

Managing National and International Legal Resources to Recover Sovereignty, Prosperity and Dignity of Indigenous Peoples in Indonesia

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Development and Indigenous Peoples in Indonesia

Indonesia is an archipelagic state consisting of 17,508 islands with an estimated population of 264 million (2017) and 1,128 ethnic groups (BPS, 2010). AMAN estimates the indigenous population to be between 50 to 70 million.

Soeharto's New Order rule (1966-1998) had sought to develop a modern, non-ethnic Indonesia, and therefore avoided mentioning anything "ethnic" and Indigenous Peoples. The state emphasized "unity" and undermined and ignored "diversity" through policies and programs that sought to limit the expression of identity. Discussing ethnic identity and indigenous rights was considered dangerous to state unity.

More than two-thirds of Indonesia's total land area has been declared as national forests, including almost the whole of Papua. The Forestry Department prohibits the use of forest resources without permits, directly affecting indigenous livelihoods. There are also examples where the government has granted Indigenous ancestral territories to mining, logging, transmigration projects and palm oil companies. The government had continued awarding such concessions even as recently as 2010. Some companies have used armed groups to attack Indigenous Peoples who refused eviction. Oil palm plantation-related conflicts increased fivefold in 2010 from the previous year. According to Sawit Watch, in 2010 there were 660 conflicts, whereas in 2009 the number was only 112. The current dominant development paradigm has victimized and excluded the Indigenous Peoples.

Resistance to Development Aggression

Development has become a form of state and corporate aggression against Indigenous Peoples, which has led to numerous human rights violations. Localized and sporadic resistance movements emerged throughout Indonesia since the 1970s, mostly against logging operations. This movement continued to develop with the support of intellectuals from non-governmental organizations run by former student activists who engaged in the resistance movement against Soeharto's New Order administration. With the support of urban-based NGOs and individual activists, resistance leaders at the local level got connected, building up the sense of solidarity among themselves and their shared feeling as victims of development. The disenfranchised feeling was deeper in some areas, since the impacts of development were worse than during the Dutch colonial period. To Indigenous Peoples, development is a continuation of colonization.

A consolidation meeting among activists from non-government organizations and local Indigenous leaders in 1993 in Toraja, South Sulawesi, agreed to establish the Network for the Defense of the Rights of Indigenous Peoples (JAPHAMA), and adopted the the

term and concept of '*Masyarakat Adat*' as the Indonesian term for Indigenous Peoples, as defined in the ILO Convention 169 and, then, draft UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The network consists of non-governmental organizations at the national level and Indigenous community organizations at the local level that served as a bridge for communication and coordination among members. The network later facilitated the formation of a national Indigenous Peoples' organization that held its first Congress of the Indigenous Archipelago in March 1999 in Jakarta. This organization is called AMAN (Aliansi Masyarakat Adat Nusantara, the Indigenous Peoples' Alliance of the Archipelago).

AMAN is a representative organization for 2,373 Indigenous communities across Indonesia with about 17 million individuals. Currently the organization is managed by a Central Governing Body with 21 Regional/Provincial Chapters, 117 Local Chapters. In addition, it has three sister organizations representing youth, women and lawyers, and four autonomous bodies. AMAN's mission is to empower, advocate for, and mobilize Indigenous Peoples of the Indonesian archipelago to protect their collective rights, and to preserve their cultures and environments entrusted by their ancestors for current and future generations.

Human Rights vs Developmentalism

During the early days of its growth, in the early 2000s AMAN was faced with two main challenges. First, how to present Indigenous Peoples as the victims of a systematic, massive oppression in public, academic discourse and, of course, from the state apparatuses and the private sector who are the very source of the problems. Meanwhile, Indigenous issues are not only a matter for Indigenous Peoples only, but for everyone. The second challenge is how to build an extensive critical mass for this new social movement among Indigenous Peoples who live mostly in remote areas with limited telecommunication and transportation infrastructure. Indigenous Peoples should be aware, and even believe, that the sufferings they have experienced are a serious form of human rights violation.

Indigenous Peoples as Collective Rights Holders

As a leader of AMAN in this growing period, initially as its Executive Secretary in 1999-2003 and then as its Secretary General in 2007-2017, I had to address these two challenges in parallel. As requested by the committee of this symposium, I will share my experiences and knowledge especially in relation to the application of existing legal resources at the national and international levels, especially UNDRIP.

The first step I was working on was to lead and facilitate the process of further conceptualizing and defining "*Masyarakat Adat*" as Indigenous Peoples, as collective rights holders that can be accepted at the local, national and international levels. At the local level we found Indigenous Peoples using a variety of terms in local languages and concepts based on their diverse cultures and customary laws. In dealing with state policies, we use "*Masyarakat Hukum Adat*", literally means "Customary Law Communities" as stated in the 1945 Constitution. At the international level we use the concept of Indigenous Peoples as outlined in several international instruments, specifically the ILO Convention 169 and the then draft UN Declaration on the Rights of

Indigenous Peoples (UNDRIP) that positions Indigenous Peoples as holders of human rights.

This first step was a burdensome and tiring intellectual process because the very young AMAN had to deal with established academic institutions that treated Indigenous Peoples as mere objects, and labelled the peoples as primitive and backward groups that must be modernized and developed. The period of conceptualization was also the confrontation phase for AMAN. There was a discord, or even a schism, between Indigenous Peoples movement on one side, the state and corporations on the other, and in some cases with religions.

