context.

<sup>17</sup>“In the Philippines, red-tagging is the labeling of individuals or organizations as communists, subversives, or terrorists, [1] regardless of their actual political beliefs or affiliations. [2] It is a type of harassment and has pernicious effects on its targets. [3] Red-tagging has been practiced by security forces, government officials or shells.” Defending the rights of the IPs against National oppression, non-recognition of the right to ancestral domain and to self-determination is not an act of terrorism.

## **INDIGENOUS PEOPLES AND CURRENT ISSUES**

Notwithstanding their distinctive lifestyle and reverence for the land, Indigenous Peoples around the world are facing many challenges that have come from many years ago until at present. It has existed from historical injustices, ongoing discrimination and the impacts of globalization. Some challenges include things such as: <sup>18</sup>National oppression. National oppression is the State’s historical non-recognition of the right to ancestral domain and to self-determination of Indigenous Peoples. This has resulted in violation of the Indigenous Peoples’ right to ancestral domain and territorial integrity by unjust laws like: <sup>19</sup>Torrens system of land registration (Land Registration Act No. 496 of 1902); Philippine Commission Act No. 178 of 1903 (all unregistered lands became part of public domain); Mining Law of 1905 (Acquisition of public lands by Americans for mining purposes); and Public Land Acts of 1913, 1919, and 1925 (Mindanao and all other fertile lands the State considered unoccupied, unreserved or otherwise unappropriated public lands became available to homesteaders and corporations). This resulted in non-recognition of ancestral land.

<sup>20</sup>The Development Aggression and Militarization is another form of challenge among IPs. This is the imposition of destructive

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<sup>17</sup> Cf. [https://en.wikipedia.org/wiki/Red-tagging\\_in\\_the\\_Philippines](https://en.wikipedia.org/wiki/Red-tagging_in_the_Philippines) (retrieved 10.26.2024).

<sup>18</sup> IP situationer, Cordillera People’s Alliance (CPA) (pp slides 24-30).

<sup>19</sup> IP situationer, CPA (p.19).

<sup>20</sup> IP situationer, Cordillera People’s Alliance (CPA) (pp slides 24-30).

projects accompanied by militarization e.g.: construction of big dams, mining and renewable energy projects. The Government may call it “development”, but it is destructive to the IPs. The presence of the state forces in the areas creates fear in the people and distracts their peaceful way of life. The misrepresentation and subversion of Indigenous Socio-political Systems; Institutionalized Discrimination. IPs are often called “barbaric, uncivilized, “with tails” (referring to the G-string that men wear). The church became instrumental in branding IPs as “un-Christians” if they are not converted to their churches; <sup>21</sup>Commercialization of Culture; Community events like festivals are used to promote culture but also used for profit of the event organizers. Historically, the government’s neglect of basic services (education and health services), has resulted in worsening marginalization, poverty and food insecurity among IPs. It also includes the <sup>22</sup>Attacks on indigenous and environmental rights activists. There were 177 environmental defenders who were killed in 2022 according to Global Witness; <sup>23</sup>while there were 126 recorded cases of extrajudicial killings of leaders and members of IP communities during the administration of Pres. Rodrigo Duterte from 2016 to 2021 according to Panaghiusa.

## **INDIGENOUS PEOPLES AND THEIR RIGHTS**

The Bible teaches that human beings are created in the image of God (Gen. 1:26). “The “image of God” means every human being has the following: 1. Self-transcendence. Every person has the ability to examine him/herself; has the capacity to think, and to decide. This capacity cannot be found in animals; 2. Reflector of the Divine. It means that human beings must reflect the Creator through words and actions, 3. Steward. Being a good steward is to be responsible and accountable to God’s creation (Rev. Luna L. Dingayan). Everyone is equal in the sight of God (Gal. 3:26). This nature is applied to all human beings, having dignity and equal rights regardless of race, age, gender and standpoint in life, free from any form of dehumanization and oppression.

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<sup>21</sup> IP situationer, Cordillera People’s Alliance (CPA) (pp slides 24-30).

<sup>22</sup> Cf. <https://www.amnesty.org/en/what-we-do/indigenous-peoples/>(Last retrived 11.6.2024).

<sup>23</sup> Cf. <https://www.hrw.org/news/2023/01/26/philippines-officials-red-tagging-indigenous-leaders-activists> (last retrieved 11.7.2024)

<sup>24</sup>Since the time of foreign colonizers up to the present, the IPs are continuing in their assertion and the defense of their rights. Leticia Bulatlat, a Kalinga woman leader said, “The generations of my people have nurtured, protected and defended our lands for many centuries now. Our people resisted hundreds of years of colonial rule. We have struggled against those who consider our lands only as a resource base. Today, we continue to fight and struggle against these oppressors. We will not allow our resources to be further exploited. For us, land is life. This land is what kept generations of my people alive. This land is where we are going to die....” The answer to the problem of national oppression of the indigenous peoples in the Philippines is the recognition of their collective right to their territories and to self-determination. The right to self-determination is enshrined in the UN Universal Declaration of Human Rights, the ILO Convention 169, the International Covenant on Civil and Political Rights, the UN Declaration on Indigenous Peoples Rights and other international instruments; For as long as the indigenous peoples’ lives are threatened, their struggles to defend their land and resources will continue, until their collective rights to land and resources and to self-determination are fully recognized and respected.

In the global community, the recognition of the IPs having an equal right like other human beings is stipulated in the resolution that was adopted by the <sup>25</sup>United Nation (UN) during its General Assembly on the 13th of September 2007. The said resolution is composed of 46 Articles indicating the rights and privileges of IPs. The declaration outlines a comprehensive set of rights for Indigenous peoples, including the right to self-determination, the right to their lands, territories, and resources, the right to cultural revitalization, and the right to participate in decision-making processes that affect their lives.

## **THE CHURCH SEEKING FORGIVENESS, BUILDING UNITY AND SOLIDARITY**

The Church, as agent in advancing equal rights and reconciliation, has found her past mistakes regarding IPs. She acknowledged past

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<sup>24</sup> IP situationer, Cordillera Peoples Alliance (CPA) (pp slides 49-51,52).

<sup>25</sup> Cf. [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) (last retrieved 10.23.2024).



wrongdoings and historical injustices and has expressed a desire to rectify them.

<sup>26</sup>After a dialogue done by the Roman Catholic Church with the Indigenous Peoples, the “Joint Statement” from the Dicastery for Culture and the Dicastery for Integral Human Development expressed their thanks with the dialogue, “the Church has acquired a greater awareness of their sufferings, past and present, due to the expropriation of their lands ... as well as the policies of forced assimilation, promoted by the governmental authorities of the time, intended to eliminate their indigenous cultures.” Furthermore, Pope Francis, on his penitential journey to Canada, apologized to the Indigenous People. He also “clearly reaffirms the Catholic Church’s rejection of the colonizing mentality. “In the course of history, the Popes have condemned acts of violence, oppression, social injustice, and slavery, including those committed against indigenous peoples.” It also notes the numerous examples of bishops, priests, women and men religious and lay faithful who gave their lives in defense of the dignity of those peoples.” At the same time, it acknowledges that “many Christians have committed evil acts against indigenous peoples for which recent Popes have asked forgiveness on numerous occasions.” In the said statement, it also recalls “numerous and repeated” declarations of the Church and the Popes in favor of the rights of indigenous peoples, beginning with the 1537 bull *Sublimis Deus* of Paul III, which solemnly declared that indigenous peoples “are by no means to be deprived of their liberty or the possession of their property, even though they be outside the Christian faith; and that they may and should, freely and legitimately, enjoy their liberty and possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.”

Other churches have formally asked apologies to the Indigenous Peoples even on the Protestant side like Anglican Church of Canada. <sup>27</sup>It was a formal apology issued to Indigenous Peoples in 2009, acknowledging the historical harms caused by the Church’s involvement in residential schools and other colonial practices. The apology expressed deep regret for the Church’s role in cultural genocide, forced assimilation, and the abuse of Indigenous children.

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<sup>26</sup> Cf. <https://www.vaticannews.va/en/vatican-city/news/2023-03/vatican-formally-repudiates-doctrine-of-discovery.html> (last retrieved 10.25. 2024).

<sup>27</sup> Cf. [https://caid.ca/church\\_apology.html](https://caid.ca/church_apology.html) (last retrieved 10.25.2024).

It also committed to ongoing reconciliation efforts, including truth-telling, reparations, and the strengthening of relationships with Indigenous communities. And also with the Presbyterian Church of Canada. It <sup>28</sup>has adopted two confessions highlighting the Church's failures and its ongoing commitment to healing and reconciliation with Indigenous peoples. Even the United Church of Canada, she also expressed her apology to the IPs during their 31st General Council in 1986 for being part of the colonization saying, <sup>29</sup>"We tried to make you be like us and in so doing we helped to destroy the vision that made you what you were." In 1988, at the 32nd General Council, the Indigenous church acknowledged the apology, expressing its hope that the church would live into its words.

<sup>30</sup>In the Philippines, the Catholic Bishops Conference (CBCP) through Bishop Sergio Utleg, the Chairman of CBCP Episcopal Commission on Indigenous Peoples, in an article on the CBCP News site on October 14, 2010 stated, "Citing the sins it committed against tribal communities, the Catholic Church begged for forgiveness from the indigenous peoples (IP) and pledged to do everything possible to protect them. The Episcopal Commission on Indigenous Peoples of the Catholic Bishops Conference of the Philippines said the church apologizes for having disrespected other cultures in the past through acts such as the colonization of native peoples. As we continue to welcome IPs into the Catholic community, we ask forgiveness for suppressing their spirit as a people and the moments when we injured their personhood as they took on a new identity as Catholics," Utleg particularly apologized for moments when the Church entered native communities from a position of power, indifferent to their struggles and pains. "We ask forgiveness for moments when we taught Christianity as a religion robed with colonial cultural superiority, instead of sharing it as a religion that calls for a relationship with God and a way of life," he said.

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<sup>28</sup> Cf. <https://caid.ca/PresChuApo1994.pdf> (last retrieved 11.6.2024).

<sup>29</sup> Cf. <https://united-church.ca/social-action/justice-initiatives/reconciliation-and-indigenous-justice/apologies> (last retrieved 11.6.2024).

<sup>30</sup> Cf. <https://www.gmanetwork.com/news/topstories/nation/203362/catholic-church-apologizes-to-indigenous-peoples-for-sins/story> (last retrieved 10.25. 2024).

<sup>31</sup>The Church did not only apologized to Indigenous Peoples but has also taken concrete steps to demonstrate her sincerity. These expressions of apology include:

The designation of Second Sunday of October as Indigenous People's Sunday in Baguio City (Philippines) by the Roman Catholics, and most of their activities in 2010 had a theme: "Healing for Solidarity: Asking for Forgiveness for Sins against Indigenous Peoples" of which a group of IPs accepted the apology.

Other churches, especially in the mainline Protestant churches, have designated October as Indigenous Peoples and Solidarity month and it is celebrated in the whole country. Issues and concerns about Indigenous Peoples are incorporated in the liturgies and sermons as well as in the education, and advocacy Programs. Part of doing her mission is her active participation engaging advocacies on behalf of the plight of the least, the lost and the last as stated in Luke 4:14-16.

Transforming church and society is remarkable in the history of the country. It is imperative for the church as the agent of mission to stand for the oppressed, the voice of the voiceless and defenders of the weak against those powers that be. This challenge must be held tight and embraced by all the "faithful" because as part of the body of Christ, if one part of the body is hurt, the whole body will be affected. The IP's unique expression of spirituality, their deep deep-rooted connection and the defense of the land, vis-a-vis to the difficult challenges they have faced all throughout history until this present time is a very compelling concern that the Church has to take seriously. This kind of deep spirituality is challenging everyone to be in solidarity with them (IPs).

Solidarity does not mean everyone should become an indigenous person literally. It does not only mean adopting their customs, following their way of life nor using their language but it means being with them, journeying with them in the defense of their lands and their rights. They may not worship God using the same name that the contemporary churches call Him, but they worship the same God who created heaven and earth. The demand of the journey to the IPs should be expressed in the respect of their own way of life, giving freedom in expressing their beliefs and traditions without judging them or converting them in the guise of evangelization. Every act

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<sup>31</sup> Cf. <https://www.gmanetwork.com/news/topstories/nation/203362/catholic-church-apologizes-to-indigenous-peoples-for-sins/story> (last retrieved 10.25.2024).

of love extended to them should not be an aim of assimilation of members, nor by converting or baptizing them as members of their church because more members could mean absorption of power, or based on the belief, if they will not be converted into our church “they will not go to heaven.” Rather, any act of solidarity with them should be in consonance with the love of God. To love God is expressed and manifested in the love to our fellow human being; the least, the lost and the last for “whatever we have done to the least of our brethren, we have done it unto God (Mat. 25:40). To love God but discriminate others is a way of using the name of God in vain.

## **CHALLENGE AND CONCLUSION**

Discrimination is the outcome of colonization and the church has played a great role in its implementation instead of being an instrument of hope and peace to the people. It neglect in her ministry to the Indigenous peoples. By preserving practices of discrimination and fail to recognize the innate rights and dignity of the IPs, the church was unfaithful to its mission and fall short to her own teaching and to the greatest commandment which is to love God. To love God is manifested in our love to love to the least of Jesus brethren. The church has failed her mission which is to proclaim good news to the poor, to proclaim freedom for the prisoners and recovery of sight to the blind, setting the oppressed free and to proclaim the year of the Lord’s favor (Luke 4:18–19).

Helping our IP brethren in their quest for recognition for their rights to ancestral domain and self-determination is a challenge to our church. Thus, the church must act accordingly on the IP concerns thru different methods such as: Incorporate a program plan for IPs. Create committee, or person responsible that will ensure its implementation and include in the budget. Education and Awareness. Give stress on the importance of education and awareness-raising programs to promote understanding and respect for Indigenous cultures and their struggles in the defense of their land and rights. Make a curriculum or bible study/Sunday school materials, include in the vacation Bible School materials; Conduct Dialogue with other interfaith sectors: consider building bridges between different religious institutions, sectors and IPs, e.g Ecumenical services, Prayer rallies and dialogues. Advocacy: Talk about the importance of supporting the rights of the IPs and the discriminatory practices

that is challenging them, e.g. skills and leadership training to IP leaders and members, Exposure and community Integration: Conducting an exposure and integration to IP communities helps a lot in understanding and acquiring knowledge on their way of life and on what they are fighting for; Issuing resolutions and petition signings as part of journeying with them in their struggles; Initiate dialogues with IPs to listen to their concerns and learn from them. Consider sanctuary to IP advocates.

The church of the present context should reflect on this matter and should deal with this seriously making sure not to involve herself in any form of colonization, but be an agent of denouncing any such act. <sup>32</sup>“The whole body of Christ, local, national and universal is the witness, the Mission of God’s loving concern here on earth. To live in division is sin. Where there is no unity, the vision is blurred, and the evangelistic task of liberating men from sin is dimmed.”

## ABOUT THE AUTHOR



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<sup>32</sup> UCCP Statements And Resolutions (1948–1990), statement on evangelism, p.94.



# **THE DISCRIMINATION AND INDIGENOUS PEOPLES RIGHTS: A NARRATION FROM THE TOMUN DAYAK IN LAMAN KINIPAN, CENTRAL KALIMANTAN, INDONESIA**

*Marko Mahin*

In this essay, I take the opportunity to speculatively reflect on discrimination against indigenous Dayak communities in Central Kalimantan, Indonesia, specifically the Dayak Tomun living in *Laman Kinipan*. I begin by providing definitions of key terms included in the title of this chapter. These terms can and have been interpreted in different ways, so it is important to clarify what I have in mind. In section 2, I consider how discrimination occurs and affects the lives of the indigenous Dayak Tomun people in *Laman Kinipan*. In section 3, which deals with discrimination against indigenous peoples, I will show what indigenous peoples' rights are being violated and what indigenous peoples are losing. In section 4, I consider how the church can be part of the fight against discrimination. In the final section I offer a brief conclusion.

## DEFINITIONS

### 1. Discrimination

Literally, the word discrimination originally meant “to sort” or “to separate” to “distinguish” on the basis of certain considerations.<sup>1</sup> However, in the future, the word discrimination evolved into a vocabulary to explain “adverse treatment” as a result of the process of sorting, separating, and distinguishing.<sup>2</sup> Finally, discrimination is defined as a treatment, practice, or policy that treats a person or group differently and unfairly on the basis of race, sex, age, religion or belief, color, disability, sexual orientation, and other categories, resulting in harm to a person or group, for example, in the form of restrictions on opportunities and rights available to members of one group but not available to members of another group.<sup>3</sup> Thus, discrimination is not just a distinction, but also includes adverse treatment, unfair treatment, inequality, restrictions on opportunities and rights of certain groups over other groups.

Thomas E. Weisskopf states that the most prominent type of discrimination as a social problem is discrimination perpetrated by members of certain relatively capable and powerful groups in society against members of other relatively less capable and weaker groups in society. The result is that some parties are disadvantaged and others are advantaged.”<sup>4</sup> In this definition, it appears that discrimination is closely related to the practice of domination by superior groups over inferior groups.

In Indonesian legislation, specifically in Law No. 39 of 1999 on Human Rights, Article 1 (3) defines discrimination as

“...any restriction, harassment or exclusion based directly or indirectly on differences between persons with regard

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<sup>1</sup> "Definition of discrimination; Origin". Oxford Dictionaries. Oxford University. Last retrieved November 8, 2024.

<sup>2</sup> Anthony Giddens, *Introduction to Sociology* (print) (7th edition), (New York: W.W. Norton & Company Inc. 2009), 324.

<sup>3</sup> Andrew Altman Zalta, "Discrimination," in Edward N., ed., *Stanford Encyclopedia of Philosophy* (Summer 2020 edition), (Metaphysics Research Lab, Stanford University 2020), accessed November 8, 2024.

<sup>4</sup> Thomas E. Weisskopf, "Reflections on Globalization, Discrimination, and Affirmative Action," in Miguel Angel Centeno and Katherine S. Newman (eds.) *Discrimination in an Unequal World* (New York: Oxford University Press, Inc., 2010), 24-25.

to religion, ethnicity, race, tribal origin, class, social status, economic status, gender, language, belief, politics, which results in the violation of human rights and the reduction, deviation or loss of the recognition, enforcement or exercise of fundamental freedoms in both individual and collective life in the political, economic, legal, social, cultural and other spheres of life”.

## **2. Indigenous Peoples in Central Kalimantan**

The indigenous peoples in Central Kalimantan are the Dayak tribe, which consists of various sub-ethnic groups, including Ngaju, Bakumpai, Ma'anyan, Ot Danum, Siang Murung, Bawo, Witu, Paku, Taboyan, Bayan, Malang, Lawangan, Tamuan, Tumon, Ruko Mapam, Sampit, Arut, Jelai, etc. Dayak is a general term,<sup>5</sup> a generic name<sup>6</sup> or a collective term<sup>7</sup> to designate the set of all ethnic or sub-ethnic groups that are indigenous to the island of Borneo and have lived on the island for generations. They are ethnic or sub-ethnic groups that clearly and unambiguously identify or claim themselves as Dayak, an identity that distinguishes them from other surrounding ethnic groups such as Banjar, Bugis or Malay.

In addition to having a history of origin and hereditary ancestors who have lived and dwelt in Central Kalimantan since the beginning, they have also formed a local living alliance consisting of people who feel bound to each other in a unity full of solidarity because of blood ties from the same ancestral lineage (genealogical), the same living area or living space (territorial), and/or a combination of both (genealogical-territorial). They organize life together in the use and management of land and the environment based on the value system

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<sup>5</sup> Alfred Bacon Hudson, Padju Epat: The Ethnography and Social Structure of a Ma'anjan Dajak Group in Southeast Borneo. Unpublished dissertation. (New York: Cornell University, 1967). Victor T. King, *The People of Borneo*. (Oxford: Blackwell Publishers, 1993).

<sup>6</sup> Solvay Gerke, "Ethnic Relations and Cultural Dynamics in East Kalimantan: The Case of the Dayak Lady," in *Indonesia Malay World*, 25 (1997), pp. 176-187. 176-187. <https://doi.org/10.1080/13639819708729897>. Gerry van Klinken, *Colonizing Borneo: State-Building and Ethnicity in Central Kalimantan* (April 1, 2006), in *Indonesia Vol. 81*, pp. 23-49, 2006, available at SSRN: <https://ssrn.com/abstract=1876543>.

<sup>7</sup> Kathy MacKinnon, Gusti Hatta, Hakimah Halim, and Arthur Mangalik, *The Ecology of Kalimantan Vol. 3*. (Singapore: Oxford University Press, 1996).



and customary law in the customary territory or area called lewu/lebu/tumpuk/jo/rowu/laman or by other names.

As explained by Martinez Cobo,<sup>8</sup> the indigenous peoples of Central Kalimantan had settled in the Central Kalimantan region before the establishment of the Indonesian state, even before the colonial period. Historically, they existed in the pre-colonial period. Anthropologically, they are socio-cultural entities that are much older than the Indonesian state itself. Therefore, they should not be equated with citizens in general; they are different from other groups in the society around them. They have sovereignty.

They have control over land, natural resources and socio-cultural life governed by customary law and customary institutions. They have control over land, natural resources and socio-cultural life governed by customary law and customary institutions. Van Vollenhoven states that they not only form an alliance of customary communities (*beschikkingrecht*) but also form a *beschikkingskringen*, i.e. a territorial unit whose customary community unit is sovereign in regulating the lives of its citizens.<sup>9</sup> Therefore, they have the right to own and control the land; they also have the right to hunt animals around the forest and their customary land.

Based on Indigenous Territory Registration Agency (Badan Registrasi Wilayah Adat) data, Central Kalimantan Province has 47 customary territories and 44 customary law communities (MHA) that occupy an area of 973,527 hectares or 16 percent of the total area of Central Kalimantan Province (157,983 km<sup>2</sup>), which means that the number of distribution of indigenous peoples in Central Kalimantan Province is quite extensive. Of these data, 47 customary law communities have been registered, only 5 have been completed at the certification stage. This means that social data and spatial information, including documents on the boundaries of indigenous territories, are complete".<sup>10</sup>

Legally, the existence of indigenous peoples in Central Kalimantan has been recognized by the government through the issuance of

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<sup>8</sup> J.R.M. Cobo. Study of the Problem of Discrimination against Indigenous Populations. (New York: United Nations 1986).

<sup>9</sup> Cornelis van Vollenhoven, The Discovery of Customary Law (Yogyakarta: INSIST Press, 1923 jo 2020).

<sup>10</sup> Badan Registrasi Wilayah Adat <https://brwa.or.id/wa/> Last retrieved November 12, 2024.

several regulations on the regulation of customary institutions in Central Kalimantan, including:

1. Regional Regulation No. 14 of 1998 concerning Kedamangan in Central Kalimantan Province, which was later replaced by Regional Regulation No. 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan, which was amended by the issuance of Regional Regulation No. 1 of 2010, which is an amendment of Regional Regulation No. 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan.
2. Regulation of the Governor of Central Kalimantan No. 13 of 2009 on Customary Land and Customary Rights to Land in the Province of Central Kalimantan.
3. Regulation of the Governor of Central Kalimantan No. 26 of 2022 on the Procedure of Recognition of Customary Communities.
4. Regional Regulation No. 2 of 2024 on Recognition and Protection of Dayak Customary Law Communities in Central Kalimantan Province.

Regarding the formal legal recognition of the existence of indigenous peoples, Ferdi Kurnianto, Chairman of the Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara) Central Kalimantan Region, stated that formal legal recognition is indeed important, especially in the current situation where tenure conflicts often occur, concessions have been given to the living spaces of indigenous peoples in Central Kalimantan. But formal recognition is not enough to guarantee that the situation and conditions of indigenous peoples will continue to be protected and improved. Formal recognition is one of the tools to support the struggle of the indigenous peoples, not the ultimate goal of the struggle. What needs to be strengthened now is the internal unity and collectivity, the realization that we live as social beings, a perspective that sees forests and nature not as a mere economic value, but as part of the identity of indigenous peoples, which has spiritual and noble values".<sup>11</sup>

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<sup>11</sup> Ferdi Kurnianto, Jalan Terjal Pengakuan dan Perlindungan Masyarakat Adat dan Haknya di Kalimantan Tengah. <https://kalteng.aman.or.id/2023/08/09/jalan-terjal-pengakuan-dan-perlindungan-masyarakat-adat-dan-haknya-di-kalimantan-tengah/>. Last retrieved November 12, 2024.

### 3. Dayak Tomun and *Laman Kinipan*

Dayak Tomun is a group of Dayak people living in the border area between Central Kalimantan and West Kalimantan, specifically in Lamandau Regency, Central Kalimantan. The complexity and ambiguity of identity extends far into the lives of these tribes, who have lived for generations in villages along the upper reaches of the Lamandau River, especially along the Delang, Batang Kawa and Belantikan tributaries and their smaller streams.<sup>12</sup>

Based on oral tradition, the Dayak Tomun all come from the same place or origin, namely the kingdom of Sarang Pruya, a place currently located in the upper reaches of the Batang Kawa River, bordering Melawi Regency, West Kalimantan. It is said that the kingdom of Sarang Paruya was established before AD, around the year  $\pm 1522$ , the local people mention it with the term tanah mula tumbuh karosik mula ada (at the beginning of time), led by a king named Santomang with a queen named Laminding. Before the existence of Sarang Pruya, there was also the story of the origin of the ancestors who were sent down to earth, but failed because each time they were sent down, they were devoured by spirits. Finally, a dog came and barked so loudly that the ghosts ran away and humans could finally inhabit the earth. That is why the Dayak Tomun people really appreciate dogs. In the past, dogs were also killed when their masters were killed. Tiwah is the last religious ritual in the Dayak belief system.

The togetherness of Sarang Pruya ended when the country was hit by a smallpox epidemic. The people were scattered to different places to save themselves, including Barley River, Arut, Lamandau, Kumai and dozens of other small tributaries. Because they lived separately, there were differences in language dialects between them, although they could still understand each other or “nomun”.

Tomun, Tomuan or Tamuan literally means “to meet” or “to meet” from the word “betomu”. The term “Tomun” is used by the Dayak people themselves to refer to themselves as a group of Dayak people who can understand each other even though they live in different places and have different dialects. The word “Tomun” can also mean “to talk”, “to discuss”, “to meet” or “to have a meeting to understand each other”.

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<sup>12</sup> Herwig Zahorka, "Ethnohistory of the 'Tomun Dayak' in the Schwaner Mountains of Central Kalimantan" in Borneo Research Bulletin, Annual 2012.

In everyday reality, according to several informants,<sup>13</sup> when people from Mentobi River meet people from Batang Kawa River, they will use their own dialects, which are different, but can be understood by each other. In Yulianti's research<sup>14</sup> it was found that the languages used by Tomun/Tamuan communities are very similar to each other, the only difference is the pronunciation or dialect between regions.

The naming "Dayak Tomun" was done by agreement. It arose with the expansion of West Kotawaringin Regency, resulting in the formation of a new district, Lamandau Regency. In 2004, several leaders gathered and discussed "Who are we in Lamandau Regency? Long story short, because Lamandau consists of many Dayak tribes and is a kind of meeting place, the name "Dayak Tomun" was decided. Tomun means meeting.<sup>15</sup>

Dayak Tomun, like other Dayak communities on the island of Borneo, uses traditional swidden agriculture to meet their food needs. This swidden farming system has been used for hundreds of generations.<sup>16</sup> They impose a *beraa* period, a period where the land is at rest. every seven or eight years. By taking a break every seven or eight years, it is believed that the natural fertility of the land will return to normal.<sup>17</sup>

A very striking feature of the agricultural system of the Dayak Tomun Lamandau community is that it is governed by custom, namely: "First, there are customary rules that bind the entire community in agricultural activities. In all stages of farming, there will always be customary rituals that must be followed by the farming community. At all stages of farming, there will always be customary rituals that must be followed by the farming community. It can be said that customary rules determine the success or failure of farming. Second, the purpose of agriculture is not to seek profit, but rather to satisfy basic needs (consumption). The maximum size of a family's field

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<sup>13</sup> Guste, Rita, Tom, Sari, personal interview via WA on May 19, 2021.

<sup>14</sup> Andi Indah Yulianti, "Dialectal Variation of Tomuan Language" in *Mabasan*, Vol. 10, No. 2, July--December 2016: 36--62.

<sup>15</sup> Rapudi Zangga personal interview via WA on May 5, 2020.

<sup>16</sup> Nina P.H. Dey & Brian Djumaty, *Perubahan Sosial Masyarakat Adat Pasca Pelarangan Pembakaran Lahan Di Desa Lopus Kabupaten Lamandau*. in *ARISTO*, 9(1), 2020. 51–71. doi:<http://dx.doi.org/10.24269/ars.v9i1.2007>

<sup>17</sup> Yulius Saden, *Kearifan Lokal Pengelolaan Sumber Daya Alam Masyarakat Dayak Tomun*, (Palangka Raya: Perkumpulan 'Save Our Borneo', 2015).

is less than 1 hectare. With this relatively small size, the carrying capacity of nature is always maintained. Third, the agriculture they practice is organic or without any fertilizer. This farming model is very environmentally friendly. The only source of nutrients is the burning of the land at the beginning (cucul)".<sup>18</sup>

Besides farming, the Dayak Tomun also engage in hunting, gathering and fishing activities. The tradition of gathering (picking forest products) is done by both men and women, while hunting is done by men. Gathering refers to the collection of non-cultivated plant foods that grow naturally in the wild without being planted and tended by humans, either in the form of fruits or vegetables. Gathering activities are therefore carried out not only in the forest, but also at the edge of forests, rivers, lakes, swamps, former fields, and in gardens. In addition to hunting, fishing is also done using nets and fishing rods or traditional fishing equipment.

The Dayak Tomun community recognizes three divisions of living space according to custom, namely:

1. *Huma ladang*, which is a place for farming / huma or cultivating crops.
2. *Rima*: Customary forest
3. *Laman*: a village inhabited by a descendant of his children and grandchildren consisting of dahas babuy, dahas sebau and dahas segunting.
4. *Panyaduan*: *Dukuh*, *Babas* (former fields), *Kobun*/ plantations and Huma.

Like other Dayak tribes, the Dayak Tomun acquire or control land through farming or bahuma. A farming family that clears forest in the area under the control of a village or commune will have a direct relationship with the land it farms, and then the land it used to farm (babas) will remain under its control. It is even stronger as property if they plant perennial or tree crops on the land.

*Laman*, which means village, is the smallest social unit of the Dayak Tomun Customary Law Community, in which families live and are bound together in a kinship network formed by blood and marriage. Laman as the smallest social unit of the Dayak Tomun Customary Law Community Unit has an area with certain boundaries,

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<sup>18</sup> Ibid.

its own assets, a value system that regulates and takes care of the common life interests of its citizens through social, economic, political and cultural institutions based on Dayak Tomun values, norms and customary laws.

*Laman Kinipan* is an indigenous community located in Kinipan Village, Batang Kawa Subdistrict, Lamandau Regency, Central Kalimantan. The history of *Laman Kinipan* begins with a kingdom called *Sarang Paruya* located in the upper reaches of Batang Kawa River, led by a king named Santomang with a queen named Laminding. In symbolic language, the elders say that the kingdom existed when “*tanah mula tumbuh, karosik mula ada*,” that is, in the past when everything began to appear and exist.

As time passed, the kingdom of *Sarang Paruya* was broken up, so the inhabitants of the kingdom of *Sarang Paruya* made a new settlement / *laman* called Laman Setabang led by King Bungkal Hulu Sungai. Due to an outbreak of plague, the people moved to a new place called *Laman Onyu*, from *Laman Onyu* they moved again to build a new village called *Laman Kinipan*.

Today, *Laman Kinipan* is a village inhabited by the Dayak Tomun community. According to the data from the Lamandau Regency Central Bureau of Statistics in 2022, the population of Kinipan village is 637 people, consisting of 320 males and 317 females,<sup>19</sup> of which 620 people (97%) are Protestant Christians (576 members of the Kalimantan Evangelical Church and 44 members of the Indonesian Bethel Church), 5 people are Catholic, 10 people are Muslim, and 2 people are Hindu Kaharingan followers.<sup>20</sup>

#### **4. Rights of the Dayak Indigenous Peoples**

Based on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it is known that there are various rights of indigenous peoples which can be summarized as follows

##### ***a. Right to self-determination***

- Indigenous peoples have the right to make decisions about their way of life.

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<sup>19</sup> Badan Pusat Statistik Kabupaten Lamandau, Kecamatan Batangkawa dalam Angka (Nanga Bulik: BPS Kabupaten Lamandau, 2022), 24.

<sup>20</sup> Rev. Ester Ritawati, head of MJ GKE "Immanuel" Kinipan, personal interview, June 22, 2021.

- Indigenous peoples have the right to determine, develop plans and sequences of interests for the use of their lands, territories and resources (development).
- Indigenous peoples have the right to declare or express their identity, to preserve their cultural languages and traditions, and to organize and manage their own lives without excessive government interference.
- Indigenous peoples have the right to autonomy and/or self-government.
- Indigenous peoples have the right to maintain and develop their own political, legal, economic, social and cultural institutions. Indigenous peoples have the right to determine the relationship of their governing institutions to the central or state government.

***b. Rights to land, territory and natural resources***

***c. Right to participation and information***

***d. Cultural rights***

***e. Right to justice***

In the context of indigenous peoples in Central Kalimantan, the most neglected right is the right to land, territory and natural resources. Their customary territories, customary lands and customary forests are not recognized, even though they are a source of social, spiritual and cultural identity specific to indigenous communities, making them economically dependent on their ancestral lands.<sup>21</sup>

One of the most fundamental rights of indigenous peoples is the right to manage land and natural resources within customary territories. It is fundamental to the existence and sustainability of an indigenous community. Indigenous peoples without customary territories, lands and forests can certainly no longer be considered indigenous peoples.

Land is very important to indigenous peoples because it is the basis for indigenous peoples to live independently. The dispossession of customary lands and forests is a dispossession of their lives. The

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<sup>21</sup> Jayantha Perera, Land and Cultural Survival (The Communal Land Rights of Indigenous Peoples in Asia), ADB, 2009. Page 15.

destruction of their customary lands and forests is the destruction of their economic resilience. Indigenous peoples will become ordinary people without independence, dependent on outside communities to meet their needs.

Land is crucial for them because land is always related to the right to life, such as forests as a living habitat where they make a living, procreate, community, and even related to beliefs or faith, especially indigenous religions or indigenous religions that consider land as their ancestors. For example, the Dayak Punan Dulau indigenous people, whose livelihoods depend on the sustainability of the forest, have the principle of “*lunag telang otah ine*”, which means “the forest is mother’s milk”. This expression is meant to illustrate that the forest cares for them, nurtures them, and raises them. The forest provides medicinal plants, clothing, side dishes and other food. If there is no forest, they cannot live. If their forests are taken away and destroyed, they are like babies deprived of their mother’s milk.<sup>22</sup>

A significant challenge confronting indigenous peoples is the endeavor to substantiate their proprietary rights over their traditional territories when confronted with other parties who have vested interests in their traditional lands. The parties with whom indigenous peoples interact often possess well-established economic and political positions. In numerous instances, indigenous peoples have competing interests with companies or the state. Consequently, the legal position of indigenous peoples is frequently vulnerable in these contentious relationships. Various state regulations do not adequately support indigenous peoples’ efforts to claim their traditional lands.

## **DISCRIMINATION AND INDIGENOUS DAYAK COMMUNITIES IN CENTRAL KALIMANTAN: THE CASE OF LAMAN KINIPAN**

The Dayak Tumon Indigenous Peoples of *Laman Kinipan* began to experience discrimination when the conversion of their customary lands and forests into large oil palm plantations occurred. In 2018,

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<sup>22</sup> Alfonsius. “Masyarakat Adat Punan Dulau: Ditipu, Dimiskinkan, dan Diadu Domba,” dalam Eko Cahyono, et., al., *Konflik Agraria Masyarakat Hukum Adat Atas Wilayahnya di Kawasan Hutan*, (Jakarta: Komnas HAM, 2016), hlm. 232–234.



PT Sawit Mandiri Lestari (PT SML) initiated land clearance activities within the customary territory of the Laman Kinipan Customary Area, resulting in the displacement of the customary forest. The land clearance activities conducted by PT SML have displaced the *Laman Kinipan* Customary Area, covering an estimated 1,242 hectares. This has involved the felling of numerous trees, including those of medicinal, durian, jengkol, and ulin species.

In fact, since May 23, 2005, during the socialization of the company's opening plan, the Dayak Tumon *Laman Kinipan* Indigenous People have consistently rejected the plan to open a large oil palm plantation in their area. They have done so on the grounds that:

1. The pattern of oil palm plantations does not align with the interests of the community, as evidenced by the developments in Bulik and Lamandau sub-districts.
2. Investors have consistently demonstrated a lack of concern for the cultural heritage and legal rights of local communities.
3. The government has never disseminated information regarding licensing and land allocation to the community.
4. The land in question is not classified as idle land, but rather as buffer or protected forest.

The rejection was carried out in collaboration with the village heads, the chairman of the Village Council (*Badan Permusyawaratan Desa*), and the community leaders of Delang District.<sup>23</sup>

Nevertheless, their objections were ignored. On January 30, 2012, the Regent of Lamandau (Ir. Marukan Hendrik, M.A.P) issued a letter from the Regent of Lamandau Number: EK.525.26/15/SK-IL/VI/2012 concerning Location Permit (*Izin Lokasi*) of PT Sawit Mandiri Lestari (SML). Then on April 7, 2014, the Lamandau Regent issued another Decree Number: EK.525.26/01/SK-IUP/IV/2014 on the Plantation Business License (*Izin Usaha Perkebunan*) of PT Sawit Mandiri Lestari (SML). In other words, the government ignores the voices of its people and is more concerned with PT SML.

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<sup>23</sup> Kinipan vs. PT SML Conflict, Documents and Information Database, Save of Borneo (SOB).

Despite this, the community is not tired of continuing to take action to resist. On September 26, 2014, 3 village heads and 3 village council chairmen from 3 villages in Batang Kawa Subdistrict, namely Kinipan Village, Ginih Village and Batu Tambun Village, on behalf of their respective village communities, declared that they reject the conversion of land and/or former community fields to be used as a palm oil plantation by PT Sawit Mandiri Lestari, which will operate in Kinipan Village, Ginih Village and Batu Tambun Village, Batang Kawa Subdistrict, Lamandau Regency.

Just like the previous incident, the government did not care about their rejection. In fact, on March 19, 2015, the Minister of Environment issued a permit to release 19,090 hectares of forest land to PT SML for oil palm plantations. Approximately 5,000 hectares of the total area is Kinipan customary territory. As a result, about 1,700 hectares of Kinipan customary territory have been displaced and planted with oil palm, while another 3,300 hectares are still under threat. Three-quarters of the area granted by the Ministry of Environment is forest and habitat for orangutans, leopards and many endangered animals and rare forest trees. This is certainly a form of threat to endangered species.<sup>24</sup>

As part of the resistance, the Kinipan Indigenous People's legal territory was mapped in 2015. In 2017, the Kinipan Indigenous People made further efforts by registering with the Badan Registrasi Wilayah Adat (Indigenous Territory Registration Agency), which resulted in the determination that Laman Kinipan was eligible to become an indigenous territory.

The resistance continued by traveling to Jakarta. In June 2018, nine villagers traveled to Jakarta to speak at the Office of the President, the Ministry of Environment and Forestry (MoEF), and the Human Rights Commission. They oppose palm oil plantations on the grounds that:<sup>25</sup>

1. The area used for oil palm plantation is customary forest belonging to the Laman Kinipan indigenous community, both the government and the company should seek and

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<sup>24</sup> Petisi: Selamatkan Hutan Kinipan. <https://www.hutanhujan.org/petisi/1159/selamatkan-hutan-kinipan#more>. Last retrieved November 12, 2024.

<sup>25</sup> Lusya Arumingtyas, Begini Nasib Hutan Adat Laman Kinipan Kala Investasi Sawit Datang. <https://www.mongabay.co.id/2018/06/18/begini-nasib-hutan-adat-laman-kinipan-kala-investasi-sawit-datang/>. Last retrieved November 12, 2024.

obtain the consent of the Dayak Laman Kinipan indigenous community.

2. Based on the experience of other villages, land compensation per family is not promising. The plasma system of two hectares per family is not enough for their daily life, let alone the loss of the forest as their source of livelihood.
3. Plasma farms are not profitable and are burdened with debt. Fourth, this investment is very risky for internal conflicts of interest among residents, so they are worried about fighting over land.

The community prefers to plant rubber, rattan and *jengkol* (black bead or *Archidendron pauciflorum*). They explicitly prefer *jengkol* to palm oil because the price of *jengkol* is higher than palm oil, and *jengkol* does not require fertilizer and maintenance like palm oil.

In October 2018, Kinipan residents staged a peaceful protest in front of the Regional House of Representatives (Dewan Perwakilan Rakyat Daerah) office. The *Laman Kinipan* community demanded that PT SML immediately stop planting oil palm seedlings and leave the forest. This is urgent as half of the forest is already gone!

In June 2020, dozens of Kinipan residents prevented PT SML from clearing land in their ancestral domain. On August 15, 2020, five residents who participated in the action to prevent PT SML personnel from clearing land were arrested by the police. Ten days later, on August 26, 2020, the police arrested Effendi Buhing, a traditional leader of *Laman Kinipan*, on charges of ordering the five residents to steal a chainsaw belonging to PT SML.

At the time, Buhing was sitting on the porch of a wooden stilt house. He was joking and chatting with his wife and relatives. Then some uninvited guests arrived. Claiming to be police, they wore black T-shirts, pants and hats. Not only that, but they displayed a warrant and a summons. The officers said they wanted to take Buhing to the police station. Buhing refused. Buhing was dragged away. He was then put into a car that drove him away. Fortunately, his wife recorded a video of the arrest with her cell phone camera and immediately uploaded it to social media.

Soon the video of Buhing's arrest went viral on social media. Several state officials commented on the video, including Mahfud MD, then Coordinating Minister for Political, Legal and Security Affairs.

Many people called for Buhing's release. The police responded by releasing Buhing to return home in less than 24 hours. Five other people who had been arrested earlier were also released.

It can be said that there has been a conflict between the Dayak Tumon tribe of Laman Kinipan and PT SML. The Dayak Tumon tribe of Laman Kinipan lost their rights to their customary land. In addition, Efendi Buhing and five other Kinipan indigenous people were persecuted and criminalized. Even though what Efendi Buhing did was a form of self-defense to defend the Kinipan's customary land rights to stop PT Sawit Mandiri Lestari from destroying the Kinipan's customary forest,

Fahrizal Fitri, who serves as the Regional Secretary of Central Kalimantan Province, said that there is no legal customary forest in Kinipan village. According to him, no Kinipan residents have applied for the establishment of customary forests."<sup>26</sup> What was communicated by the local government was not at all positive towards the recognition of the Kinipan indigenous peoples. Even though the Kinipan have been there long before the existence of PT Sawit Mandiri Lestari, using the forest for generations, the illegality does not deny the fact that the Kinipan have been there for a long time.

To this day, the Laman Kinipan indigenous community continues to struggle to defend their rights to protect the Kinipan customary forest from the expansion of PT SML's oil palm plantations. There has been no significant progress in resolving land conflicts between the Kinipan community and oil palm plantation companies. Although land clearing activities by companies considered to be occupying customary territories have been halted, there is no certainty regarding the recognition of Kinipan's customary lands and territories. Despite twice submitting letters requesting recognition of customary territories, the Kinipan indigenous community has not received a satisfactory response from the Lamandau Regency government (Sangumang, 2023). This is because the proposal submitted is considered incomplete, while the expected support is not in line with the direction of the General Directorate of Social Forestry and Social Partnership.

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<sup>26</sup> Press Release Pemprov Kalteng Mengenai PT. Sawit Mandiri Lestari <https://mmc.kalteng.go.id/berita/read/30581/press-release-pemprov-kalteng-mengenai-pt-sawit-mandiri-lestari>. Last retrieved November 12, 2024.

The Laman Kinipan continue to face serious challenges in their efforts to defend their customary territories from the domination of large private oil palm plantation companies. They have to sacrifice a lot of energy and time to fight the land grabbing efforts of these corporations, while facing the risk of criminalization as they have experienced before.

The latest data shows that the Kinipan Customary Territory has an area of about 16,132.85 hectares, most of which is natural forest. However, about 7,937 hectares of this area is included in the company's operating area and is under threat of deforestation. Approximately 5,111 hectares are covered by PT Sawit Mandiri Lestari Plantation Business License (IUP), while another 2,829 hectares are covered by PT Amprah Mitra Jaya Timber Product Utilization Business License (IUPHHK-HA) (Wicaksono, 2022). Of the 5,111 hectares of customary land included in PT Sawit Lamandau Lestari's IUP, approximately 1,829 hectares have been deforested by the palm oil company. Forests that were once dense and rich in economically valuable timber resources have now been cleared and replaced by oil palm monocultures.