UNDRIP and other international instruments filling the gap

We intensively used ILO Convention 169 and draft of UNDRIP as materials in organizing our members at the grass-root level, for public awareness campaigns, and also in engaging with politicians and government officials. The government showed a positive response to our campaign. In 2006, the Government of Indonesia celebrated International Day of Indigenous Peoples of the World for the first time, in which President Susilo Bambang Yudhoyono in his official speech emphasized the need to have a dialogue and partnership with Indigenous Peoples. He also mentioned the importance of a law on Indigenous Peoples in fulfilling the constitutional right of Indigenous Peoples in Indonesia. A year later in 2007 Indonesia signed the adoption of the UNDRIP.

The positive response from the national government built up a momentum along with the acceptance of a fairly solid but still growing concept on “Masyarakat Adat” as Indigenous Peoples in Indonesia, as well as the visibility of Indigenous Peoples movement at national level. With such circumstances in 2007, AMAN entered the second stage of our struggle with to the adoption of a new strategy that moved away from confrontation to critical engagement with the government. In its 2007 Congress, AMAN decided to promote national legal and policy reform in a more systematic manner.

The advantage of using UNDRIP in advocacy work at country level is that it does not provide a definition of Indigenous Peoples. The declaration only provides a set of characteristics and recognizes a very broad range of rights, from the right to self-determination, right to culture and right to land, territory and resources. It sets standards and an agenda for a state and IPs to design a reasonable approach toward progressive realization of state duties and responsibilities, serving as a guide for consultations among IPs and the government agencies.

At the national level, AMAN engaged in a number of activities, including:

1. Promoting new regulatory frameworks, policies and programs through the Parliament, National Human Rights Commission; or proposing these directly to the Government and intervening in the drafting of new legislation, policies and development plans.
2. Incorporating the content of the UNDRIP and other international instruments in our Memorandum of Understanding with the National Human Rights

Commission (Komnas HAM) in 2007, Ministry of Environment (now Ministry of Environment & Forestry) in 2009, and the National Land Agency (now Ministry of Agrarian & Spatial Planning) in 2011. One of the most important results was the partnership with Komnas HAM and supporting NGOs in conducting the National Inquiry concerning Violations of Human Rights of Indigenous Peoples in Forest Zone.

3. Challenging various national legislation, regulations and policies that harm Indigenous Peoples through judicial review, and audit of development and licensing programs. One of the most important outcomes is the Constitutional Court Ruling No. 35 (2013) on Forestry Law that Customary Forests in Indigenous Peoples' territories should no longer be considered as State Forests, in recognizing indigenous rights to the forest.
4. Drafting and advocating a new National Law on the Recognition and Protection of Indigenous Peoples Rights (2011- ongoing)
5. Promoting Indigenous Territory Maps into the Government's One Map Initiative and the adoption of Indigenous Maps by the National REDD + Agency,
6. In partnership with Presidential Delivery Unit (UKP4) and National REDD+ Agency developing the National Initiative Program on the Recognition and Protection of Indigenous Peoples launched by the Vice President of Indonesia,
7. Participating in the drafting of President Joko Widodo's programs known as NAWACITA during his candidacy, particularly on six points towards the protection of Indigenous Peoples, advocating President's plan to create a special Task Force on Indigenous Peoples.
8. Promoting the inclusion of Indigenous Peoples and their territories in One Map Policy.

At the international level, AMAN has been active in:

1. Representing Indonesian Indigenous Peoples in international negotiations related to human rights, biodiversity, climate change and sustainable development. Since 2007 AMAN has actively engaged on [REDD+](#) issues as a member of the International Indigenous Peoples' Forum on Climate Change (IIPFCC) and participated in the intervention on the formulation of Paris Agreement. AMAN is entrusted by Asia's Indigenous Peoples' organizations to lead and represent the region in various climate change forums and REDD+ negotiations such as the UNREDD Policy Board, [FCPF](#) Participants Committee, [CIF-FIP](#) Sub Committee, involved in the formation of Dedicated Grant Mechanism (DGM) for Indigenous Peoples and Local Communities under the FIP, involved in [GEF](#) Council, REDD+ Partnership Forum, etc.
2. Reporting various development legislation, regulations, policies and programs in Indonesia that violate the rights of Indigenous Peoples to the existing international mechanisms. AMAN also actively participates in [UNPFII](#), follows Human Rights issues and involves in UN meetings in Geneva like the Universal Periodic Review (UPR) and Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), as well as making reports to [CERD](#). AMAN has been regularly invited to the various high level international conferences to speak about Indigenous Peoples Rights, and a way to address problems such as human rights, deforestation, climate change, and economics and businesses.

3. Continue to be involved and contribute as part of the global Indigenous Peoples movement, and a part of a cross-sectoral social movement at the national level to inspire each other, learn from each other, and build solidarity with one another as well. AMAN participated in, among others: the UN Permanent Forum on Indigenous Issues (UNPFII), World Economic Forum (WEF), Global Landscape Forum, UNFCCC COP 21 in Paris, the Creative Time Summit, Global Land Forum – Land Rights Now!, the State of Rights and Resources, the Climate Summit, various high level conferences organized by the Ford Foundation; Forest for Climate: The Science. The Politics, the UNESCO event: An Afternoon with Robert Redford: Storytelling for Global Action, the Tropical Forest Alliance, etc.