## **HUMAN RIGHTS VIOLATIONS AND LOSSES OF INDIGENOUS PEOPLES**

From the above, it is clear that the main objective of discrimination is to deprive and cut off indigenous peoples' access to their customary territories, lands and forests. They experience violence, criminalization and exclusion from their customary lands. Their identity as indigenous peoples with rights to control forest resources is denied and harassed. Discrimination makes the Dayak Tomun *Laman Kinipan* experience powerlessness, making them a vulnerable group that easily loses "the ability to use things". As described by Hall, Derek, Philip Hirsch and Tania Murray Li,<sup>27</sup> they experience land exclusion, i.e. they are ostracized, separated and excluded from the land, and therefore lose the ability to benefit from things. In short, they experience resource dispossession, that is, deprivation of control, access and use of resources.

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<sup>27</sup> Derek Hall, Tania Li, Philip Hirsch, Powers of Exclusion: Land Dilemmas in Southeast Asia, (Singapore and Manoa: NUS Press and University of Hawaii Press, 2011).

In 2020, their identity as indigenous Dayak and their rights to customary forest ownership were negated and openly denied by the Regent of Lamandau, who is also the Chairman of the Lamandau District Indigenous Dayak Council (Dewan Adat Dayak). In a widely circulated video, he stated that “there is no customary land in the area he leads.”<sup>28</sup> This was reiterated by the Regional Secretary of Central Kalimantan Province, based in the provincial capital of Palangka Raya.<sup>29</sup>

Thea Farina et.al,<sup>30</sup> mentioned that the lack of recognition of customary forests is closely related to the violation of human rights, especially the rights of indigenous peoples, including:

1. Right to the forest. This occurs when the interests of indigenous peoples to manage their customary forests are not taken into account in government decisions. For example, the designation of production forest areas for oil palm plantations can disrupt the survival of indigenous peoples who depend on their customary forests for their daily livelihoods.
2. Rights to land and natural resources. Errors in the recognition of customary forests could potentially threaten indigenous peoples’ rights to the land and natural resources they have inherited from previous generations.
3. Right to a decent life. When indigenous peoples lose access to their natural resources, it can threaten their livelihoods and the lives of those who depend on those resources. This is a violation of the right to a life in dignity.
4. Right to participation and consultation. Decision-making processes affecting indigenous peoples’ territories often fail to effectively involve and consult indigenous peoples. This violates the right to participation and consultation recognized in Articles 18 and 19 of the United Nations

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<sup>28</sup> Video lengkap dapat dilihat melalui link berikut: Perjuangan Kinipan Mencari Keadilan [https://www.youtube.com/watch?v=uj9XAJ\\_L1Rw](https://www.youtube.com/watch?v=uj9XAJ_L1Rw). Last retrieved November 12, 2024.

<sup>29</sup> Ibid., Press Release Pemprov Kalteng Mengenai PT. Sawit Mandiri Lestari

<sup>30</sup> Thea Farina, dkk., “Pengakuan dan Perlindungan Hutan Adat dalam Mewujudkan Hak Masyarakat Hukum Adat di Provinsi Kalimantan Tengah,” dalam *Unes Law Review* Vol. 6, No. 3, Maret 2024, DOI: <https://doi.org/10.31933/unesrev.v6i3>

Declaration on the Rights of Indigenous Peoples (UNDRIP) (Nations, 2007).

5. Right to cultural identity. Recognition of customary forests is also linked to the right of indigenous peoples to maintain their cultural identity, which is closely linked to their territories and natural resources. Failure to recognize customary forests can threaten the cultural identity of indigenous peoples.

The opening of large oil palm plantations and the granting of Timber Forest Product Utilization Business License in Natural Forest (Izin Usaha Pemanfaatan Hasil Hutan Kayu dalam Hutan Alam or IUPHHK-HA) have had a negative and very detrimental impact on the lives of the Dayak Laman Kinipan indigenous peoples in the form of:

## 1. Ecological Losses

- a. Forest degradation has occurred, i.e., the forests that protect them cannot function to conserve soil and water, so they can cause floods and landslides during the rainy season, rainwater catchment areas have been reduced, so there are many droughts during the dry season.<sup>31</sup> From the report of the Liputan 6 TV journalist, it is known that on September 9, 2020, there were floods as high as 1 meter 2 times during 2020 in a number of villages in Lamandau as a result of deforestation in the area. Whereas, long before the presence of PT SML, the village of Lamandau had never experienced such high floods.<sup>32</sup>
- b. Pollution has occurred. Oil palm deforestation can cause pollution of various environmental elements such as water, air and soil. It can also increase vulnerability to food problems and contribute to water, soil and air pollution and global climate change. It is known from several reports that

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<sup>31</sup> Ari Wibowo, dan A. Ngakolen Gintings, "Degradasi Dan Upaya Pelestarian Hutan," dalam Kedi Suradisastra, Et. al., Membalik Kecenderungan Degradasi Sumber Daya Lahan dan Air,( Bogor: PT. IPB Press.2010).

<sup>32</sup> Bencana Banjir Lamandau Dampak Gundulnya Hutan <https://www.liputan6.com/regional/read/4351413/bencana-banjir-lamandau-dampak-gundulnya-hutan?page=2>. Last retrieved November 12, 2024.

in June 2020, dead fish were found floating in the river due to poisoning. The fish came from the river in the Kinipan customary forest area, now controlled by PT SML.<sup>33</sup> It can be assumed that the use of chemical fertilizers (KCL, TSP, Urea, NPK, etc.) and chemical poisons (pesticides, herbicides, fungicides) have polluted the river water and poisoned the fish.

## 2. Economic Losses

- a. Due to deforestation and conversion of land into oil palm plantations, their habitat is getting smaller, narrower and less. This has also led to the reduction of wildlife such as deer, wild boar, hornbills, etc., along with the narrowing of wildlife habitat.
- b. The murky river due to siltation makes it difficult for them to catch fish, which is their source of food.
- c. Deforestation has reduced the number of tapang trees where honey-producing bees nest. Logging has also reduced the meranti trees and the flowers of the forest wood trees, which are food for honey-producing bees, causing them to lose their economic resources from collecting forest honey.
- d. Loss and reduction of forest fruits that are a source of food and opinions such as jengkol, cempedak, durian, lai, kapul.
- e. The smaller and narrower space for farming and gardening because it has become oil palm plantation land.
- f. The disappearance and reduction of trees in the forest that are used for building houses, such as ulin wood, benuas wood, etc.
- g. The loss and reduction of places to collect local food from forest plants, such as rattan, mushrooms, nails, tubers, etc.
- h. Overall, they can no longer use the natural resources found in their own customary land, customary forest to sustain their lives.

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<sup>33</sup> Kasus Effendi Buhing Terkait Pencaplokan Tanah Adat, Pak Mahfud <https://tirto.id/kasus-effendi-buhing-terkait-pencaplokan-tanah-adat-pak-mahfud-f3sg>. Last retrieved November 12, 2024.



### **3. Social and Cultural Losses**

- a. The emergence of horizontal conflicts and social divisions within the indigenous community, as there are people who are for and against large oil palm plantations. The presence of large oil palm plantations undermines the fraternity, familiarity and intimacy of the indigenous peoples.
- b. The emergence of vertical conflicts between the indigenous peoples and the company, as well as between the indigenous peoples and the government.<sup>34</sup>
- c. Various cultural riches, ranging from local knowledge, local wisdom, local technology to local food seeds, are stored in these indigenous communities. But all this cultural wealth is now under threat as their forests disappear and are replaced by oil palm plantations.

### **4. Health Losses**

- a. There are fewer and fewer places to find traditional medicinal herbs that grow in their native forests. As a result, the cost of treatment becomes more expensive as they have to search for medicine in the city or the nearest health center.
- b. The loss or reduction of places to find local foods that grow in the forest. They lose organic food that is healthy and cheap. They end up depending on food from outside, which may be unhealthy and expensive.

### **5. Loss of security and freedom**

Criminalization of indigenous leaders. Effendi Buhing has even been arrested by the authorities for theft. Another community leader, Willem Hengki, was accused of corruption, but the charges were not proven and he was released from prison.<sup>35</sup>

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<sup>34</sup> Ema Kartika, et.,al., "Relations and Resistance of Authorities in Deforestation of Indigenous Forests in Kinipan Village, Central Borneo," dalam Jurnal Penelitian Ilmu-Ilmu Sosial Volume 4, No. 1, 2023, Hal. 33-48, <https://journals2.ums.ac.id/index.php/sosial>

<sup>35</sup> Konflik Lahan Masyarakat Adat Berkepanjangan, Bagaimana Duduk Soalnya? <https://www.kompas.id/baca/nusantara/2024/09/10/konflik-lahan-masyarakat-adat-berkepanjangan-bagaimana-duduk-soalnya>. Last retrieved November 12, 2024. The "criminalization" referred to in this paper refers to law enforcement that is carried out not for the purpose of law enforcement itself, but with the aim of harming the suspect or the person who is intended to be a suspect.

Indirectly, the arrests have left psychological trauma on families and the indigenous community as a whole. They do not feel comfortable and safe in their own ancestral lands.

## **THE CHURCH AND THE STRUGGLE OF INDIGENOUS PEOPLES**

The oppression, land grabbing, and discrimination that are happening in the *Laman Kinipan* is a grim narrative that should force the church to think about how it can be part of the resistance. In this section, I propose two reflective thoughts that can be used by the church to not remain silent when oppression and injustice are vulgarly happening before its eyes.

### **1. Siding with the Victims**

*Laman Kinipan* is not only a story about the dispossession of its forests and the criminalization of indigenous rights defenders. *Laman Kinipan* is also the story of a small group of indigenous people who have been Christians since 1926.

In 1946, the first congregation of the Dayak Evangelical Church (GDE) was established on the Batang Kawa River, namely the Dayak Evangelical Church Kinipan with the leader of the congregation Mr. Yohanes Jaman.<sup>36</sup> In 2022, it was known that 620 people (97%) of the Kinipan village population were Protestant Christians, with details of 576 people from the Kalimantan Evangelical Church (GKE) and 44 people from the Bethel Indonesia Church (GBI). The remaining 5 people are Catholic Christians, 10 people are Muslims, and 2 people are Kaharingan Hindus.

Almost all of the indigenous rights defenders in *Laman Kinipan* are members of the Dayak Evangelical Church (GDE), now called the Kalimantan Evangelical Church (GKE). It is, of course, a unique phenomenon that a group of people become members of an indigenous community at the same time as they become members of a church. From my fieldwork in August 2022, I can conclude that, especially among the Dayak, a change in religious affiliation does not necessarily eliminate tribal affiliation.

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<sup>36</sup> Selayang Pandang Calon Resort GKE Batang Kawa (Kinipan: Calon Majelis Resort GKE Batang Kawa).

In times of rejection and resistance to palm oil companies encroaching on customary forests, they almost never emphasized their religious identity as Christians or members of the Kalimantan Evangelical Church. They mostly emphasized their Dayak tribal attributes, such as tattoos, red headbands, traditional Dayak clothing and the mandau, a traditional Dayak weapon. However, when they want to carry out activities to protect their customary forests and hold demonstrations in district or provincial towns, they always ask the pastor to pray for them.

Ester Ritawati, a woman pastor who is the leader of the GKE Kinipan community,<sup>37</sup> said that when most of her community members rejected and resisted the palm oil companies, she was always with them and present in their midst. He realized that he could not do much, but his presence could reassure them and keep them from feeling alone and abandoned.

When Effendi Buhing, the leader of the *Laman Kinipan* indigenous community, was forcibly arrested by the police, Reverend Ester Ritawati could only sit next to Effendi Buhing's wife, who was downcast and crying. In this way she showed that she did not support and was not neutral about the unfair treatment of the indigenous people who were also members of her congregation. He took the side of the marginalized indigenous people. He weeps with those who weep. He could feel the pain of the members of his congregation who were also indigenous. His compassion reminds us of the words once spoken by Leo Tolstoy: "If you feel pain. You are still alive. But if you feel the pain of others, you are human".

The first step the church must take is to decide not to be silent. Of course, we remember the famous phrase of Martin Luther King JR., the champion of the rights of black people: "In the end, we will remember not the words of our enemies, but the silence of our friends. A phrase that says that the words of our enemies may hurt, but the pain of friends who do not stand with us, who do not side with us, who do not support us, will always be remembered. The church should also remember the words of the Reformer Martin Luther: "You are responsible not only for what you say, but also for what you do not say. Of course, most of us are well aware that we are responsible for our own words, and what we say belongs to

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<sup>37</sup> Since 2023, Reverend Ester Ritawati is no longer a pastor in Kinipan, having moved to Nanga Bulik, the capital of Lamandau Regency.

us. But we are also responsible for our silence, for what we don't say. The church in Kinipan cannot be silent because it is part of the indigenous community and part of the victims.

Not speaking out when human rights violations occur is not much different from helping those who did the wrong or oppression in the first place. If we can't convince them to stop, we should at least warn others so they can be prepared to stop.

The next step is to refuse to be neutral. If the church is in the middle of the oppressors and the oppressed, then it must side with the oppressed without ignoring the other class. The church must determine its orientation and position itself with the victims. Neutrality should not be used as an excuse to tame the prophetic voice of the church against the injustices of society.

The Bible repeatedly reminds us that there is no place for neutrality when it comes to injustices that cause the suffering of innocent people and divisions in society. God sent Moses to Pharaoh because of the misery and suffering of his people under a cruel empire. From then on, God would send His prophets to "political leaders" who acted unjustly. When "neutrality" becomes a form of "silence," Christians will be held accountable for hiding the treasure of righteousness underground.

## **2. Fighting for a Space of Inclusion**

But it is not enough to stand with the victims; the church must take the initiative to push for affirmative action, for the government to adopt policies aimed at providing equal opportunities for indigenous groups that have historically been discriminated against or marginalized in society. These policies aim to redress long-standing inequalities and injustices by giving special or preferential treatment to indigenous groups.

Indigenous peoples need something more substantive, namely to be heard, to be included, and to be recognized by being given opportunities to interact and participate in the policies that affect their lives. They want to be treated like other people. They want to be active, self-organizing, self-determining citizens who know how to survive in harmony with nature, how to manage natural resources sustainably, and who are aware of their rights and responsibilities as equal and dignified citizens in the state.

The church can elegantly encourage or influence the government to develop social inclusion for indigenous peoples as vulnerable

groups to be included in an equitable development process. Social inclusion is an effort to place the dignity and independence of individuals/groups as the main capital to achieve an ideal quality of life. Social inclusion involves the process of building social relationships and respect for individuals and communities so that those who are marginalized and experience prejudice can participate fully in decision-making, economic, social, political and cultural life, and have equal access to and control over resources to meet their basic needs, according to standards of well-being considered appropriate in the community group concerned"[3].

The Church, together with other civil society networks, can propose to review policies that discriminate against indigenous peoples, such as natural resource management policies that limit the recognition of indigenous peoples' rights.

On September 19, 2023, Hendra Lesmana, the Regent of Lamandau, issued and ratified the Lamandau Regency Regional Regulation No. 3 of 2023 on Guidelines for the Recognition and Protection of Dayak Customary Communities. This regional regulation can be a means of struggle to form an inclusive space to protect human rights, preserve nature, promote inclusive economic development, strengthen unity and cultural diversity, and fulfill constitutional obligations and national and even international law.<sup>38</sup>

## CONCLUSION

According to Hall, Derek, Philip Hirsch, and Tania Murray Li,<sup>39</sup> there are four power factors that contribute significantly to the process of exclusion of others from access to land in Southeast Asia, namely: (1) *regulation*, which refers to the set of laws and regulations enacted by the state; (2) *coercion*, both by the state and by non-state actors; (3) *markets*, which facilitate the acquisition of land by state and non-state actors; (4) *legitimacy*, which ranges from government claims to regulate, using both economic rationality and political considerations, to various forms of moral justification operating at the community level. These four power factors are very relevant in the context of the Dayak Tomun Laman Kinipan, who are being

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<sup>38</sup> Peraturan Daerah Kab. lamandau No 3 Tahun 2023 tentang Pedoman PPMHA Dayak. <https://aman.or.id/publication-documentation/236>. Last retrieved November 12, 2024.

<sup>39</sup> Op.cit, p. 27

excluded from their customary lands due to plantation development policies.

In terms of regulations, agrarian conflicts that occur in the territory of the Dayak *Tomun Laman Kinipan* Indigenous Peoples are based on the absence of policies that provide security of control over access to land, natural resources, community management areas, including access for indigenous peoples within the state forest area. So that in the process of granting licenses / rights / concessions by public officials (Minister of Forestry, Minister of Energy and Mineral Resources, Head of the National Land Agency, Governors and Regents) to forest, plantation and mining companies, customary territories / lands / management areas / natural resources belonging to indigenous peoples are easily included in the company's concession area.

In relation to the market, the characteristics of land conflicts occurring in the *Laman Kinipan* indigenous community are not the result of land scarcity, but the result of massive expansion of capital facilitated by laws and government policies. Conflicts between the government and the *Laman Kinipan* indigenous community arise from injustice or inequality in the control of natural resources, where the position of indigenous peoples dependent on land-based natural resources is systematically weakened. On the other hand, the large private sector involved in plantations and forestry is supported by the state. The alignment with big capital to optimize the maximum profit from the available land ignores the existence of indigenous peoples who are highly dependent on the land.

In such chaotic social, political and cultural processes, the *Laman Kinipan* Indigenous Peoples experience discrimination. Their rights as indigenous peoples are violated and negated. As a result, they suffer ecological, economic, socio-cultural and health losses, as well as loss of security and freedom.

The church, which belongs to the indigenous peoples and is itself an indigenous community, has taken a stand not to be silent, not to be neutral, but to be on the side of the victims, the indigenous peoples. However, it is not enough to be on the side of the victims, the Church must take the initiative to promote positive action by the government and actively fight for spaces of inclusion for indigenous peoples through various possible means.

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## **MASYARAKAT ADAT DI PERSIMPANGAN: ANTARA PERLINDUNGAN DAN DISKRIMINASI**

*Rocky Pasaribu*

Hampir satu minggu ini, saya tidak bisa tidur dengan tenang setelah menerima surat pemberitahuan dari PT Toba Pulp Lestari (TPL) tentang upaya penanaman paksa di wilayah adat kami. Dengan nada pelan bercampur wajah ketakutan, Rudolf Pasaribu mengungkapkan kegelisahannya.

“Bagaimana tidak? Sepanjang bulan Januari ini, komunitas masyarakat adat di Tano Batak terus-menerus diteror oleh TPL terkait upaya penanaman di seluruh wilayah adat yang diklaim sebagai konsesi perusahaan,” ujarnya.

Rudolf Pasaribu adalah salah satu warga Natinggir yang tengah memperjuangkan hak atas tanah adatnya bersama 20 kepala keluarga lainnya, keturunan *Ompu* Raja Naso Malo Marhohos Pasaribu. Setelah lima tahun berjuang, mereka berhasil menguasai kembali sebagian wilayah adat yang sebelumnya diklaim sebagai konsesi TPL. Selama perjuangan itu, mereka mulai menikmati hasil bertani dengan menanam berbagai tanaman pangan.

Sebagai sebuah dusun yang terletak di jantung perkantoran sektor Habinsaran milik TPL, Natinggir menjadi salah satu kampung yang tanahnya banyak diklaim sebagai bagian dari konsesi perusahaan. Dari total 1.496 hektare wilayah adat mereka, sebanyak 1.396 hektare masuk dalam konsesi PT TPL. Keberadaan konsesi ini telah membawa dampak buruk bagi Natinggir, termasuk rusaknya sumber air, menurunnya kesuburan tanah, dan berbagai masalah lingkungan lainnya.

Pengalaman pahit juga dialami Sahala Pasaribu, salah satu warga Natinggir yang merasakan langsung dampaknya. Pada tahun 2020, ketika ingin membangun rumah, ia harus membeli kayu dari Balige. “Padahal, Natinggir berada di kawasan hulu yang dikelilingi hutan. Tapi anehnya, kami harus membeli kayu dari kota,” keluhnya. Kondisi ini tidak lepas dari keberadaan PT TPL yang sejak tahun 1992 telah mengganti hutan alam dengan pohon eukaliptus, sehingga tidak menyisakan kayu alam yang biasa digunakan sebagai bahan bangunan.

Natinggir bukan satu-satunya kampung yang mengalami nasib tragis ini. Hampir seluruh wilayah atau kampung yang diklaim sebagai konsesi PT TPL menghadapi permasalahan serupa: krisis air, kerusakan hutan, dan menurunnya mata pencaharian masyarakat. Namun, ketika masyarakat melaporkan kondisi ini kepada pihak berwenang, pemerintah justru berdalih bahwa perusahaan memiliki dokumen legal. Alih-alih mendapat perlindungan, masyarakat malah dianjurkan menempuh jalur hukum jika merasa dirugikan oleh keberadaan perusahaan.

Tak jarang, ketika masyarakat berusaha menghentikan aktivitas perusahaan, mereka justru mendapat ancaman kriminalisasi. Berdasarkan catatan Kelompok Studi dan Pengembangan Masyarakat (KSPPM) dan Aliansi Masyarakat Adat Nusantara (AMAN) Tano Batak, dalam kurun waktu lebih dari 10 tahun terakhir, setidaknya 120 orang masyarakat adat telah dikriminalisasi karena mempertahankan wilayah dan hutan adat mereka.

## **JALAN TERJAL PENGAKUAN HUTAN ADAT: MENEMPUH JALUR POLITIK DEMI KEADILAN**

Pasca putusan Mahkamah Konstitusi No. 35/2012 tentang “Hutan Adat Bukan Hutan Negara,” perjuangan masyarakat adat seolah menemukan titik terang. Putusan ini dianggap revolusioner karena berhasil mengikis kolonialisasi dalam penguasaan sumber daya alam. Sebelumnya, dalam Undang-Undang No. 41 Tahun 1999 tentang Kehutanan, hutan adat dianggap sebagai bagian dari hutan negara. Oleh karena itu, undang-undang ini sejak lama dinilai memiliki semangat kolonialisme.

Keputusan tersebut membuka jalan bagi lahirnya berbagai regulasi yang mengatur tata cara pengakuan hutan adat dan hak-hak masyarakat adat. Banyak pihak, termasuk komunitas adat sendiri,

memaknai putusan ini sebagai langkah awal yang baik dalam memperjuangkan keberadaan mereka beserta hak-haknya.

Pemerintah pun makin terbuka untuk berdiskusi dengan berbagai organisasi masyarakat sipil guna merumuskan mekanisme pengakuan pasca Putusan MK 35/2012. Puncaknya, pada tahun 2016, Kementerian Lingkungan Hidup dan Kehutanan (KLHK), yang saat ini bernama Kementerian Kehutanan, menyerahkan 10 Surat Keputusan (SK) pengakuan hutan adat di Istana Negara. Salah satu penerima SK tersebut adalah masyarakat adat Pandumaan-Sipituhuta dari Kabupaten Humbang Hasundutan, Sumatra Utara.

Pengakuan yang diberikan kepada 10 komunitas masyarakat adat pada tahun 2016 itu menjadi momentum besar, di mana banyak masyarakat adat yang kemudian terdorong untuk mengajukan permohonan serupa agar wilayah adat mereka diakui oleh negara.

Di *Tano Batak*, misalnya, terjadi lonjakan permohonan dari komunitas adat yang meminta pendampingan dari KSPPM dan AMAN. Hampir setiap minggu, kantor KSPPM kedatangan tamu yang ingin berdiskusi tentang persyaratan pengajuan pengakuan hutan adat.

Fenomena ini menunjukkan bahwa selama ini masyarakat adat menyadari keberadaan wilayah adat mereka, tetapi tidak berani mengajukan permohonan atau sekadar mendeklarasikannya karena belum melihat kepastian hukum. Namun, apa yang terjadi pada tahun 2016 telah membangkitkan keyakinan mereka bahwa pengakuan itu bukan lagi hal yang mustahil.

## **“MIMPI YANG KANDAS: KETIDAKPASTIAN PENGAKUAN HUTAN ADAT “**

Semangat yang sempat menyala di kalangan masyarakat adat perlahan mulai redup. Setelah sembilan tahun, sejak tahun 2016, hanya tiga komunitas adat di *Tano Batak* yang mendapatkan pengakuan dari negara. Di seluruh Indonesia, ada 156 komunitas adat dengan luas wilayah 332.505 hektare yang telah diakui. Namun, angka ini masih jauh dari harapan dan tidak sebanding dengan jumlah permohonan yang diajukan oleh masyarakat adat di seluruh Indonesia.

Pemerintah beralih bahwa keterlambatan dalam proses pengakuan terjadi karena terbatasnya anggaran. Namun, alasan ini terdengar klise dan tidak sejalan dengan realitas di lapangan. Masih segar dalam ingatan ketika Kementerian Lingkungan Hidup dan Kehutanan (KLHK) pada tahun 2021 melakukan verifikasi

dan identifikasi terhadap keberadaan masyarakat adat di Tano Batak. Sayangnya, tim verifikasi yang diturunkan saat itu justru menunjukkan sikap yang tidak berpihak kepada masyarakat adat.

Hal ini terlihat dari cara mereka mengajukan pertanyaan yang cenderung mencurigai keberadaan masyarakat adat, alih-alih membantu dalam proses pengakuan. Berbagai tindakan yang mereka lakukan di lapangan justru mengundang amarah dan kekecewaan. Salah satu contoh nyata adalah ketika tim meminta masyarakat untuk menunjukkan benda sejarah atau hukum adat yang berlaku di komunitas mereka. Namun, bukannya dianggap sebagai bukti valid, benda-benda tersebut malah dicurigai dan dipertanyakan lebih lanjut.

Situasi ini seolah mengindikasikan bahwa kehadiran tim verifikasi bukan untuk membantu masyarakat mendapatkan pengakuan, melainkan untuk mencari celah agar pengakuan tersebut tidak diberikan. Mereka lebih berusaha membuktikan bahwa masyarakat adat tidak benar-benar ada, daripada mendukung perjuangan mereka dalam mendapatkan hak atas wilayah adatnya.

Salah satu kegagalan lain dalam proses verifikasi dan identifikasi saat itu adalah sikap tim yang terlalu mudah mempercayai perusahaan ketika ada tuduhan bahwa masyarakat adat yang sedang diverifikasi memiliki masalah hukum atau administratif. Padahal, dalam banyak kasus, konflik antara perusahaan dan masyarakat adat sering kali terjadi karena kepentingan bisnis yang bertentangan dengan hak ulayat masyarakat adat.

Tim verifikasi seharusnya bersikap netral dan objektif, tetapi dalam praktiknya, mereka lebih banyak mendengar suara perusahaan dibandingkan masyarakat adat yang menjadi objek verifikasi. Hal ini semakin memperkuat dugaan bahwa ada ketidakadilan dalam proses pengakuan hak-hak masyarakat adat.

Banyak kegagalan lain yang membuat masyarakat adat merasa bahwa mereka tidak diperlakukan dengan adil dalam proses ini. Situasi inilah yang akhirnya mendorong KSPPM untuk mendokumentasikan pengalaman tersebut dalam sebuah buku berjudul *Nungga Leleng Hami Mian Di Son* (Kami Sudah Lama Tinggal di Sini).

Judul buku ini bukan sekadar pernyataan biasa, tetapi sebuah penegasan kepada semua pihak—termasuk tim verifikasi yang datang—bahwa keberadaan masyarakat adat di tanah mereka bukan sesuatu yang bisa dipertanyakan atau diragukan. Mereka telah tinggal di kampungnya secara turun-temurun, jauh sebelum

perusahaan-perusahaan besar hadir dan mengklaim wilayah tersebut sebagai bagian dari konsesi mereka.

## **JALAN BERLIKU MENDAPAT PENGAKUAN DAN PERLINDUNGAN MASYARAKAT ADAT.**

Tantangan lain dalam pengakuan masyarakat adat saat ini adalah keharusan adanya Peraturan Daerah (Perda) tentang pengakuan dan perlindungan masyarakat hukum adat, sesuai dengan amanat Putusan Mahkamah Konstitusi No. 35/2012. Alasan di balik amanat ini adalah karena pemerintah kabupaten dianggap lebih memahami kondisi masyarakatnya dibandingkan pemerintah pusat.

Biasanya, setelah Perda di tingkat kabupaten diterbitkan, pemerintah kabupaten akan membentuk tim panitia melalui sebuah keputusan resmi. Tim ini bertugas untuk melakukan verifikasi lapangan sebelum akhirnya bupati menerbitkan Surat Keputusan (SK) tentang pengakuan masyarakat adat dan wilayah adatnya.

SK bupati ini kemudian menjadi lampiran yang diajukan ke kementerian terkait untuk melanjutkan proses verifikasi hutan adat. Proses ini, misalnya, telah terjadi pada tahun 2021 lalu.

Namun, sebelum Perda bisa terbit di suatu kabupaten, masyarakat adat harus menghadapi berbagai kepentingan politik di daerah tersebut. Mereka harus berjuang meyakinkan pihak legislatif dan eksekutif agar mau menerbitkan Perda tersebut. Sering kali, pengalaman menunjukkan bahwa ketika masyarakat adat melakukan audiensi ke kantor pemerintahan untuk mendorong diterbitkannya Perda, mereka justru disudutkan dengan berbagai pertanyaan dan hambatan birokrasi.

Pola yang sama juga sering terjadi ketika masyarakat adat berdialog dengan pihak pemerintah lainnya. Masyarakat kerap diarahkan agar terlebih dahulu memiliki Perda jika ingin memperjuangkan tanahnya. Pernyataan seperti ini sering kali menyulut kemarahan masyarakat adat karena seolah-olah membebankan tanggung jawab penerbitan Perda kepada mereka, padahal ini seharusnya menjadi tugas pemerintah daerah. Tidak mengherankan jika hingga saat ini hanya dua kabupaten di Sumatera Utara yang memiliki Perda tentang masyarakat adat.

Meskipun Putusan MK 35/2012 sudah dengan tegas menyatakan bahwa hutan adat bukan hutan negara, kenyataannya putusan ini belum serta-merta dapat digunakan untuk mengakui dan melindungi

masyarakat adat. Mereka masih harus berhadapan dengan birokrasi politik yang sangat berbelit-belit di tingkat kabupaten.

Di saat yang sama, perusahaan terus melakukan ekspansi di wilayah adat masyarakat. Mereka menebangi hutan dan menggantinya dengan tanaman monokultur. Ironisnya, ketika masyarakat adat mencoba mempertahankan wilayah mereka, mereka justru dihadapkan dengan hukum formal yang tidak berpihak kepada mereka. Akibatnya, hingga saat ini, banyak anggota masyarakat adat yang dipenjara hanya karena mempertahankan tanah leluhur mereka.

Proses pengakuan masyarakat adat yang seharusnya menjadi hak mereka justru terhambat oleh politik daerah yang penuh kepentingan, birokrasi yang berbelit, serta lemahnya keberpihakan pemerintah terhadap masyarakat adat.

Sementara masyarakat adat terus dipersulit dengan regulasi dan persyaratan yang tidak kunjung rampung, perusahaan-perusahaan besar dengan mudah memperluas konsesi mereka, merusak ekosistem hutan adat, dan mengancam keberlangsungan hidup masyarakat adat.

## **ISAPAN JEMPOL: MASYARAKAT ADAT DAN REALITAS PERLINDUNGAN YANG SEMU**

Peran masyarakat adat dalam menjaga hutan dengan segala kearifan lokalnya telah terbukti sejak lama. Mereka tidak hanya menggantungkan hidup pada alam, tetapi juga memiliki tradisi yang secara turun-temurun memastikan keseimbangan ekosistem tetap terjaga. Seharusnya, dengan peran strategis ini, mereka mendapatkan perlindungan serius dari pemerintah.

Apalagi, Indonesia telah berkomitmen dalam upaya mengatasi perubahan iklim global melalui berbagai perjanjian internasional, seperti Perjanjian Paris. Dalam forum-forum global, pemerintah kerap menyebut masyarakat adat sebagai garda terdepan dalam konservasi alam. Namun, kenyataan di lapangan jauh dari janji-janji manis tersebut.

Slogan bahwa masyarakat adat adalah penjaga hutan terbaik sering kali hanya sekadar isapan jempol. Hak-hak mereka justru terus diabaikan, bahkan dilanggar oleh pemerintah dan perusahaan yang mengincar sumber daya alam di wilayah adat.



Isu perlindungan masyarakat adat sering kali hanya menjadi komoditas politik yang digunakan saat menjelang pemilihan umum. Saat kampanye, politisi berbicara lantang mengenai perlindungan hak masyarakat adat. Namun, setelah pemilu berakhir, janji-janji itu menguap begitu saja.

Masyarakat adat tidak lebih dari sekadar alat pencitraan, yang akan kembali dilupakan ketika kepentingan industri dan investasi berbicara lebih keras.

Sebagai contoh, berbagai peraturan yang sebenarnya bisa mempercepat pengakuan dan perlindungan masyarakat adat justru terhambat oleh birokrasi yang berbelit-belit dan kepentingan politik yang tidak berpihak kepada mereka.

Di tingkat daerah, perda yang seharusnya menjadi jalan keluar bagi pengakuan masyarakat adat justru sering kali dipolitisasi. Pemerintah daerah lebih memilih mengakomodasi kepentingan korporasi dibandingkan memperjuangkan hak-hak masyarakat adat yang telah lama berdiam di wilayahnya.

Bukti nyata dari ketidakpedulian pemerintah terhadap masyarakat adat dapat dilihat dari kasus yang menimpa masyarakat adat Nagasaribu Onana Harbangan.

Baru-baru ini mereka dilarang oleh perusahaan untuk memasuki hutan adatnya sendiri—hutan yang selama ini menjadi sumber utama mata pencaharian mereka. Perusahaan yang mengklaim lahan tersebut menggunakan berbagai cara untuk mengusir masyarakat, termasuk melibatkan aparat keamanan.

Pemerintah yang melihat kejadian ini justru bersikap seolah-olah tidak peduli. Tidak ada intervensi yang berarti untuk melindungi masyarakat adat dari perampasan tanah mereka. Bahkan, dalam beberapa kasus, pemerintah justru berpihak pada perusahaan dengan dalih bahwa perusahaan memiliki dokumen legal untuk beroperasi.

Hal ini menambah panjang daftar diskriminasi terhadap masyarakat adat di Indonesia. Hak-hak mereka dirampas, tanah leluhur mereka diklaim secara sepihak, dan mata pencaharian mereka dihancurkan tanpa ada solusi yang berpihak kepada mereka.

Kasus seperti yang dialami oleh masyarakat adat Nagasaribu Onana Harbangan bukanlah satu-satunya. Di berbagai wilayah lain di Indonesia, masyarakat adat menghadapi tantangan yang sama. Pencaplokan tanah adat oleh perusahaan dengan dalih investasi dan pembangunan ekonomi, kriminalisasi terhadap masyarakat adat yang mencoba mempertahankan hak-hak mereka, birokrasi yang

mempersulit pengakuan wilayah adat meskipun sudah ada putusan Mahkamah Konstitusi No. 35/2012 yang menegaskan bahwa hutan adat bukanlah bagian dari hutan negara, dan ketimpangan kebijakan, di mana pemerintah lebih cepat memberikan izin konsesi kepada perusahaan dibandingkan memberikan pengakuan kepada masyarakat adat.

## **PENUTUP**

Ketidakadilan terhadap masyarakat adat bukan hanya masalah mereka semata, tetapi juga menjadi ancaman bagi lingkungan dan kesejahteraan bangsa secara keseluruhan.

Ketika tanah adat diambil alih oleh perusahaan untuk perkebunan monokultur, pertambangan, atau industri lainnya, dampaknya bukan hanya pada hilangnya ruang hidup masyarakat adat, tetapi juga pada kerusakan ekosistem yang lebih luas.

Realitas ini menunjukkan bahwa masyarakat adat terus menjadi korban diskriminasi sistemis. Mereka kehilangan tanah, sumber daya alam, hingga hak-haknya, sementara pemerintah lebih memihak pada kepentingan korporasi dan investasi besar.

Jika kondisi ini dibiarkan, bukan hanya masyarakat adat yang makin terpinggirkan, melainkan juga lingkungan yang makin rusak akibat eksploitasi tanpa batas. Indonesia akan kehilangan salah satu aset terpentingnya: masyarakat adat yang selama ini menjadi benteng terakhir dalam menjaga kelestarian alam.

Diperlukan tindakan nyata dari pemerintah dan masyarakat sipil untuk memastikan bahwa masyarakat adat tidak lagi menjadi korban kebijakan yang diskriminatif. Sebagai negara yang kaya akan keberagaman budaya dan sumber daya alam, Indonesia tidak boleh terus membiarkan masyarakat adatnya terpinggirkan. Keadilan dan pengakuan terhadap hak-hak mereka harus menjadi prioritas, bukan sekadar janji politik yang terus diingkar.

## **TENTANG PENULIS**



Saya Rocky Pasaribu, saat ini bekerja di organisasi bernama KSPPM sebagai Direktur Eksekutif KSPPM. Hampir 10 tahun terakhir saya fokus melakukan pendampingan terhadap masyarakat adat mempertahankan dan memperjuangkan haknya atas tanah di Kawasan Danau Toba.



## **INDIGENOUS COMMUNITIES AT THE CROSSROADS: BETWEEN PROTECTION AND DISCRIMINATION**

*Rocky Pasaribu*

For almost a week now, I have not been able to sleep peacefully after receiving a notification letter from PT Toba Pulp Lestari (TPL) regarding their forced planting efforts in our indigenous territory. With a soft voice and a fearful expression, Rudolf Pasaribu expressed his anxiety.

“How could I not? Throughout January, the indigenous community in Tano Batak has been continuously terrorized by TPL regarding its efforts to plant across the entire indigenous territory, which the company claims as part of their concession,” he said.

Rudolf Pasaribu is one of the residents of Natinggir who is fighting for the rights to his ancestral land along with 20 other families, descendants of Ompu Raja Naso Malo Marhohos Pasaribu. After five years of struggle, they managed to regain control over part of their ancestral land that was previously claimed as part of TPL’s concession. During this struggle, they began to reap the benefits of farming by planting various food crops.

As a village located in the heart of TPL’s Habinsaran sector offices, Natinggir has become one of the villages whose land is largely claimed as part of the company’s concession. Out of the total 1,496 hectares of their ancestral land, 1,396 hectares are within PT TPL’s concession. The existence of this concession has had a negative impact on Natinggir, including the destruction of water sources, a decline in soil fertility, and various other environmental issues.

Sahala Pasaribu, one of the residents of Natinggir, felt the impact firsthand. In 2020, when he wanted to build a house, he had to buy wood from Balige. “In fact, Natinggir is in an upstream area surrounded by forests. But strangely, we have to buy wood from the city,” he complained. This situation is a result of PT TPL’s presence, which since 1992 has replaced natural forests with eucalyptus trees, leaving no natural wood that is typically used as building materials.

Natinggir is not the only village to suffer this tragic fate. Almost all the areas or villages claimed as part of PT TPL’s concession are facing similar problems: water crises, forest destruction, and a decline in people’s livelihoods. However, when the community reported these conditions to the authorities, the government merely claimed that the company held legal documents. Instead of receiving protection, the community was advised to pursue legal action if they felt harmed by the company’s presence.

Not infrequently, when people try to stop the company’s activities, they actually receive threats of criminalization. Based on the records of Kelompok Studi dan Pengembangan Masyarakat (KSPPM) or the Community Study and Development Group and Aliansi Masyarakat Adat Nusantara (AMAN) or the Alliance of Indigenous Peoples of the Tano Batak Archipelago, over the past 10 years, at least 120 indigenous people have been criminalized for defending their territorial and ancestral forests.

## **THE STEEP PATH TO RECOGNITION OF ANCESTRAL FORESTS: TAKING THE POLITICAL PATH FOR JUSTICE**

After the Constitutional Court ruling No. 35/2012 on “Ancestral Forests Are Not State Forests,” the struggle of indigenous communities seemed to find a glimmer of hope. This ruling was considered revolutionary because it successfully dismantled the colonialist control over natural resources. Previously, under Law No. 41 of 1999 on Forestry, ancestral forests were regarded as part of state forests. As a result, this law had long been criticized for embodying colonialist sentiments.

The decision paved the way for the creation of various regulations governing the recognition of ancestral forests and the rights of indigenous communities. Many parties, including the indigenous communities themselves, interpreted this ruling as a good first step in advocating for their existence and rights.

The government became increasingly open to discussions with various civil society organizations to formulate mechanisms for recognition following the Constitutional Court ruling No. 35/2012. The peak of this effort occurred in 2016, when the Ministry of Environment and Forestry, now known as the Ministry of Forestry, handed over 10 Decrees (Surat Keputusan) recognizing ancestral forests at the State Palace. One of the recipients of these decrees was the indigenous community of Pandumaan-Sipituhuta from Humbang Hasundutan Regency, North Sumatra.

The recognition granted to 10 indigenous communities in 2016 became a significant milestone. Many other indigenous communities were then motivated to submit similar requests for their ancestral territories to be recognized by the state.

In Tano Batak, for example, there was a surge in requests from indigenous communities seeking assistance from KSPPM and AMAN. Almost every week, the KSPPM office received visitors wanting to discuss the requirements for submitting an application for the recognition of ancestral forests.

This phenomenon shows that indigenous communities have long been aware of the existence of their ancestral territories, but they were hesitant to submit applications or even declare them due to the lack of legal certainty. However, the moment in 2016 rekindled their belief that recognition is no longer an impossible goal.

## **DREAMS DASHED: THE UNCERTAINTY OF ANCESTRAL FOREST RECOGNITION**

The spirit that once burned brightly among indigenous communities slowly began to fade. After nine years since 2016, only three indigenous communities in Tano Batak have received recognition from the state. Throughout Indonesia, there are 156 indigenous communities with an area of 332,505 hectares that have been recognized. However, this figure is still far from expectations and is not comparable to the number of applications submitted by indigenous communities across Indonesia.

The government argued that the delay in the recognition process occurred due to limited budget. However, this reason sounds cliché and is not in line with the reality on the ground. It is still fresh in memory when the Ministry of Environment and Forestry in 2021 verified and identified the existence of indigenous communities in

Tano Batak. Unfortunately, the verification team that was sent at that time showed an attitude that was not in favor of indigenous communities.

This was evident from the way they asked questions that seemed to suspect the existence of the indigenous communities, rather than helping in the recognition process. Various actions they took on the ground only provoked anger and disappointment. One clear example was when the team asked the community to show historical objects or customary laws that applied in their community. However, instead of being considered valid evidence, these objects were met with suspicion and further questioning.

This situation seemed to indicate that the presence of the verification team was not to assist the communities in gaining recognition, but rather to find loopholes to deny that recognition. They appeared to be more focused on proving that the indigenous communities did not truly exist, rather than supporting their struggle to claim their rights to ancestral land.

One other irregularity in the verification and identification process at that time was the team's tendency to easily trust the company when there were allegations that the indigenous communities being verified had legal or administrative issues. In many cases, conflicts between companies and indigenous communities often arise due to business interests that conflict with the indigenous peoples' customary rights.

The verification team was supposed to be neutral and objective, but in practice, they listened to the company's voice more than the indigenous communities who were the subject of verification. This further strengthened the suspicion that there was an injustice in the process of recognizing the rights of indigenous peoples.

There are many other irregularities that make indigenous peoples feel that they are not being treated fairly in this process. This situation finally prompted KSPPM to document this experience in a book titled "Nungga Leleng Hami Mian Di Son" (We Have Lived Here for a Long Time).

The title of this book is not just an ordinary statement, but also an affirmation to all parties—including the verification team who came—that the existence of indigenous peoples on their lands is not something that can be questioned or doubted. They have lived in their village for generations, long before large corporations came along and claimed the area as part of their concessions.

## **THE WINDING ROAD TO RECOGNITION AND PROTECTION OF INDIGENOUS COMMUNITIES**

Another challenge in the recognition of indigenous communities today is the requirement for a Regional Regulation (Perda) on the recognition and protection of customary law communities, as mandated by the Constitutional Court ruling No. 35/2012. The reasoning behind this mandate is that the district government is considered to have a better understanding of its community's conditions compared to the central government.

Typically, after the Perda is issued at the district level, the district government will form a committee through an official decree. This team is responsible for conducting field verification before the regent issues a Decree recognizing the indigenous community and their ancestral land.

This regent's decree then becomes an attachment submitted to the relevant ministries to continue the customary forest verification process. This process, for example, has occurred in 2021.

However, before a Perda can be issued in a district, indigenous communities must face various political interests in the region. They have to struggle to convince both the legislative and executive branches to issue the Perda. Often, experiences show that when indigenous communities hold meetings at government offices to push for the issuance of the Perda, they are instead cornered with various questions and bureaucratic obstacles.

The same pattern often occurs when indigenous communities engage in dialogue with other government authorities. Communities are often directed to first have a Regional Regulation (Perda) if they wish to fight for their land. Statements like this frequently provoke anger among indigenous communities, as it seems to place the responsibility of issuing the Perda on them, when it should actually be the task of the local government. It is no surprise that, to this day, only two districts in North Sumatra have a Perda regarding indigenous communities.

Although the Constitutional Court ruling No. 35/2012 clearly stated that ancestral forests are not state forests, in reality, this ruling has not immediately been used to recognize and protect indigenous communities. They still have to face a very complicated political bureaucracy at the district level.

At the same time, companies continue to expand in the community's ancestral territory. They cut down the forest and replaced it with monoculture crops. Ironically, when indigenous communities try to defend their territory, they are instead confronted with formal laws that are not in their favor. As a result, to date, many members of indigenous people have been imprisoned simply for defending their ancestral lands.

The process of recognizing indigenous peoples as their rights is hampered by regional politics full of interests, convoluted bureaucracy, and weak government alignment with indigenous peoples.

While indigenous peoples continue to be complicated by unresolved regulations and requirements, large corporations are easily expanding their concessions, damaging indigenous forest ecosystems, and threatening the survival of indigenous peoples.

## **AN EMPTY PROMISE: INDIGENOUS COMMUNITIES AND THE ILLUSION OF PROTECTION**

The role of indigenous communities in protecting forests with their local wisdom has long been proven. They not only rely on nature for their livelihood but also have traditions passed down through generations that ensure the balance of the ecosystem is maintained. With such a strategic role, they should receive serious protection from the government.

Moreover, Indonesia has committed to addressing global climate change through various international agreements, such as the Paris Agreement. In global forums, the government often refers to indigenous communities as the front line in environmental conservation. However, the reality on the ground is far from these sweet promises.

The slogan that indigenous communities are the best forest guardians is often just an empty phrase. Their rights are continually ignored, even violated by the government and companies seeking natural resources in indigenous territories.

The issue of protecting indigenous communities often becomes a political commodity used during election campaigns. During campaigns, politicians speak loudly about protecting the rights of indigenous communities. However, once the election is over, those promises vanish into thin air.



Indigenous communities are no more than a tool for image-building, only to be forgotten again when industrial and investment interests speak louder.

For example, various regulations that could actually expedite the recognition and protection of indigenous communities are instead hindered by convoluted bureaucracy and political interests that do not support them.

At the regional level, local regulations that are supposed to be a way out for the recognition of indigenous peoples are often politicized. The local government prefers to accommodate corporate interests rather than fighting for the rights of indigenous peoples who have long lived in their territory.

Clear evidence of the government's indifference to indigenous peoples can be seen from the case that befell the indigenous people of Nagasaribu Onana Harbangan.

Recently, they were barred by companies from entering their own customary forests—forests that have been their main source of livelihood. The company that claimed the land used various means to evict the community, including involving security forces.

The government that saw this incident actually acted as if it did not care. There was no meaningful intervention to protect indigenous peoples from their land grabbing. In fact, in some cases, the government has sided with the company under the pretext that the company has the legal documents to operate.

This adds to the long list of discrimination against indigenous communities in Indonesia. Their rights are seized, their ancestral lands are claimed unilaterally, and their livelihoods are destroyed without any solutions that favor them.

Cases like that of the Nagasaribu Onana Harbangan indigenous community are not isolated. In various other regions of Indonesia, indigenous communities face the same challenges. The encroachment of ancestral lands by companies under the guise of investment and economic development, the criminalization of indigenous people who try to defend their rights, the bureaucracy that complicates the recognition of indigenous territories despite the Constitutional Court ruling No. 35/2012 which affirms that ancestral forests are not part of state forests, and the policy imbalances where the government is quicker to grant concessions to companies than to recognize indigenous communities.

## CONCLUSION

The injustice faced by indigenous communities is not only their problem, but also a threat to the environment and the well-being of the nation as a whole.

When ancestral lands are taken over by companies for mono-culture plantations, mining, or other industries, the impact is not only the loss of living space for indigenous communities, but also the destruction of broader ecosystems.

This reality demonstrates that indigenous communities continue to be victims of systemic discrimination. They lose their land, natural resources, and rights, while the government tends to side with the interests of corporations and large investments.

If this condition is allowed to continue, it will not only marginalize indigenous communities further, but also lead to the increasing destruction of the environment due to unchecked exploitation. Indonesia will lose one of its most important assets: indigenous communities, who have long been the last bastion in preserving nature.

Real action is needed from the government and civil society to ensure that indigenous communities are no longer victims of discriminatory policies. As a country rich in cultural diversity and natural resources, Indonesia must not continue to let its indigenous peoples be marginalized. Justice and recognition of their rights must be a priority, not just a political promise that continues to be broken.

## ABOUT THE AUTHOR



I am Rocky Pasaribu, and I currently work at an organization called KSPPM as executive director. For the past 10 years, I have focused on assisting indigenous communities in defending and fighting for their land rights in the Lake Toba area.



# **PERJUANGAN MASYARAKAT ADAT MENTAWAI MELAWAN DISKRIMINASI DAN PENGINGKARAN HAK-HAK ADAT**

*Tarida Hernawati Elisabeth S.*

## **PENDAHULUAN**

Kabupaten Kepulauan Mentawai adalah salah satu kabupaten yang terletak di Provinsi Sumatera Barat, Indonesia. Kabupaten ini berada di luar dari wilayah pulau Sumatera, yang terdiri atas empat pulau utama. Kabupaten Kepulauan Mentawai dibentuk berdasarkan Undang-Undang Republik Indonesia No. 49 Tahun 1999 resmi dimekarkan dari Kabupaten Padang Pariaman dan dinamai menurut nama asli geografisnya. Ada empat pulau utama yang berpenghuni, yaitu Pulau Siberut, Pulau Sipora, Pulau Pagai Utara, dan Pulau Pagai Selatan yang dihuni oleh mayoritas masyarakat suku Mentawai, suku Minangkabau, dan pendatang lainnya di luar Sumatra Barat. Pada pertengahan tahun 2024, jumlah penduduk Kepulauan Mentawai sebanyak 96.570 jiwa<sup>1</sup>.

Kepulauan Mentawai mempunyai potensi kekayaan alam yang tak ternilai harganya. Flora dan fauna di Kepulauan Mentawai tidak terdapat di tempat lain di mana pun di dunia. UNESCO menyatakan manusia, flora, dan fauna di Kepulauan Mentawai memiliki kemurnian genetika, termasuk spesies, sehingga dianggap penting dalam pengetahuan evolusi makhluk hidup. Berbagai flora dan fauna itu bersifat endemik, mencerminkan keanekaragaman hayati

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<sup>1</sup> [https://id.wikipedia.org/wiki/Kabupaten\\_Kepulauan\\_Mentawai](https://id.wikipedia.org/wiki/Kabupaten_Kepulauan_Mentawai)

khas Kepulauan Mentawai<sup>2</sup>. Selain keanekaragaman hayati, Schefold (1991:170) menegaskan hutan Mentawai memiliki komposisi yang khas disebabkan letak geografisnya yang sudah sejak ratusan ribu tahun terasing dari Pulau Sumatra. Hutan di Mentawai sebagian besar merupakan tumbuh-tumbuhan hutan hujan primer atau hutan tropis yang pola pertumbuhannya belum pernah tersentuh campur tangan manusia.

Bagi orang Mentawai, tanah dan hutan warisan nenek moyang yang disebut dengan *polak teteu*<sup>3</sup>, memiliki makna religius dalam dimensi waktu dahulu, sekarang, dan masa depan. *Polak teteu* menyimpan sejarah tidak tertulis akan keberadaan nenek moyang yang menjadi alas kelangsungan kehidupan sosial budaya-religi-ekonomi-politis, dan sebagai tali ikatan dengan generasi yang akan datang. *Polak teteu* juga merupakan simbol kekuasaan orang Mentawai atas sumberdaya alam yang sekaligus menjadi simbol harga diri dan prestise setiap *uma*<sup>4</sup> atau klan. Bagi masyarakat adat di Pulau Siberut, *polak teteu* juga memiliki makna spiritual yang berkaitan dengan kepercayaan Arat Sabulungan, bahwa segala sesuatu di alam semesta memiliki roh. Mereka selalu berupaya hidup harmonis dan menjaga keseimbangan dengan roh-roh di hutan. Hubungan simbolik antara hutan, roh-roh dan orang Mentawai tecermin dalam perilaku pengelolaan dan pemanfaatan hutan.

Karena itulah, gagasan pembangunan di Kepulauan Mentawai menjadi kontroversial: antara mempertahankan kelestarian alam dan budaya dan pembangunan ekonomi (Walujo dan Susanto dalam Adhikerana, et.al 1997: 5). Kebijakan pembangunan, yang sering disamakan dengan pertumbuhan ekonomi, menuntut adanya pembebasan tanah dan lahan, ini dapat berdampak terhadap hilangnya kelestarian alam dan budaya masyarakat di sekitarnya.

Negara mengklaim semua tanah yang dianggap “bukan tanah milik siapa- siapa” sebagai milik negara. Negara menetapkan batas-batas tanah yang dinyatakan sebagai milik negara untuk menekankan kontrol negara terhadap sumber daya alam. Penetapan batas-batas tanah membuat wilayah itu menjadi tertutup karena

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<sup>2</sup> Laporan Kajian LIPI tentang “Penyusunan Strategi Pengembangan Kawasan Buffer Zone Taman Nasional Siberut dan Fasilitasi Hutan Kemasyarakatan” Tahun 2016.

<sup>3</sup> Istilah ini umum digunakan oleh masyarakat adat di Pulau Siberut.

<sup>4</sup> Di Pulau Sipora dan Pulau Pagai Utara-Selatan, klan lebih dikenal dengan istilah muntogat.

negara melarang siapa pun untuk mengakses wilayah serta sumber daya alam di dalamnya. Negara kemudian meluncurkan program zonasi terhadap sebuah wilayah untuk mengatur tipe-tipe aktivitas yang diizinkan pada setiap zona.

Penguasaan negara terhadap tanah dan hutan di Indonesia, termasuk di Kepulauan Mentawai, telah mendorong munculnya berbagai konflik berbasis tanah dan sumber daya alam. Konflik tersebut bersumber dari persoalan diskriminasi atas pengaturan dan perlakuan pemerintah terhadap masyarakat dengan mengabaikan, menggusur, dan bahkan mematisurikan nilai-nilai dan norma-norma hukum adat, termasuk religi dan tradisi-tradisi masyarakat melalui dominasi dan penegakan hukum negara. Konflik dan perlawanan terjadi dalam perebutan akses dan kontrol terhadap hutan. Masyarakat Mentawai berupaya mempertahankan tanah adat mereka, tidak hanya sebagai sumber mata pencaharian hidup. Tanah adat memiliki peran dan makna yang sangat penting dalam kehidupan orang Mentawai sebagai simbol identitas, kekayaan, kejayaan, dan kedaulatan orang Mentawai sebagai masyarakat adat. Berbagai perlawanan baik terhadap negara, perusahaan dan investor pun dilakukan oleh orang Mentawai dalam rangka mempertahankan tanah adat mereka. Aksi-aksi perlawanan dilakukan sebagai protes atas penyangkalan negara terhadap status dan hak-hak adat serta upaya untuk mempertahankan tanah adat mereka. Strategi budaya menjadi strategi paling utama yang digunakan orang Mentawai dalam aksi-aksi perlawanan untuk mempertahankan tanah adat tersebut.

## **DISKRIMINASI DAN PERAMPASAN HAK ATAS TANAH DAN HUTAN**

Penguasaan negara terhadap hutan di Indonesia telah berlangsung semenjak masa kolonial, dengan sedikitnya tiga tahapan teritorialisasi, seperti yang dijelaskan oleh Vandergeest dan Peluso (dalam Rachman dan Siscawati, 2014: 10-11). Tahap pertama, negara mengklaim semua tanah yang dianggap “bukan tanah milik siapa- siapa” sebagai milik negara. Tahap kedua adalah penetapan batas-batas tanah yang dinyatakan sebagai milik negara untuk menekankan kontrol Negara terhadap sumberdaya alam. Penetapan batas-batas tanah membuat wilayah itu menjadi tertutup karena negara melarang siapa pun untuk mengakses wilayah serta sumber

daya alam di dalamnya. Tahap ketiga, adalah meluncurkan program zonasi terhadap sebuah wilayah untuk mengatur tipe-tipe aktivitas yang diizinkan pada setiap zona.

Kontrol Negara atas hutan ditekankan dalam Pasal 5 ayat (1) yang menyatakan bahwa “semua hutan dalam wilayah Republik Indonesia termasuk kekayaan alam yang terkandung di dalamnya, dikuasai oleh Negara”. Selanjutnya, Pasal 5 ayat (2) menekankan bahwa “hak menguasai dari Negara tersebut pada ayat (1) memberi wewenang untuk (a) menetapkan dan mengatur perencanaan, peruntukan, penyediaan, dan penggunaan hutan sesuai dengan fungsinya dalam memberikan manfaat kepada rakyat dan Negara; (b) mengatur pengurusan hutan dalam arti luas; (c) menentukan dan mengatur hubungan-hubungan antara orang atau badan hukum dengan hutan dan mengatur perbuatan-perbuatan hukum mengenai hutan”.

Proses penguasaan Negara terhadap hutan menurut Rachman dan Siscawati (2014: 26-27) mencapai puncaknya selama rezim Orde Baru, Berdasarkan UU Nomor 5 Tahun 1967. Dalam Pasal 1 ayat (1) disebutkan bahwa ‘hutan’ ialah suatu lapangan bertumbuhan pohon-pohonan yang secara keseluruhan merupakan persekutuan hidup alam hayati beserta alam lingkungannya dan yang ditetapkan oleh pemerintah sebagai ‘hutan’. Pasca Orde Baru, penguasaan Negara atas hutan dilanjutkan dengan pendekatan kontrol yang terpusat dan berbasis Negara melalui UU Nomor 41 Tahun 1999, yang mengadopsi pendekatan ekosistem. Pasal (1) menyatakan bahwa “hutan adalah suatu kesatuan ekosistem berupa hamparan lahan berisi sumberdaya alam hayati yang didominasi pepohonan dalam persekutuan alam lingkungannya, yang satu dengan lainnya tidak dapat dipisahkan”. Menurut Rachman dan Siscawati (2014: 32), Undang-Undang ini mengadopsi suatu pendekatan yang konvensional dalam melihat ekosistem di mana orang tidak menjadi bagian darinya.

Penguasaan negara terhadap hutan di Mentawai, melalui teritorialisasi dimana negara menetapkan batas-batas suatu kawasan hutan membuat orang Mentawai tidak dapat leluasa mengakses wilayah tersebut beserta seluruh sumberdaya alam di dalamnya. Negara kemudian dapat mengizinkan atau memberi konsesi kepada perusahaan-perusahaan kayu dan perkebunan skala besar di atas kawasan hutan. Badan Pusat Statistik Kabupaten Kepulauan Mentawai menyebutkan dari 601.135 km<sup>2</sup> luas keseluruhan wilayah daratan Kabupaten Kepulauan Mentawai, 85, 19% dibebani dengan

fungsi dan konsesi-konsesi hasil hutan baik berupa kayu maupun bukan kayu<sup>5</sup>. Hanya 14,81% wilayah Kabupaten Kepulauan Mentawai yang bukan kawasan hutan negara yang berdampak pada hambatan pembangunan di Mentawai.

Penetapan hak dan fungsi hutan dan kawasan hutan di Kepulauan Mentawai dapat dilihat dalam penjelasan berikut: Berdasarkan Surat Keputusan Menteri Kehutan Nomor SK. 35/Menhut-II/2013, yang menyatakan luas dan fungsi kawasan hutan di Kabupaten Kepulauan Mentawai saat ini terdiri dari Kawasan Hutan Suaka Alam /Kawasan Pelestraian Alam seluas 183.378,87 ha, Hutan Lindung seluas 7.670,73 ha, Hutan Produksi seluas 246.011,41 ha, dan Hutan Produksi Konversi seluas 54,856,28 ha<sup>6</sup>. Sebelumnya, pada tahun 1993 melalui SK Menteri Kehutanan Nomor 407/Kpts-II/93, seluas 190.500 ha dari 403.300 ha luas Pulau Siberut ditetapkan sebagai Taman Nasional Siberut. Ini merupakan peningkatan status konservasi sebagian wilayah Pulau Siberut yang pada tahun 1976 telah ditetapkan sebagai suaka margasatwa. Penetapan kawasan Taman Nasional Siberut ini sekaligus mencabut izin konsesi empat perusahaan kayu yang sebelumnya memiliki izin konsesi dari pemerintah dengan total wilayah konsesi seluas 235.000 ha. Tahun 2004, Menteri Kehutanan memberikan izin konsesi seluas 47.605 ha kepada PT. Salaki Summa Sejahtera yang masih beroperasi hingga saat ini.

Relasi antara pembangunan dan persoalan pertanahan bukan hanya menyangkut ekonomi, melainkan juga sosial-politik (Afrizal

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<sup>5</sup> Luas hutan di Kepulauan Mentawai paling banyak ditatagunakan untuk Hutan Produksi, yakni seluas 256.011,40 hektare atau sekitar 42,59 persen dari total luas hutan, sedangkan hutan yang digunakan sebagai Hutan Lindung memiliki persentase terkecil, yakni hanya mencapai 1, 28 persen, atau 7.670, 63 hektare. Persentase luas hutan yang digunakan untuk Hutan Suaka Alam dan Wisata (HSAW) sebesar 30,50 persen (183.369,87 hektare). Sedangkan luas hutan yang digunakan untuk areal penggunaan lain adalah 109.217,71 hektare, atau mencapai 18,17 persen dari total luas Kabupaten Kepulauan Mentawai.

<sup>6</sup> Draf Peraturan Daerah Kabupaten Kepulauan Mentawai Tentang Pengakuan dan Perlindungan Uma Sebagai Keasatuan Masyarakat Hukum Adat di Mentawai, Yayasan Citra Mandiri Meetawai, 2008. Draf Perda ini menguraikan pembagian ruang dan kawasan hutan di Kepulaun Mentawai, respons masyarakat, dan segala perkembangan yang menjadi latar belakang munculnya desakan untuk segera menetapkan Peraturan Daerah tentang pengakuan Negara terhadap masyarakat adat Mentawai dengan segala hak dan kewajibannya terhadap sumber daya hutan.

2006 dan 2018, Fauzi 1997: 4-5). Pengejaran pertumbuhan ekonomi telah menyebabkan terjadinya pemusatan penguasaan tanah melalui dua mekanisme utama yaitu pasar dan intervensi Negara (Afrizal 2006, 2009 dan 2018, Fauzi 1997). Fauzi (1997:4-5) menyebutkan konsentrasi penguasaan tanah terbesar adalah pada penguasaan hutan melalui Hak Penguasaan Hutan dari Negara kepada perusahaan-perusahaan kayu. Dampak dari pemusatan kontrol terhadap hutan menurut Fauzi (1997) adalah terlepasnya akses dan kontrol masyarakat atas tanah yang dikuasai sebelumnya. Terlepasnya akses dan kontrol masyarakat atas tanah juga terjadi ketika negara memberikan izin-izin konsesi perkebunan skala besar di atas tanah-tanah rakyat (Peluso: 2000).

Pengaruh perusahaan kayu terhadap penghidupan sosial ekonomi masyarakat Mentawai dijelaskan oleh Syafruddin (1985: 142-143). Hanya sebagian kecil orang Mentawai yang dapat bekerja di perusahaan kayu, itu pun sebagai buruh harian. Sebab perusahaan lebih mengutamakan tenaga kerja yang terlatih dan terdidik. Orang Mentawai yang bekerja di perusahaan kayu itu pun sebenarnya mengalami banyak dilema, salah satunya bahwa mereka bisa mendapatkan gaji sebagai buruh tetapi harus meninggalkan keluarga serta pekerjaan di ladang dan peternakan mereka yang sebenarnya dapat menjamin kehidupan jangka panjang.

Dilema lain adalah terkait aspek kearifan lokal orang Mentawai, penebangan kayu skala besar merupakan perbuatan yang merusak keserasian alam. Penguasaan Negara yang diberikan kepada perusahaan kayu menjadi simbol kekalahan di atas tanah mereka sendiri (Syafruddin:1985). Bagi orang Mentawai, tanah dan hutan memiliki makna religius dalam dimensi waktu dahulu, sekarang dan masa depan. Hal ini seturut dengan apa yang dikemukakan oleh Fauzi (1997: 14) bagi masyarakat adat tanah menyimpan sejarah tidak tertulis akan keberadaan nenek moyang yang menjadi alas kelangsungan kehidupan sosial budaya-religi-ekonomi-politis, dan sebagai tali ikatan dengan generasi yang akan datang.

Sebagaimana diketahui, tanah dan hutan sering pula memunculkan beragam konflik. Fenomena konflik kemudian akan muncul jika adanya konflik nilai (*conflict of values*), konflik norma (*conflicts of norms*), dan/atau konflik kepentingan (*conflict of interest*) antara masyarakat dan negara. Konflik tersebut bersumber dari persoalan diskriminasi pengaturan dan perlakuan pemerintah terhadap masyarakat dengan mengabaikan, menggusur, dan bahkan



mematisurikan nilai-nilai, norma-norma hukum rakyat, termasuk religi dan tradisi-tradisi masyarakat melalui dominasi dan penegakan hukum Negara (Nurjaya, 2006; 2).

Seluruh konsep penguasaan Negara ini telah menafikan keberadaan masyarakat Mentawai yang mendorong munculnya berbagai konflik berbasis tanah dan sumber daya alam. Dominasi dan penegakan hukum negara atas hutan telah mendorong terjadinya konflik sumber daya alam atau konflik agraria di Kepulauan Mentawai. Christodoulou seperti yang dikutip oleh Afrizal (2006: 7) menyebutkan bahwa konflik agraria merupakan fenomena sosial yang berkaitan dengan hubungan-hubungan sosial terkait dengan pengawasan dan penggunaan sumber-sumber agraria yang dapat terjadi antara individu dan kelompok sosial dengan kelompok sosial lainnya.

Masih mengikuti pandangan Afrizal (2006 dan 2018) yang menyatakan bahwa fenomena konflik agraria, di mana pun terjadi, memperlihatkan kontestasi antara tiga kelompok sosial yang berkepentingan, yaitu komunitas atau penduduk setempat, negara, dan perusahaan yang memperebutkan sumber-sumber agraria baik berupa lahan, bahan tambang, dan sumber air atau air. Kontestasi tersebut menampilkan isu-isu hak komunitas setempat berlawanan dengan hak-hak negara yang didefenisikan sendiri oleh negara. Dalam kontestasi ini, komunitas lokal melakukan perlawanan terhadap negara dan perusahaan untuk menuntut hak-hak mereka. Sementara itu, negara dan perusahaan juga melakukan perlawanan atau penekanan terhadap komunitas lokal yang juga untuk memperjuangkan apa yang mereka sebut sebagai hak-haknya. Kontestasi ini akan dimenangkan oleh kelompok yang lebih kuat dan yang mempunyai kemampuan untuk memobilasi sumber-sumber dukungan.

## **PERJUANGAN MELAWAN DISKRIMINASI**

Penguasaan tanah adat oleh negara mendapatkan perlawanan orang Mentawai ketika melibatkan investor dan perusahaan kayu. Penguasaan ini tidak hanya membuat orang Mentawai kehilangan akses dan kontrol atas tanah dan hutan mereka, tetapi juga menghancurkan makna dan hubungan simbolis orang Mentawai dengan hutannya. Aksi-aksi perlawanan juga sering kali dilakukan atas program-program pembangunan infrastruktur dari pemerintah

yang tidak melibatkan *sibakkat polak* (pemilik tanah) dan/atau *sibakkat mone* (pemilik ladang). Sebab hutan didominasi oleh tanaman-tanaman yang memiliki makna dan nilai penting (nilai ekonomi dan spiritual) dalam kehidupan orang Mentawai.

Aksi-aksi perlawanan yang menuntut pengakuan negara atas hak kepemilikan orang Mentawai dilakukan dengan berbagai strategi. Salah satu strategi perlawanan yang sering kali digunakan adalah membangun kembali kekuatan dan aliansi dalam organisasi sosial, yakni *uma* atau *muntogat*. Surat-surat penolakan atas kehadiran perusahaan kayu dan rencana perkebunan kelapa sawit dibuat atas nama *uma* asal yang telah berafiliasi menjadi *uma-uma* yang lebih kecil. *Uma-uma* yang telah berafiliasi dan berganti nama tersebut akan kembali menggunakan nama *uma* asal mereka sebagai simbol kebesaran dan kekuatan energi dalam *uma*.

*Uma* menjadi bagian penting dalam klaim kepemilikan dan penguasaan atas tanah adat dengan konsep kepemilikan yang disebut dengan istilah *sibakkat laggai* atau *sibakkat polak* (si pemilik tanah). Setiap anggota *uma* yang disebut *sikauma* mengetahui asal-usul, lokasi dan isi sumber daya alam tanah adat yang menjadi milik kelompoknya. *Sikauma* memiliki hak penuh atas sumber daya alam dan pemanfaatan *polak teteu* mereka. Keputusan atas lahan dan kepemilikan ditentukan oleh masing-masing *uma* melalui negosiasi berdasarkan cerita-cerita lisan yang diwariskan secara turun-temurun (Schefold: 1991 dan Tullius: 2012).

Perlawanan orang Mentawai terhadap penguasaan negara atas tanah adat mereka telah menimbulkan konflik agraria di Mentawai. Menurut Afrizal (2006:13), konflik agraria atas perebutan hutan dan sumber daya di dalamnya sering kali dimenangkan oleh negara dan perusahaan sebagai kelompok yang lebih kuat. Ketika struktur politis tidak memberikan peluang kepada komunitas lokal untuk mempertahankan haknya, konflik-konflik agraria cenderung dimenangkan oleh negara dan perusahaan. Strategi-strategi perjuangan komunitas lokal dalam “memenangkan” kontestasi melawan negara dan perusahaan menjadi sangat penting untuk dapat merebut kembali apa yang diyakini sebagai hak-haknya. Giddens dalam Afrizal (2006: 42) menyatakan bahwa komunitas lokal, sama halnya dengan negara dan perusahaan, merupakan subjek yang berpengetahuan dan aktif memonitor lingkungannya.

Salah satu perlawanan orang Mentawai adalah terhadap rencana pembukaan perkebunan kelapa sawit skala besar pada tahun 2010.

Aksi-aksi penolakan masyarakat terhadap perkebunan kelapa sawit hampir tidak menggunakan aksi demonstrasi sebagai salah satu strategi perlawanan. Sebagian masyarakat menyatakan menerima kehadiran perusahaan kelapa sawit di Mentawai berdasarkan informasi dari sosialisasi yang dilakukan oleh pemerintah daerah dan perusahaan. Pemerintah daerah bersama perusahaan perkebunan sawit, dalam pemberitaan Puailiggoubat [191: Mei 2010], disebut gencar melakukan sosialisasi tentang keuntungan yang dapat diperoleh masyarakat dengan dibukanya perkebunan kelapa sawit di Mentawai.

Aksi-aksi penolakan terhadap rencana perkebunan kelapa sawit dilatarbelakangi oleh kecemasan masyarakat akan hilangnya hak-hak atas tanah dan tertutupnya akses mereka ke dalam hutan. Kesadaran tersebut muncul dari sosialisasi dampak buruk perkebunan kelapa sawit skala besar yang gencar dilakukan oleh organisasi non-pemerintah pro-konservasi dan lingkungan. Aksi-aksi terbuka seperti demonstrasi dikhawatirkan dapat memicu konflik horizontal di tengah masyarakat. Aksi perlawanan dilakukan masing-masing *uma* atau suku dengan membuat surat pernyataan penolakan perkebunan kelapa sawit di atas *polak teteu* mereka yang ditandatangani oleh seluruh sikauma [Puailiggoubat 194: Juni 2010]. Gencarnya aksi-aksi perlawanan yang dilakukan oleh masyarakat yang didukung LSM pro-konservasi dan penggerak masyarakat adat, berhasil menghadang masuknya perkebunan kelapa sawit di Kepulauan Mentawai.

Pada tahun 2016, orang Mentawai kembali melakukan perlawanan menolak kehadiran perusahaan yang mengurus Izin Usaha Pemanfaatan Hasil Hutan Kayu-Hutan Tanaman Industri atau IUPHHK-HT (HTI) seluas 20.110 hektare di Pulau Siberut. PT Biomass Andalan Energi mengurus izin untuk mengeksploitasi hutan Siberut menjadi kebun kaliandra. Pohon kaliandra akan diolah menjadi bio energi baru (*wood pellet*) untuk memenuhi kebutuhan listrik di Mentawai. Rencana pembukaan kebun kaliandra oleh PT. Biomass Andalan Energi kembali menimbulkan pro dan kontra di kalangan masyarakat Mentawai.

Masyarakat terbelah ke dalam dua kubu, yakni kelompok pendukung dan kelompok penentang perusahaan PT. Biomass Andalan Energi. Suku yang menentang dilatarbelakangi kecemasan dan kegusaran akan kehilangan hak-hak atas tanah leluhur melakukan protes dan penolakan terhadap perusahaan. Salah satu

aksi yang dilakukan adalah dengan membuat dan mengirimkan surat-surat penolakan izin Hutan Tanaman Industri (HTI) kepada Menteri Lingkungan Hidup dan Kehutanan (LHK). Dengan tuntutan agar Menteri LHK segera mencabut izin HTI di Pulau Siberut. Menggunakan identitas sebagai *muntogat* suatu suku tertentu untuk mengklaim hak atas tanah adat merupakan salah satu strategi yang biasa dilakukan orang Mentawai. Strategi ini biasa digunakan dalam perebutan hak atas tanah yang melibatkan orang luar, perusahaan dan negara.

Tahun 2019, PT Biomass Andalan Energi kembali mengajukan izin-Izin Usaha Pemanfaatan Hasil Hutan Kayu-Hutan Tanaman Industri (IUPHHK-HTI) dan melakukan sosialisasi di tingkat masyarakat sebagai perusahaan HTE (Hutan Tanaman Energi). Kata energi digunakan untuk membangun opini dan dukungan publik terhadap perusahaan yang akan menghasilkan energi baru di Mentawai.

Afrizal (2006 dan 2018) menjelaskan bahwa aksi-aksi yang dilakukan komunitas lokal dalam melawan negara dan perusahaan berasal dari pemahaman mereka tentang situasi dan merupakan respons yang kreatif terhadap aksi-aksi yang dilakukan oleh negara dan perusahaan, dan bukan sekadar respons-respons tanpa refleksi atas aksi-aksi tersebut. Selanjutnya, strategi-strategi yang umum diterapkan oleh komunitas lokal di Indonesia untuk mencapai tujuannya merebut hak-hak atas sumber agraria dapat dibagi lima, yaitu: strategi organisasi, strategi lobi, demonstrasi, strategi pendudukan lahan dan strategi kekerasan. Umumnya komunitas lokal mengombinasikan strategi-strategi di atas secara bertahap.

Penguasaan negara atas hutan dan sumber daya alam telah menyebabkan diskriminasi dan kriminalisasi terhadap masyarakat adat di seluruh Indonesia termasuk di Kepulauan Mentawai. Namun aksi-aksi perlawanan yang dilakukan oleh masyarakat adat justru sering kali diinterpretasikan oleh negara sebagai bentuk pembangkangan dan pemberontakan. Bagi masyarakat adat justru sebaliknya, sebagaimana dikemukakan oleh Rachman dan Siscawati (2014: 50), bagi masyarakat adat aksi-aksi perlawanan itu adalah perlawanan balik untuk bertahan dan melindungi diri.

Aksi-aksi perlawanan masyarakat adat perlu dipahami oleh Negara sebagai protes atas penyangkalan negara terhadap status dan hak-hak adat mereka atas hutan dan sumber-sumber agraria. Demikian pula dalam aksi-aksi perlawanan orang Mentawai untuk mempertahankan tanah adatnya. Dalam banyak kasus, negara

sering kali mengingkari legitimasi sistem hak kepemilikan yang ada sebelumnya atas lahan dan sumber daya alam lain berbasis tanah. Orang Mentawai mengklaim bahwa seluruh tanah di Kepulauan Mentawai adalah milik orang Mentawai, tetapi mereka tidak memiliki dokumen resmi yang diakui oleh negara. Klaim kepemilikan tanah hanya berdasarkan cerita atau kisah keluarga atau kisah nenek moyang. Kondisi ini menimbulkan konflik antara orang Mentawai dengan negara yang mengklaim diri sebagai pemilik wewenang dan hak untuk menguasai dan mengelola sumber daya alam bagi kepentingan rakyat.

Negara telah memberikan ruang politis bagi masyarakat adat untuk mendapatkan pengakuan Negara melalui Putusan Mahkamah Konstitusi Republik Indonesia atas Perkara Nomor 35/PUU-X/2012. Bahwa “hutan adat adalah hutan Negara yang berada dalam wilayah masyarakat hukum adat”. Hutan adat tidak lagi menjadi hutan negara, melainkan bagian dari hutan hak. Putusan ini menegaskan bahwa masyarakat adat adalah “penyandang hak” karena memiliki hubungan asasi dengan wilayah adatnya. Kesiapan masyarakat hukum adat menjadi sangat penting agar dapat memanfaatkan ruang politis dalam merebut kembali hak-hak atas hutannya

Pemerintah Daerah Kabupaten Kepulauan Mentawai dalam menjalankan mandat putusan MK Nomor 35/PUU-X/2012 telah menerbitkan Peraturan Daerah Kabupaten Kepulauan Mentawai Nomor 11 Tahun 2017. Serta Peraturan Bupati Kepulauan Mentawai Nomor 12 Tahun 2019 yang mengatur tentang prosedur dan tahapan “Pengakuan dan Perlindungan Uma sebagai Kesatuan Masyarakat Hukum Adat di Mentawai”. Ruang politis bagi masyarakat hukum adat seperti yang dimaksud dalam peraturan perundang-undangan tersebut bisa menjadi pilihan strategi baru dalam perjuangan dan kontestasi merebut akses dan kontrol terhadap tanah adat mereka. Namun ruang politis bagi orang Mentawai belum menjadi strategi perlawanan yang ingin diterapkan.

Keengganan orang Mentawai menggunakan peluang politis dalam melawan negara dan perusahaan berkemungkinan dilatarbelakangi oleh ketidakpercayaan mereka pada politik itu sendiri. Myrna Eindhoven dalam tulisannya “Penjajah baru? Identitas, Representasi, dan Pemerintahan di Kepulauan Mentawai, Pasca-Orde Baru” (2007) menguraikan tentang pandangan orang Mentawai terhadap politik lokal di Kepulauan pasca Orde Baru. Pasca berdirinya Kabupaten Kepulauan Mentawai, orang Mentawai dapat terbebas dari

“penjajahan” orang Minangkabau ketika masih menjadi bagian dari Kabupaten Padang Pariaman. Namun, ruang politis ini justru memberi peluang baru bagi elite-elite lokal untuk mendapatkan posisi dan struktur politis yang hanya menguntungkan kepentingan para elite tersebut.

Lebih lanjut Eindhoven (2007:89) menyebutkan LSM-LSM lokal yang sebelumnya mendukung perjuangan politis komunitas lokal cenderung memainkan peranan mendua dalam proses politis. Banyak LSM lokal mengubah diri menjadi kubu-kubu politis dan menyingkirkan fungsi mereka sebagai masyarakat sipil. Sementara itu, komunitas lokal atau orang biasa, menurut Eindhoven, tidak dilibatkan sepenuhnya dalam proses-proses politik dan cenderung menjadi penonton yang hanya diberi tahu ketika keputusan-keputusan besar sudah dibuat. Akibatnya, komunitas lokal dengan mudah mengembangkan pandangan sinis mengenai retorika politis termasuk retorika adat.

Seruan putra asli daerah sebagai pemimpin atau pejabat public berhasil memberikan kedudukan dan jabatan-jabatan penting di pemerintahan kabupaten kepada elite-elite Mentawai. Persoalan yang menucul kemudian adalah terkait konsep ‘pembangunan’ dan ‘kemajuan’ yang harus dilaksanakan oleh pemerintah. Salah satu program pembangunan yang penting untuk seegera dilaksanakan adalah proyek-proyek pembangunan jalan. Karena tanah di Mentawai merupakan milik komunitas-komunitas lokal atau *uma*, pemerintah daerah harus berunding dengan komunitas-komunitas lokal mengenai lahan di mana proyek-proyek tersebut akan dilakukan. Perundingan-perundingan itu bisa menjadi sangat pelik dan menimbulkan kekacauan di antara semua pihak dan kadang-kadang bahkan sampai konflik serius di antara anggota-anggota *uma* dengan pemerintah, dan di antara sesama anggota *uma* (Eindhoven, 2007).

Protes agraria kembali muncul dari komunitas-komunitas lokal yang kini justru diarahkan kepada para politikus Mentawai yang merupakan putra asli daerah. Komunitas-komunitas lokal merasa tidak dilibatkan dalam perundingan-perundingan politis dan proses-proses pembuatan keputusan. Mereka merasa para elite Mentawai yang semula gigih menentang marginalisasi justru terlibat dalam berbagai konspirasi yang menguntungkan diri sendiri dan kelompoknya. Hal inilah yang kemudian memunculkan pertanyaan di kalangan komunitas lokal Mentawai akan munculnya penjajahan baru di Mentawai (Eindhoven, 2007:112).

Tanah adat atau *polak teteu* sebagai sumber-sumber agraria orang Mentawai yang memiliki nilai ekonomi, sosial dan ekologi, melibatkan banyak relasi sosial dengan kepentingan berbeda. Para pemangku kepentingan saling berkompetisi dengan menjalankan strategi, mekanisme, dan taktik untuk saling memengaruhi, menundukkan, atau bertahan dari pengaruh pihak lain. Strategi yang dijalankan pihak tertentu bertujuan mendorong pihak lain untuk patuh atau taat, tunduk atau memberi dukungan. Negara menempatkan dirinya sebagai wali masyarakat dalam upaya perbaikan kehidupan dan kesejahteraan rakyat. Pembangunan di Indonesia, termasuk program-program agraria dan sektor kehutanan menurut Li (2012), pada dasarnya adalah kehendak untuk memperbaiki (*the will to improve*), yakni upaya memperbaiki keadaan hidup masyarakat dan peningkatan kesejahteraan. Program-program pembangunan dirancang untuk mengubah keadaan menjadi lebih baik. Namun, ironisnya, program-program yang dirancang sering kali memunculkan persoalan baru.

Hal ini terjadi sebab pembangunan berada di ranah kekuasaan yang disebut oleh Michael Foucault, seperti dikutip oleh Li (2010), sebagai “kepengaturan” atau “pengarahan perilaku”. Mengatur berarti bertindak terhadap tindakan-tindakan subyek yang memiliki kapasitas untuk bertindak yang lain. Kepengaturan berupaya untuk mengarahkan perilaku manusia dengan serangkaian cara yang telah dikalkulasikan sedemikian rupa.

Dalam teori akses yang dikembangkan Ribot dan Peluso, seperti dikutip oleh Siscawati (2014: 164–165), akses terhadap tanah dan sumber daya lainnya ditentukan oleh bagaimana memperoleh, mengendalikan, dan memelihara akses terhadap sumber daya tertentu. Setiap orang atau lembaga yang berbeda dapat memiliki penguasaan atas akses terhadap sumber daya secara yang berbeda pula sehubungan dengan jaringan kekuasaan yang dimiliki. Mekanisme penting untuk memperoleh, mengendalikan, mempertahankan, dan memelihara akses salah satunya adalah mekanisme akses melalui hak atau akses berbasis hak (*rights-based access*). Dalam penguasaan atas akses terhadap tanah adat, orang Mentawai juga menggunakan mekanisme akses berbasis hak. Namun, hingga saat ini mekanisme tersebut belum serta-merta mampu memenangkan orang Mentawai untuk mendapatkan akses dan kontrol atas *polak teteu* yang dikuasai negara dan perusahaan.

Dalam konteks politik lokal di *uma*, orang Mentawai tidak mengenal struktur pemimpin yang sangat berpengaruh. *Uma* memang memiliki arti penting bagi orang Mentawai, tetapi *uma* sendiri bercorak egaliter. Di antara *sikauma* tidak ada yang berketerampilan khusus yang bisa dibeli jasanya, dan juga tidak ada pengembalian kekuasaan yang bisa memaksakan keputusan dalam lingkup wilayah kekuasaannya (Schefold, 1991:114). *Uma* memang memiliki struktur kepemimpinan dengan *sikebbukat uma*<sup>7</sup> sebagai pemimpin kelompok yang peran dan fungsinya lebih banyak terkait dengan kehidupan sehari-hari, ritual dan budaya. Oleh sebab itu, *sikebbukat uma* bukan pemimpin politik di *uma*. *Uma* tidak mengenal pemimpin yang memiliki alat kekuasaan untuk mengharuskan anggota kelompok menaati perintahnya, bahkan untuk menaati kewajiban-kewajiban anggota kelompok terhadap kelompoknya. Tidak ada pula pranata dalam *uma* yang dapat menjatuhkan hukuman dan kewajiban melaksanakan sanksi hukuman bagi perilaku sosial *sikauma*. Pengambilan keputusan yang menyangkut setiap *sikauma* harus dilakukan melalui proses *parurukat* di *uma* atau musyawarah bersama.

Jika ada yang berbeda pendapat, ia tidak boleh dipaksa tunduk dan mengikuti pendapat mayoritas, tetapi harus diupayakan cara untuk meyakinkan diri yang bersangkutan untuk bisa menerima pendapat mayoritas. Tetapi jika terjadi ketegangan yang terlalu besar dan musyawarah tidak mampu mempertahankan kesatuan kelompok maka konflik secara terbuka. *Sikauma* yang berbeda pendapat dengan pendapat mayoritas biasanya akan memisahkan diri dari kelompoknya dan membentuk kelompok baru (Schefold, 1991:116–118).

Mempertahankan tanah adat menjadi sangat penting sebab bagi orang Mentawai umumnya, *polak teteu* adalah satu-satunya identitas sebagai penduduk asli yang berkaitan dengan sejarah nenek moyang dan hubungan kekerabatan orang Mentawai (Tulius: 2012). *Polak teteu* juga menjadi simbol kebanggaan atau prestise setiap *uma* yang bermanfaat sebagai cadangan sumber daya di masa depan. Meski dalam aturan Undang-Undang Kehutanan sebagian besar wilayah Mentawai adalah kawasan hutan negara, bagi orang Mentawai tanah dan lahan tersebut adalah milik mereka, dengan sistem kepemilikan yang berbasis *uma*, atau yang sering disamakan

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<sup>7</sup> Di Pulau Sipora dan Pulau Pagai menggunakan istilah Rimata



dengan istilah “suku” (Reeves; 2004). Pengalihan kepemilikan dan pemanfaatan lahan harus seizin *sibakkat polak* atau pemilik tanah melalui mekanisme adat yang diwakilkan kepada pemimpin *uma* atau *sikebbukat uma*. Keputusan *sikebbukat uma* diambil berdasarkan hasil musyawarah atau perundingan dengan seluruh *sikauma*.

Pengelolaan *polak teteu* merupakan suatu sistem yang kompleks, yang tidak hanya menyangkut hubungan antara manusia dan lingkungan, tetapi juga representasi dari struktur sosial yang luas, mencakup aspek sosial, budaya, ekonomi, dan politik. Sebagaimana teori akses yang diperkenalkan Ribot dan Peluso (Peluso 2000), upaya-upaya orang Mentawai dalam mempertahankan *polak teteu* bisa dilihat sebagai “bundelan jaringan kekuasaan” yang berisikan makna, proses, dan relasi sosial yang membuat orang Mentawai mampu mendapatkan kontrol dan akses atas *polak teteu* mereka. Melalui sistem pengelolaan *polak teteu*, orang Mentawai dapat menentukan siapa saja yang dapat memiliki, mengelola, dan mengawasi *polak teteu* beserta sumber daya alam di atasnya.

## PENUTUP

Salah satu mekanisme penting untuk memperoleh, mengendalikan, mempertahankan, dan memelihara akses menurut Ribot dan Peluso (Siscawati; 2014) adalah mekanisme akses melalui hak atau akses berbasis hak (*right-based access*). Akses dan kontrol atas *polak teteu* juga dikelola melalui mekanisme berbasis hak, yang digambarkan melalui pelabelan-pelabelan pihak yang terlibat. Bagi orang Mentawai, akses berbasis hak dikenali melalui istilah-istilah *sibakkat laggai*<sup>8</sup>, *sibakkat polak*<sup>9</sup>, *sipasijago*<sup>10</sup>, dan *sitoi*<sup>11</sup>. Setiap istilah dalam konsep kepemilikan dan pengelolaan ini berkaitan erat dengan konsep kekuasaan yang mengatur akses dan kontrol atas *polak teteu*. Untuk memahami kekuasaan menurut Haryatmoko (Maring, 2010) yang harus dipahami terlebih dahulu adalah adanya beragam hubungan kekuasaan yang melekat pada bidang organisasi dan pihak-pihak yang terlibat.

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<sup>8</sup> Pemilik wilayah atau hutan dan lahan dalam wilayah yang luas

<sup>9</sup> Pemilik tanah

<sup>10</sup> Orang yang diberi mandat dan wewenang menjaga

<sup>11</sup> Pendatang atau orang yang diberi hak oleh pemilik untuk menggunakan tanah tanpa hak untuk menguasai atau memiliki

Konsep kepemilikan yang digunakan sebagai dasar untuk membangun sistem pengelolaan sumber daya alam menurut Usman (2015) dikembangkan dalam tiga kategori, yaitu : milik negara (*state property*), milik komunal (*communal property*), dan milik pribadi (*private property*). Dalam kategori milik negara, sumber daya alam dikontrol oleh pemerintah dan diatur melalui perundang-undangan yang dikeluarkan berdasarkan otoritas yang dimiliki. Sedangkan dalam kategori milik komunal, sumber daya alam dikontrol oleh kelompok (etnis) tertentu atas dasar hukum adat yang berlaku dalam masyarakat (hak ulayat). Dalam kategori milik pribadi, sumber daya alam dikontrol oleh perseorangan atau korporasi.

Usman (2015:86) menyebut bahwa pemerintah sangat menonjolkan konsep milik negara (*state property*) dan mengabaikan konsep milik pribadi (*private property*) dan milik komunal (*communal property*) sebagai acuan untuk melakukan eksploitasi sumber daya alam. Pemerintah mereduksi Undang-Undang Dasar 1945 Pasal 33 ayat 3 yang menyatakan bahwa “bumi dan air dan kekayaan yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat,” menjadi sumber daya alam yang dikuasai oleh pemerintah.

Undang-Undang Nomor 22 Tahun 1999 tentang Otonomi Daerah kemudian memberi ruang bagi pemerintah daerah untuk mengelola sumber daya alam di daerahnya, yang dimaknai oleh pemerintah daerah sebagai peluang untuk meningkatkan pendapatan daerah. Pemaknaan ini membuat laju eksploitasi sumber daya alam dilakukan secara besar-besaran dan makin sulit dikendalikan (Usman: 2015). Eksploitasi sumberdaya alam secara besar-besaran yang dilakukan oleh pemerintah selalu mengatasnamakan pembangunan atau pertumbuhan ekonomi. Proses pembangunan selalu menuntut adanya pembebasan tanah dan lahan. Relasi antara pembangunan dan persoalan tanah menyebabkan terjadinya pemusatan penguasaan tanah melalui dua mekanisme utama yaitu pasar dan intervensi Negara (Afrizal 2006 dan 2018, Fauzi 1997). Menurut Fauzi (1997), konsentrasi penguasaan tanah terbesar adalah pada penguasaan hutan melalui Hak Penguasaan Hutan dari negara kepada perusahaan-perusahaan kayu yang berdampak pada terlepasnya akses dan kontrol masyarakat atas tanah yang dikuasai sebelumnya.

Konsep pemilikan Negara atas tanah dan hutan di Kepulauan Mentawai telah menafikan kebudayaan masyarakat Mentawai dalam pengeolaan hutan dan ini mendorong munculnya berbagai

konflik berbasis tanah dan sumberdaya alam. Penetapan kawasan hutan negara dan pemberian izin konsesi kepada perusahaan-perusahaan kayu dan perkebunan skala besar menghancurkan sistem pengelolaan sumber daya hutan yang selama ini dipraktikkan orang Mentawai. Pemerintah cenderung memandang sistem pertanian dan pengelolaan hutan oleh orang Mentawai sebagai sebuah keterbelakangan.

Pemerintah Daerah Kabupaten Kepulauan Mentawai, dalam menjalankan mandat putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012, telah menerbitkan Peraturan Daerah Kabupaten Kepulauan Mentawai Nomor 11 Tahun 2017 tentang Pengakuan dan Perlindungan Uma Sebagai Kesatuan Masyarakat Hukum Adat (Perda PPUMHA). Serta Peraturan Bupati Kepulauan Mentawai Nomor 12 Tahun 2019 yang mengatur tentang prosedur dan tahapan “Pengakuan dan Perlindungan Uma sebagai Kesatuan Masyarakat Hukum Adat di Mentawai”.

Putusan Mahkamah Konstitusi No. 35/PUU-X/2012 menegaskan bahwa masyarakat adat adalah “penyandang hak” karena memiliki hubungan asasi dengan wilayah adatnya. Dalam putusan tersebut, Mahkamah Konstitusi mencantumkan tiga kriteria masyarakat hukum adat, yaitu : 1). Suatu masyarakat sebagai satu kesatuan sosial atau satu sistem sosial, 2). Memiliki kelembagaan (struktur kepemimpinan) adat, dan 3). Memiliki wilayah adat.

Produk hukum ini memberi ruang kepada setiap *uma* di Mentawai dapat mengajukan usulan untuk mendapat pengakuan, pengukuhan dan penetapan negara atas hak dan wilayah adat mereka. Yayasan Citra Mandiri Mentawai (YCMM) merupakan organisasi masyarakat sipil yang secara proaktif mendorong *uma-uma* di Mentawai untuk mengajukan usulan PPUMHA. Terkait salah satu syarat yang mewajibkan setiap *uma* memiliki peta wilayah adat, YCMM mengadakan program pemetaan partisipatif untuk memfasilitasi setiap *uma* yang ingin membuat peta tanah adat atau *polak teteu* mereka.

Namun ruang politik yang disediakan oleh negara bagi orang Mentawai untuk mempertahankan dan merebut kembali *polak teteu* dari penguasaan negara dan perusahaan, tidak disikapi dengan antusias. Orang Mentawai enggan terlibat dalam strategi-strategi politik dalam penyelesaian konflik-konflik tanah di Mentawai. Pemetaan partisipatif tidak dianggap sebagai strategi terbaik untuk meneguhkan klaim hak kepemilikan, batas-batas kepemilikan, akses,

dan kontrol atas tanah. Salah satunya dilatarbelakangi oleh trauma masa lalu dengan penetapan kawasan Taman Nasional Siberut di atas tanah orang Mentawai.

Keengganan melakukan pemetaan wilayah adat dan usulan penetapan wilayah adat juga dilatarbelakangi kecemasan akan potensi privatisasi tanah-tanah komunal di Mentawai. Sebagian besar orang Mentawai di Pulau Siberut menghuni dan mengelola tanah milik orang/*uma* lain (Tulius 2012; Darmanto dan Setyowati: 2012). Penetapan wilayah adat oleh negara dikhawatirkan akan merusak sistem pengelolaan tanah selama ini di Mentawai.

Keengganan orang Mentawai menggunakan ruang politik dalam melawan negara dan perusahaan menurut Eindhoven (2007) berkemungkinan dilatarbelakangi oleh ketidakpercayaan mereka pada politik itu sendiri. Ruang politik dianggap hanya memberi peluang baru bagi elit-elit lokal untuk mendapatkan posisi dan struktur politik yang hanya menguntungkan kepentingan para elit tersebut. Eindhoven (2007) juga memaparkan bahwa di awal era reformasi di Indonesia, banyak LSM lokal yang mengubah diri menjadi kubu-kubu politik dan menyingkirkan fungsi mereka sebagai masyarakat sipil. Sementara itu komunitas lokal atau orang biasa cenderung menjadi penonton. Akibatnya komunitas lokal dengan mudah mengembangkan pandangan sinis mengenai retorika politik.

Pengalaman-pengalaman masa lalu dan kepentingan-kepentingan takktis atas tanah membuat orang Mentawai enggan menggunakan ruang politik dalam mempertahankan *polak teteu* mereka. Hal ini dapat menjadi dilema bagi proses penyelesaian konflik-konflik agraria di Mentawai. Sementara Negara melalui putusan Mahkamah Konstitusi telah menetapkan bahwa sepanjang belum diakui, dikukuhkan dan ditetapkan oleh Pemerintah Daerah, maka masyarakat hukum adat, belum bisa menjalankan hak-haknya yang sudah diatur dalam berbagai perundang-undangan.

Di sisi lain, bagi orang Mentawai semua klaim dan akses atas *polak teteu* harus mengacu pada identitas dan hak-hak mereka sebagai penduduk asli di Siberut. Hal ini semakin dikuatkan oleh para pendatang dan etnis-etnis lain yang mengakui bahwa orang Mentawai merupakan pemilik tanah dan hutan di Siberut. Secara historis, penduduk non-Mentawai pada dasarnya tidak punya kepemilikan apa pun atas tanah dan hutan dan segala isinya di Siberut. Pemanfaatan sumber daya oleh pihak luar harus seizin

orang Mentawai sebagai pemilik tanah (Darmanto dan Setyowati: 2012).

Dalam menghadapi kekuasaan negara, orang Mentawai mengembangkan strategi yang memiliki konteks sosial dan kultural. Dalam perspektif Foucault (Maring: 2010) perlawanan orang Mentawai dapat diposisikan sebagai sebuah kompleks strategi dinamis yang bisa datang dari berbagai arah dan tingkatan. Menurut Foucault dalam mekanisme kerja, kekuasaan tidak bisa dipisahkan dari perlawanan, di mana kekuasaan bekerja, di situ ada perlawanan.

## KESIMPULAN

Orang Mentawai mempertahankan *polak teteu* karena tanah itu memiliki makna yang sangat penting bagi mereka. *Polak teteu* menyimpan kisah masa lalu keluarga yang tidak hanya menguraikan tentang kepemilikan tanah dan pengelolaannya, namun juga menguraikan tentang hubungan kelompok kekerabatan orang Mentawai, yang menjadi ciri dan identitas setiap *uma*. Peristiwa-peristiwa masa lalu di atas *polak teteu* mempengaruhi kehidupan orang Mentawai hingga saat ini.

*Polak teteu* merupakan simbol kekuasaan orang Mentawai atas sumberdaya alam yang sekaligus menjadi simbol harga diri dan prestise setiap *uma*. Konsep *sibakkat laggai*, *sibakkat porak*, *sipasijago*, dan *sitoi* merepresentasikan kekuasaan setiap individu atau *uma* atas tanah dan hutan. *Polak teteu* juga memiliki makna spiritual yang berkaitan dengan kepercayaan Arat Sabulungan, bahwa segala sesuatu di alam semesta memiliki roh. Orang Mentawai selalu berusaha menjaga hubungan yang harmonis dengan roh-roh di hutan yang tercermin dari setiap perilaku dan sikap terhadap suatu peristiwa.

Sistem pengelolaan *polak teteu* merupakan ekspresi budaya, pengetahuan dan kearifan orang Mentawai dalam pengelolaan sumberdaya hutan. Pengelolaan *polak teteu* merupakan suatu sistem yang kompleks, yang tidak hanya menyangkut hubungan antara manusia dengan lingkungan, namun juga representasi dari struktur sosial yang luas, mencakup aspek sosial, budaya, ekonomi, dan politik lokal orang Mentawai.

Penguasaan negara atas tanah dan hutan di Mentawai telah membuat orang Mentawai kehilangan akses dan kontrol atas *polak teteu* mereka. Penguasaan itu membuat orang Mentawai melakukan

perlawanan untuk mempertahankan tanah adat mereka. Negara tidak mengakui hak kepemilikan orang Mentawai atas tanah dan hutan serta sumberdaya di dalamnya. Penguasaan negara tidak hanya membuat orang Mentawai kehilangan akses dan kontrol atas tanah dan hutan mereka, namun juga menghancurkan makna dan hubungan simbolik orang Mentawai dengan hutannya.

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## TENTANG PENULIS



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# **THE STRUGGLE OF THE INDIGENOUS PEOPLES OF THE MENTAWAI AGAINST DISCRIMINATION AND DENIAL OF INDIGENOUS RIGHTS**

*Tarida Hernawati Elisabeth S.*

## **INTRODUCTION**

Mentawai Islands Regency is one of the regencies located in West Sumatra Province, Indonesia. This district is located outside of the Sumatra island region, which consists of four main islands. Mentawai Islands Regency was formed based on the Law of the Republic of Indonesia No. 49 Year 1999 officially expanded from Padang Pariaman Regency and named after its original geographical name. There are four main inhabited islands namely Siberut Island, Sipora Island, North Pagai Island, and South Pagai Island which are inhabited by the majority of Mentawai tribe, Minangkabau tribe, and other migrants outside West Sumatra. In mid-2024, the population of the Mentawai Islands was 96,570 people<sup>1</sup>.

The Mentawai Islands have priceless natural resources. The flora and fauna of the Mentawai Islands are not found anywhere else in the world. UNESCO states that humans, flora and fauna in the Mentawai Islands have genetic purity including species so that they are considered important in the knowledge of the evolution of living things. Various flora and fauna are endemic which reflects the unique biodiversity of the Mentawai Islands<sup>2</sup>. In addition to

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<sup>1</sup> [https://id.wikipedia.org/wiki/Kabupaten\\_Kepulauan\\_Mentawai](https://id.wikipedia.org/wiki/Kabupaten_Kepulauan_Mentawai)

<sup>2</sup> LIPI Study Report on "Development Strategy of Siberut National Park Buffer Zone and Community Forest Facilitation" 2016

biodiversity, Schefold (1991:170) emphasized that Mentawai forest has a unique composition due to its geographical location which has been isolated from Sumatra Island for hundreds of thousands of years. The forest in Mentawai is mostly primary rainforest or tropical forest whose growth pattern has never been touched by human intervention.

For the Mentawai people, the land and forests inherited from their ancestors, called *polak teteu*<sup>3</sup>, has religious significance in the dimensions of past, present and future. *Polak teteu* holds an unwritten history of the existence of ancestors who became the basis for the continuity of socio-cultural-religious-economic-political life, and as a bond with future generations. *Polak teteu* is also a symbol of the Mentawai people's power over natural resources as well as a symbol of the pride and prestige of each *uma*<sup>4</sup> or clan. For the indigenous people of Siberut Island, *polak teteu* also has a spiritual meaning related to the Arat Sabulungan belief that everything in the universe has a spirit. They always try to live in harmony and maintain balance with the spirits in the forest. The symbolic relationship between the forest, the spirits and the Mentawai people is reflected in the behavior of forest management and utilization.

For this reason, the idea of development in the Mentawai Islands is controversial: between maintaining natural and cultural sustainability and economic development (Walujo and Susanto in Adhikerana, et.al 1997: 5). Development policy, which is often equated with economic growth, demands land and land acquisition, this can have an impact on the loss of natural and cultural sustainability of the surrounding community.

The State claims all land that is considered "nobody's land" as State property. The State defines the boundaries of land declared as State property to emphasize State control over natural resources. The demarcation of land makes the area closed because the state prohibits anyone from accessing the area and the natural resources within it. The State then launches a zoning program for the area to regulate the types of activities permitted in each zone.

State control over land and forests in Indonesia, including in the Mentawai Islands, has encouraged the emergence of various

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<sup>3</sup> This term is commonly used by indigenous people on Siberut Island

<sup>4</sup> In Sipora Island and North-South Pagai Island, clan is better known as *muntogat*.

land and natural resource-based conflicts. These conflicts stem from the discrimination of government regulation and treatment of the community by ignoring, displacing, and even marginalizing the values, norms of customary law, including religion and traditions of the community through the domination and enforcement of State law. Mentawai people try to maintain their customary land, not only as a source of livelihood. Customary Land has a very important role and meaning in the life of the Mentawai people as a symbol of identity, wealth, glory, and sovereignty of the Mentawai people as indigenous peoples. Various resistance against the state, companies and investors were carried out by the Mentawai people in order to defend their customary land. These acts of resistance were carried out as a protest against the State's denial of status and customary rights as well as an attempt to defend their customary land. Cultural strategy is the most important strategy used by the Mentawai people in their resistance actions to defend their customary land.

## **DISCRIMINATION AND APPROPRIATION OF RIGHTS TO LAND AND FOREST**

State control over forests in Indonesia has been ongoing since the colonial period, with at least three stages of territorialization, as described by Vandergeest and Peluso (in Rachman and Siscawati, 2014: 10-11): In the first stage, the State claims all land that is considered "nobody's land" as belonging to the State; in the next stage, the boundaries of land declared as belonging to the State are established to emphasize the State's control over natural resources. The demarcation of land boundaries makes the area closed because the State prohibits anyone from accessing the area and the natural resources within it. The third stage is to launch a zoning program for the area to regulate the types of activities permitted in each zone. State control over forests is emphasized in Article 5 paragraph (1) which states that "all forests within the territory of the Republic of Indonesia, including the natural resources contained therein, shall be controlled by the State". Furthermore, Article 5 paragraph (2) emphasizes that "the right to control from the State mentioned in paragraph (1) gives the authority to (a) determine and regulate the planning, allocation, provision and use of forests in accordance with their functions in providing benefits to the people and the State; (b) regulate the management of forests in a broad sense;

(c) determine and regulate relationships between persons or legal entities with forests and regulate legal acts concerning forests”.

The process of state control over forests according to Rachman and Siscawati (2014: 26-27) reached its peak during the New Order regime, based on Law Number 5 of 1967. Article 1 paragraph (1) states that ‘forest’ is a field of trees that as a whole constitutes a living community of biological nature and its environment and which is designated by the government as ‘forest’. Post-New Order, the State’s control over forests continued with a centralized, state-based control approach through Law No. 41/1999, which adopted an ecosystem approach. Article (1) states that “forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural environment, which cannot be separated from one another”. According to Rachman and Siscawati (2014: 32), this law adopts a conventional approach in viewing ecosystems where people are not part of it.

State control over the forest in Mentawai, through territorialization where the state sets the boundaries of a forest area, makes Mentawai people unable to freely access the area and all the natural resources in it. The state can then allow or grant concessions to large-scale timber and plantation companies over the forest area. The Central Bureau of Statistics of the Mentawai Islands Regency states that of the 601,135 km<sup>2</sup> total land area of the Mentawai Islands Regency, 85.19% is burdened with forest product functions and concessions in the form of both timber and non-timber<sup>5</sup>. Only 14.81% of the Mentawai Islands Regency area is not a state forest area, which has an impact on development barriers in Mentawai.

The determination of rights and functions of forests and forest areas in the Mentawai Islands can be seen in the following explanation: Based on the Decree of the Minister of Forestry Number SK. 35/Menhut-II/2013, which states the area and function of forest areas in the Mentawai Islands Regency currently consists of Nature Reserve Forest Area / Nature Conservation Area covering

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<sup>5</sup> The forest area in the Mentawai Islands is mostly used for Production Forest, which is 256,011.40 hectares or around 42.59 percent of the total forest area, while the forest used as Protection Forest has the smallest percentage, which only reaches 1.28 percent or only 7,670.63 hectares. The percentage of forest area used for Nature Reserve and Tourism Forest (HSAW) amounted to 30.50 percent (183,369.87 hectares). While the forest area used for other use areas is 109,217.71 hectares or reaches 18.17 percent of the total area of Mentawai Islands Regency

183,378.87 ha, Protection Forest covering 7,670.73 ha, Production Forest covering 246,011.41 ha, and Conversion Production Forest covering 54,856.28 ha<sup>6</sup>. Previously, in 1993 through the Decree of the Minister of Forestry Number 407/Kpts-II/93, an area of 190,500 ha out of the 403,300 ha area of Siberut Island was designated as Siberut National Park. This was an increase in the conservation status of a part of Siberut Island which in 1976 had been designated as a wildlife sanctuary. The designation of the Siberut National Park area also revoked the concession permits of four logging companies that previously held concession permits from the government with a total concession area of 235,000 ha. In 2004, the Minister of Forestry granted a concession permit of 47,605 ha to PT. Salaki Summa Sejahtera, which is still operating to date.

The relationship between development and land issues is not only about economics, but also socio-political (Afrizal 2006 and 2018, Fauzi 1997: 4-5). The pursuit of economic growth has led to the concentration of land control through two main mechanisms: the market and state intervention (Afrizal 2006, 2009 and 2018, Fauzi 1997). Fauzi (1997: 4-5) states that the largest concentration of land control is in the control of forests through Forest Concession Rights from the State to logging companies. The impact of this centralized control over forests, according to Fauzi (1997), is the loss of community access and control over previously controlled land. The loss of community access and control over land also occurs when the state grants large-scale plantation concession permits on people's land (Peluso: 2000).

The influence of logging companies on the socio-economic livelihoods of the Mentawai people is explained by Syafruddin (1985: 142-143). Only a small fraction of the Mentawai people were able to work for these logging companies, and even then, only as daily laborers. This was because the companies prioritized trained and educated workers. The Mentawai people who did work for the logging companies actually faced many dilemmas, one of which was

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<sup>6</sup> Draft Regional Regulation of the Mentawai Islands Regency Concerning the Recognition and Protection of Uma as a Customary Law Community Unit in Mentawai, Yayasan Citra Mandiri Meetawai, 2008. This Draft Regional Regulation outlines the spatial division and forest areas in the Mentawai Islands, community responses, and all developments that form the background to the emergence of demands for the immediate enactment of a Regional Regulation concerning the State's recognition of the Mentawai indigenous people with all their rights and obligations towards forest resources

that while they could earn wages as laborers, they had to leave their families and their work in the fields and livestock farming, which could actually guarantee their long-term livelihoods.

Another dilemma is related to the aspect of local wisdom of the Mentawai people; large-scale logging is an act that disrupts the harmony of nature. The State's control, granted to logging companies, became a symbol of defeat on their own land (Syafuruddin: 1985). For the Mentawai people, land and forests have religious significance in the dimensions of the past, present, and future. This is in line with what Fauzi (1997: 14) stated: for indigenous communities, land holds the unwritten history of the existence of ancestors who are the foundation for the continuity of socio-cultural-religious-economic-political life, and as a bond with future generations.

As is well known, land and forests often give rise to various conflicts. The phenomenon of conflict will then emerge if there is a conflict of values, a conflict of norms, and/or a conflict of interest between the community and the state. These conflicts stem from issues of discriminatory regulation and treatment by the government towards the community by ignoring, displacing, and even marginalizing the values, legal norms of the people, including religion and community traditions, through the dominance and enforcement of state law (Nurjaya, 2006; 2).

The whole concept of State control has denied the existence of Mentawai people, which encourages the emergence of various land and natural resource-based conflicts. The domination and law enforcement of the State over the forest has encouraged the natural resources conflict or agrarian conflict in Mentawai Islands. Christodoulou as cited by Afrizal (2006: 7) states that agrarian conflict is a social phenomenon related to social relations related to the control and use of agrarian resources that can occur between individuals, and can also occur between social groups and other social groups.

Still following Afrizal's (2006 and 2018) view that the phenomenon of agrarian conflict, wherever it occurs, shows a contestation between three interested social groups: the community or local residents, the state, and companies vying for agrarian resources in the form of land, mining materials, and water resources. This contestation presents issues of local community rights versus state rights, which are self-defined by the state. In this contestation, local communities resist the state and companies to demand their

rights. Meanwhile, the state and companies also resist or pressure local communities, also to fight for what they call their rights. This contestation will be won by the stronger group that has the ability to mobilize sources of support.

## THE STRUGGLE AGAINST DISCRIMINATION

The State's control over customary land faced resistance from the Mentawai people when it involved investors and logging companies. This control not only caused the Mentawai people to lose access and control over their land and forests but also destroyed the meaning and symbolic relationship of the Mentawai people with their forests. Acts of resistance were also frequently carried out against infrastructure development programs from the government that did not involve the *sibakkat polak* (landowners) and/or the *sibakkat mone* (farm owners). This is because the forests are dominated by plants that have significant meaning and value (economic and spiritual) in the lives of the Mentawai people.

Acts of resistance demanding state recognition of the Mentawai people's ownership rights were carried out using various strategies. One frequently used strategy of resistance was to rebuild strength and alliances within social organizations, namely *uma* or *muntogat*. Letters of rejection against the presence of logging companies and oil palm plantation plans were made in the name of the original *uma* that had affiliated into smaller *uma*. These affiliated and renamed *uma* would revert to using their original *uma* name as a symbol of greatness and the power of energy within the *uma*.

The *uma* becomes an important element in the claim of ownership and control over customary land, with a concept of ownership referred to as *sibakkat laggai* or *sibakkat polak* (the landowner). Every member of the *uma*, called *sikauma*, knows the origin, location, and contents of the natural resources of the customary land belonging to their group. The *sikauma* have full rights over the natural resources and the utilization of their *polak teteu*. Decisions regarding land and ownership are determined by each *uma* through negotiations based on oral stories passed down through generations (Schefold: 1991 and Tulus: 2012).

The resistance of the Mentawai people against state control over their customary land has led to agrarian conflicts in Mentawai. According to Afrizal (2006:13), agrarian conflicts over the seizure

of forests and the resources within them are often won by the State and companies as the stronger groups. When the political structure does not provide opportunities for local communities to defend their rights, agrarian conflicts tend to be won by the State and companies. The struggle strategies of local communities in “winning” the contestation against the State and companies become very important to be able to reclaim what they believe are their rights. Giddens, in Afrizal (2006: 42), states that local communities, just like the State and companies, are knowledgeable subjects who actively monitor their environment.

One instance of the Mentawai people’s resistance was against the planned opening of large-scale oil palm plantations in 2010. The community’s actions of rejection towards oil palm plantations almost never involved demonstrations as a strategy of resistance. Some members of the community stated that they accepted the presence of oil palm companies in Mentawai based on information from socialization efforts carried out by the local government and the companies. The local government, together with the oil palm plantation companies, as reported by Puailiggoubat [191: May 2010], were actively conducting socialization about the benefits that the community could obtain from the opening of oil palm plantations in Mentawai.

The actions of rejection towards the planned oil palm plantations were motivated by the community’s anxiety about the loss of rights to their land and the closure of their access to the forests. This awareness arose from the intensive socialization of the negative impacts of large-scale oil palm plantations carried out by pro-conservation and environmental non-governmental organizations. Open actions such as demonstrations were feared to trigger horizontal conflict within the community. The acts of resistance were carried out by each *uma* or *suku* (clan) by creating a statement of rejection of oil palm plantations on their *polak teteu*, signed by all *sikauma* [Puailiggoubat 194: June 2010]. The widespread resistance actions carried out by the community, supported by pro-conservation NGOs and indigenous community advocates, successfully blocked the entry of oil palm plantations into the Mentawai Islands.

In 2016, the Mentawai people once again resisted the presence of a company managing a Timber Forest Product Utilization Permit - Industrial Plantation Forest or IUPHHK-HT (HTI) covering 20,110 hectares on Siberut Island. PT. Biomass Andalan Energi



was processing a permit to exploit the Siberut forest to establish a kaliandra (calliandra) plantation. The kaliandra trees would be processed into a new bio-energy source (wood pellets) to meet the electricity needs in Mentawai. The plan to open a kaliandra plantation by PT. Biomass Andalan Energi once again sparked both support and opposition among the Mentawai community.

The community was divided into two camps: those who supported and those who opposed PT. Biomass Andalan Energi. The tribes who opposed the company, driven by anxiety and unease about losing their ancestral land rights, staged protests and rejections against the company. One of the actions taken was to create and send letters of rejection of the Industrial Plantation Forest (HTI) permit to the Minister of Environment and Forestry (LHK), demanding that the Minister immediately revoke the HTI permit on Siberut Island. Using the identity as a *muntogat* of a specific tribe to claim rights over customary land is a common strategy employed by the Mentawai people. This strategy is typically used in disputes over land rights involving outsiders, companies, and the state.

In 2019, PT. Biomass Andalan Energi reapplied for a Timber Forest Product Utilization Permit - Industrial Plantation Forest (IUPHHK-HTI) and conducted socialization at the community level as an HTE (Energy Plantation Forest) company. The word “energy” was used to build public opinion and support for the company that would produce new energy in Mentawai.

Afrizal (2006 and 2018) explains that the actions taken by local communities in resisting the State and companies stem from their understanding of the situation and are creative responses to the actions taken by the State and companies, and not merely unreflective reactions to those actions. Furthermore, the common strategies employed by local communities in Indonesia to achieve their goals of reclaiming rights to agrarian resources can be divided into five: organizational strategies, lobbying strategies, demonstrations, land occupation strategies, and violence strategies. Generally, local communities combine the above strategies in stages.

The State’s control over forests and natural resources has led to discrimination and criminalization against indigenous communities throughout Indonesia, including in the Mentawai Islands. However, the acts of resistance carried out by indigenous communities are often interpreted by the State as insubordination and rebellion. For indigenous communities, the opposite is true; as stated by Rachman

and Siscawati (2014: 50), for indigenous communities, these acts of resistance are a counter-resistance to survive and protect themselves.

The State needs to understand the acts of resistance by indigenous communities as protests against the State's denial of their status and customary rights over forests and agrarian resources. This is also the case in the Mentawai people's acts of resistance to defend their customary land. In many cases, the state often denies the legitimacy of pre-existing ownership rights systems over land and other land-based natural resources. The Mentawai people claim that all land in the Mentawai Islands belongs to the Mentawai people, but they do not possess official documents recognized by the state. Land ownership claims are based solely on family stories or ancestral tales. This condition creates conflict between the Mentawai people and the state, which claims authority and the right to control and manage natural resources for the benefit of the people.

The State has provided political space for indigenous communities to gain State recognition through the Decision of the Constitutional Court of the Republic of Indonesia concerning Case Number 35/PUU-X/2012, which states that "customary forest is State forest located within the territory of customary law communities." Customary forest is no longer considered State forest but rather part of rights-based forest. This decision affirms that indigenous communities are "rights holders" because they have a fundamental connection to their customary territory. The readiness of customary law communities is crucial to be able to utilize this political space to reclaim their forest rights.

In carrying out the mandate of the Constitutional Court Decision Number 35/PUU-X/2012, the Regional Government of the Mentawai Islands Regency has issued Regional Regulation of the Mentawai Islands Regency Number 11 of 2017 and Regent Regulation of the Mentawai Islands Regency Number 12 of 2019, which regulates the procedures and stages for the "Recognition and Protection of Uma as a Customary Law Community Unit in Mentawai." The political space for customary law communities, as referred to in these laws and regulations, could become a new strategic option in the struggle and contestation to regain access and control over their customary land. However, this political space has not yet become a resistance strategy that the Mentawai people wish to implement.

The Mentawai people's reluctance to utilize political opportunities in opposing the state and companies is likely rooted in their distrust

of politics itself. Myrna Eindhoven, in her writing “New Colonizers? Identity, Representation, and Governance in the Mentawai Islands, Post-New Order” (2007), elaborates on the Mentawai people’s views on local politics in the post-New Order Mentawai Islands. After the establishment of the Mentawai Islands Regency, the Mentawai people were able to break free from the “colonization” of the Minangkabau people when they were still part of the Padang Pariaman Regency. However, this political space has instead created new opportunities for local elites to gain political positions and structures that only benefit their own interests.

Furthermore, Eindhoven (2007: 89) mentions that local NGOs, which previously supported the political struggles of local communities, tended to play a duplicitous role in the political process. Many local NGOs transformed themselves into political factions and abandoned their function as civil society. Meanwhile, local communities or ordinary people, according to Eindhoven, were not fully involved in political processes and tended to become spectators who were only informed after major decisions had been made. As a result, local communities easily developed a cynical view regarding political rhetoric, including customary rhetoric.

The call for native sons to become leaders or public officials successfully granted positions and important offices in the regency government to Mentawai elites. The issue that then arose concerned the concepts of ‘development’ and ‘progress’ that the government had to implement. One crucial development program that needed to be carried out immediately was road construction projects. Because land in Mentawai belongs to local communities or *uma*, the regional government had to negotiate with these communities regarding the land where the projects would be carried out. These negotiations could become very complex and cause chaos among all parties, and sometimes even lead to serious conflicts between *uma* members and the government, and among *uma* members themselves (Eindhoven: 2007).

Agrarian protests re-emerged from local communities, now directed at Mentawai politicians who were native sons of the region. Local communities felt excluded from political negotiations and decision-making processes. They perceived that the Mentawai elites, who had initially fiercely opposed marginalization, were now involved in various conspiracies that benefited themselves and their groups. This situation then raised questions among the Mentawai

local communities about the emergence of a new form of colonialism in Mentawai (Eindhoven: 2007: 112).

Customary land or *polak teteu*, as the agrarian resources of the Mentawai people that hold economic, social, and ecological value, involves many social relations with differing interests. The stakeholders compete with each other by implementing strategies, mechanisms, and tactics to influence, subdue, or withstand the influence of other parties. The strategies employed by certain parties aim to encourage others to obey or comply, submit, or provide support. The state positions itself as the guardian of society in an effort to improve the lives and welfare of the people. Development in Indonesia, including agrarian and forestry sector programs, according to Li (2012), is fundamentally a “will to improve.” That is, an effort to improve the living conditions of the community and increase welfare. Development programs are designed to change conditions for the better, but ironically, they often give rise to new problems.

This occurs because development is within the realm of power, which Michael Foucault, as cited by Li (2010), refers to as “governmentality” or “the conduct of conduct.” To govern means to act upon the actions of subjects who have the capacity to act otherwise. Governmentality strives to direct human behavior through a series of carefully calculated methods.

In the access theory developed by Ribot and Peluso, as cited by Siscawati (2014: 164-165), access to land and other resources is determined by how one obtains, controls, and maintains access to specific resources. Different individuals or institutions can have varying degrees of control over access to resources in relation to their power networks. An important mechanism for obtaining, controlling, maintaining, and preserving access is the rights-based access mechanism. In their control over access to customary land, the Mentawai people also employ a rights-based access mechanism. However, to date, this mechanism has not automatically enabled the Mentawai people to gain access and control over the *polak teteu* controlled by the State and companies.

Within the context of local politics in the *uma*, the Mentawai people do not recognize a highly influential leadership structure. While the *uma* holds significant importance for the Mentawai people, the *uma* itself has an egalitarian character. Among the *sikauma*, there is no one with special skills whose services can be bought, nor

is there a wielder of power who can impose decisions within their sphere of authority (Schefold, 1991: 114). The *uma* does have a leadership structure with the *sikebbukat uma*<sup>7</sup> as the group leader, whose roles and functions are primarily related to daily life, rituals, and culture. Therefore, the *sikebbukat uma* is not a political leader within the *uma*. The *uma* does not recognize a leader who possesses the instruments of power to compel group members to obey their commands, even to fulfill the obligations of group members towards their group. Furthermore, there are no institutions within the *uma* that can impose punishments and the obligation to carry out sanctions for the social behavior of the *sikauma*. Decision-making that concerns every *sikauma* must be done through the *parurukat* process in the *uma*, or joint deliberation.

If there is someone who disagrees, they cannot be forced to submit and follow the majority opinion. Instead, efforts must be made to convince the individual to accept the majority view. However, if tensions become too high and deliberation fails to maintain group unity, open conflict may erupt. A *sikauma* who disagrees with the majority opinion will typically separate from their group and form a new group (Schefold, 1991: 116-118).

Maintaining customary land is very important because, for the Mentawai people in general, *polak teteu* is the sole identity as indigenous inhabitants connected to the history of their ancestors and the kinship relations of the Mentawai people (Tulius: 2012). *Polak teteu* also serves as a symbol of pride or prestige for each *uma*, acting as a reserve of resources for the future. Although under the Forestry Law, most of the Mentawai region is designated as state forest area, for the Mentawai people, this land belongs to them under an ownership system based on the *uma*, often disguised by the term *suku* (clan) (Reeves, 2004). The transfer of ownership and land use requires the permission of the *sibakkat polak* or landowner through customary mechanisms represented by the *uma* leader or *sikebbukat uma*. The *sikebbukat uma*'s decision is made based on the results of deliberation or negotiation with all *sikauma*.

*Polak teteu* management is a complex system, which not only involves the relationship between humans and the environment, but also represents a broad social structure, including social, cultural, economic, and political aspects. Like Ribot and Peluso's access

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<sup>7</sup> On Sipora and Pagai Islands, the term *Rimata* is used

theory (Peluso 2000), the Mentawai people's efforts in maintaining *polak teteu* can be seen as a "bundle of power networks" containing meanings, processes, and social relations that enable Mentawai people to gain control and access over their *polak teteu*. *Polak teteu* management is a complex system, which not only involves the relationship between humans and the environment, but also represents a broad social structure, including social, cultural, economic, and political aspects. Like Ribot and Peluso's access theory (Peluso 2000), the Mentawai people's efforts in maintaining *polak teteu* can be seen as a "bundle of power networks" containing meanings, processes, and social relations that enable Mentawai people to gain control and access over their *polak teteu*. Through the *polak teteu* management system, the Mentawai people can determine who can own, manage, and supervise the *polak teteu* and its natural resources.

## AFTERWORDS

One important mechanism for obtaining, controlling, maintaining, and preserving access, according to Ribot and Peluso (Siscawati, 2014), is the rights-based access mechanism. Access and control over *polak teteu* are also managed through a rights-based mechanism, which is illustrated through the labels assigned to the parties involved. For the Mentawai people, rights-based access is recognized through the terms *sibakkat laggai*<sup>8</sup>, *sibakkat polak*<sup>9</sup>, *sipasijago*<sup>10</sup>, and *sitoi*<sup>11</sup>. Each term in this concept of ownership and management is closely related to the concept of power that regulates access and control over *polak teteu*. To understand power, according to Haryatmoko (Maring, 2010), what must first be understood is the existence of various power relations inherent in the organizational field and the parties involved.

According to Usman (2015), the ownership concepts used as the basis for building natural resource management systems are developed into three categories of ownership: state property,

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<sup>8</sup> owner of a large territory or forest and land within a broad area.

<sup>9</sup> landowner.

<sup>10</sup> person mandated and authorized to guard.

<sup>11</sup> newcomer or person granted the right by the owner to use the land without the right to control or own it.

communal property, and private property. In the state property category, natural resources are controlled by the government and regulated through legislation issued based on its authority. Meanwhile, in the communal property category, natural resources are controlled by a specific (ethnic) group based on customary law prevailing in the community (communal rights). In the private property category, natural resources are controlled by individuals or corporations.

Usman (2015: 86) states that the government strongly emphasizes the concept of state property and neglects the concepts of private property and communal property as references for exploiting natural resources. The government reduces Article 33 paragraph 3 of the 1945 Constitution, which states that “land and water and the natural resources contained therein shall be controlled by the state 1 and utilized for the greatest 2 possible prosperity of the people,” to mean that natural resources are controlled by the government.

Law Number 22 of 1999 concerning Regional Autonomy subsequently provided space for regional governments to manage natural resources in their respective areas, which was interpreted by regional governments as an opportunity to increase regional revenue. This interpretation led to large-scale natural resource exploitation that became increasingly difficult to control (Usman, 2015). The large-scale exploitation of natural resources carried out by the government is always justified in the name of development or economic growth. The development process invariably demands land acquisition. The relationship between development and land issues leads to the concentration of land control through two main mechanisms: the market and state intervention (Afrizal 2006 and 2018, Fauzi 1997). According to Fauzi (1997), the largest concentration of land control lies in the control of forests through Forest Concession Rights granted by the State to logging companies, which results in the loss of community access and control over previously controlled land.

The concept of state ownership over land and forests in the Mentawai Islands has disregarded the Mentawai people's culture in forest management, and this has fueled the emergence of various conflicts based on land and natural resources. The designation of state forest areas and the granting of concession permits to logging companies and large-scale plantations have destroyed

the forest resource management system that the Mentawai people have practiced for generations. The government tends to view the Mentawai people's farming and forest management systems as backward.

In carrying out the mandate of the Constitutional Court Decision Number 35/PUU-X/2012, the Regional Government of the Mentawai Islands Regency has issued Regional Regulation of the Mentawai Islands Regency Number 11 of 2017 concerning the Recognition and Protection of Uma as a Customary Law Community Unit (Perda PPUMHA), and Regent Regulation of the Mentawai Islands Regency Number 12 of 2019 which regulates the procedures and stages for the "Recognition and Protection of Uma as a Customary Law Community Unit in Mentawai."

This legal product provides an opportunity for every *uma* in Mentawai to submit proposals for state recognition, affirmation, and determination of their customary rights and territories. Yayasan Citra Mandiri Mentawai (YCMM) is a civil society organization that proactively encourages *uma* in Mentawai to submit PPUMHA proposals. Regarding one of the requirements that obligates each *uma* to possess a map of their customary territory, YCMM conducts a participatory mapping program to facilitate every *uma* that wishes to create a map of their customary land or *polak teteu*.

However, the political space provided by the state for the Mentawai people to defend and reclaim their *polak teteu* from state and corporate control has not been met with enthusiasm. The Mentawai people are reluctant to engage in political strategies to resolve land conflicts in Mentawai. Participatory mapping is not considered the best strategy to affirm ownership claims, ownership boundaries, access, and control over land. One of the reasons for this reluctance is the past trauma associated with the establishment of Siberut National Park on Mentawai ancestral land.

The reluctance to conduct customary territory mapping and propose the designation of customary territories is also motivated by anxiety about the potential privatization of communal lands in Mentawai. A significant portion of the Mentawai people on Siberut Island inhabit and manage land belonging to other individuals/*uma* (Tulius 2012; Darmanto and Setyowati: 2012). There is concern that the state's designation of customary territories will disrupt the existing land management system in Mentawai.



According to Eindhoven (2007), the Mentawai people's reluctance to utilize political space in opposing the state and companies is likely rooted in their distrust of politics itself. Political space is perceived as merely creating new opportunities for local elites to obtain political positions and structures that solely benefit their own interests. Eindhoven (2007) also explains that at the beginning of the reform era in Indonesia, many local NGOs transformed themselves into political factions and abandoned their function as civil society. Meanwhile, local communities or ordinary people tended to become spectators. Consequently, local communities easily developed a cynical view regarding political rhetoric.

Past experiences and tactical interests concerning land have made the Mentawai people reluctant to utilize political space in defending their *polak teteu*. This can pose a dilemma for the process of resolving agrarian conflicts in Mentawai. Meanwhile, the State, through the Constitutional Court's decision, has stipulated that as long as customary law communities are not recognized, affirmed, and designated by the Regional Government, they cannot exercise their rights that are already regulated in various laws and regulations.

On the other hand, for the Mentawai people, all claims and access to *polak teteu* must refer to their identity and rights as indigenous inhabitants of Siberut. This is further reinforced by newcomers and other ethnic groups who acknowledge that the Mentawai people are the owners of land and forests in Siberut. Historically, non-Mentawai residents essentially had no ownership whatsoever over the land, forests, and all their contents in Siberut. The utilization of resources by outsiders must have the permission of the Mentawai people as landowners (Darmanto and Setyowati: 2012).

In facing the state power, Mentawai people develop strategies that have social and cultural contexts. In Foucault's perspective (Maring: 2010), the resistance of Mentawai people can be positioned as a dynamic strategy complex that can come from various directions and levels. According to Foucault in working mechanism, power cannot be separated from resistance, where power works, there is resistance.

## CONCLUSION

Mentawai people maintain *polak teteu* because the land has a very important meaning to them. *Polak teteu* holds stories of the family's

past that not only describe land ownership and management, but also describe the Mentawai people's kinship group relationships, which characterize and identity each *uma*. Past events on the *polak teteu* influence the lives of Mentawai people to this day.

*Polak teteu* is a symbol of Mentawai people's power over natural resources which is also a symbol of self-esteem and prestige of each *uma*. The concepts of *sibakkat laggai*, *sibakkat porak*, *sipasijago*, and *sitoi* represent the power of each individual or *uma* over the land and forest. *Polak teteu* also has a spiritual meaning related to the belief of Arat Sabulungan, that everything in the universe has a spirit. Mentawai people always try to maintain a harmonious relationship with the spirits in the forest which is reflected in every behavior and attitude towards an event.

The *polak teteu* management system is an expression of Mentawai culture, knowledge and wisdom in managing forest resources. *Polak teteu* management is a complex system, which not only concerns the relationship between humans and the environment, but also a representation of a broad social structure, covering social, cultural, economic, and local political aspects of the Mentawai people.

State control over land and forest in Mentawai has made Mentawai people lose access and control over their *polak teteu*. This control makes Mentawai people fight back to defend their customary land. The state does not recognize the Mentawai people's ownership rights over the land and forest and the resources within. State control not only makes Mentawai people lose access and control over their land and forest, but also destroys the meaning and symbolic relationship of Mentawai people with their forest.

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