

THE HUMAN RIGHTS SITUATION CONCERNING INDIGENOUS PEOPLES AND ETHNIC MINORITIES IN INDONESIA



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A Research Report

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PART I

INTRODUCTION

- **Background**

At present the population of Indonesia is more than 200 million people. Based on Statistic Center Bureau in 2000, the Indonesia population is 205.8 million people (Badan Pusat Statistik/BPS 2001) and this is the fourth largest in the world after China, India and United States of America. The majority of the Indonesian population lives on the island of Java, which is only 6.60 % of the total inhabited area of Indonesia.

Indonesia is a multi-ethnic society which has various minority and many indigenous peoples¹ who are situated in many places or islands. Since independence in 1945, the founders of this state promoted the 'diversity in unity' (*bhinneka tunggal ika*) which became the most important spirit of life of the people and nation in Indonesia under *Pancasila* (five fundamental principles)². The *Pancasila* is explicitly mentioned under the preamble of Indonesia Constitution 1945.

¹ Translation version of 'indigenous' in *Bahasa* is 'adat'.

² Five principles are (i) a belief in the One and Only God; (ii) just and civilised humanity; (iii) the unity of Indonesia; (iv) democratic life led by wisdom of thoughts in deliberation amongst representatives of the people; and (v) achieving social justice for all the people of Indonesia.

In the context of the nation spirit of *Pancasila*, the interesting thing concerning demography feature is the data of minority population in Indonesia. The last comprehensive population census that included data on ethnic background was in 1930, made during the Dutch colonial period. The next population census (1961, 1971, 1980, and 1990) never included any direct information on ethnicity (Suryadinata *et al* 2003: xx). The reasons for not including ethnic information in the censuses is because during military authoritarian Soeharto, the regime constructed 'the stage of nation building' which the concept of SARA (*Suku, Agama, Ras dan Antar Golongan*, or ethnic, religion, race and groups) was considered sensitive, especially ethnicity and race. The absence of quantitative information on ethnicity was expected to prevent conflict arising from differences in ethnicity, and national integration would be better achieved without such information. Nevertheless, the fact is just the opposite that the conflict on ethnicity did not disappear (Suryadinata *et al* 2003: xx-xxi).

The problems of ethnicity and indigenous peoples are not mainly caused by horizontal conflict or issues among society, but it is more structural conflict which the state has been involving in creation the conflicts. It means that the conflict involves state organs in order to achieve particular purpose at political-economy power and elite interest. In the case of natural resources conflict, such as the issue of land, forest, water, mine, and other resources, the indigenous peoples are the community at grassroots level who are mostly affected by the over-exploitation of the state or corporations. "The Jakarta" policies has oppressed the local peoples and made them suffers.³

Those problems have been significantly happening during authoritarian military regime of Soeharto, particularly when the Chinese as minority group has been discriminated by many policies in order to discipline citizenship from the influence of communist party in the past. After the fall of Soeharto in 1998, the situation of minorities -- especially ethnic minorities -- and indigenous peoples are not far different, many of their rights are violated by oppressive policies, marginalization and discrimination. Injustice situation against the indigenous peoples and ethnic minorities are still seriously threatening, and dealt with mainly lands and

³ Jakarta is not only as capital city of Indonesia, but it is also a symbol of powerful place in exploiting and destructing systematically other places through oppressive policies throughout Indonesia. It is because many important state institutions, corporations, and strategic institutions in making decisions and policies.

natural resources, environment, culture and identity. In the context political transition, decentralization process and direct election since 1999 did not guarantee better recognition of indigenous peoples and ethnic minorities.

In this context situation, this research tries to deconstruct the oppressive policies which have been created by dominant power, not only in Jakarta, but also local elite who involved to marginalize the ethnic minorities and indigenous peoples. The result of this research is expected in order to have a mapping on indigenous peoples and ethnic minorities in Indonesia, especially to understand: (i) policies and legal discourse on ethnic minorities and indigenous peoples; (ii) conflicts and (iii) actors and strategies which have been applied by indigenous peoples groups and non-governmental organization.

This research also used participatory action methodology which is achieved to progress cogenerative research. Openness, action-reflection and participatory process, including the involvement of researcher in organizing community, are important values for developing cogenerative process. In understanding policies and legal discourse, it uses Critical Legal Studies. Critical Legal Studies is a theory that challenges and overturns accepted norms and standards in legal theory and practice. The basic idea of Critical Legal Studies is that the law is politics and it is not neutral or value free. Critical Legal Studies believes that logic and structure attributed to the law grow out of the power relationships of the society and the law exists to support the interests of the party or class that forms it and is merely a collection of beliefs and prejudices that legitimize the injustices of society. The powerful uses the law as an instrument for oppression in order to maintain their place in hierarchy. By using this methodology, this research is expected to answer behind the problem of legal policies that affects to the indigenous peoples and ethnic minorities.

To analyze policies and legal discourse, first, it uses the existing protection standards, mechanisms and practices for enhancing the rights and welfare of indigenous peoples and ethnic minorities, as well as to critic its implementation for protecting rights. Second, it scrutinizes critically the absence of law. And the third, compare local, national and international legal provisions.

After describing the existing legal protection, the research pictures the conflict situation at grassroots level or national level, by scrutinizing the impact of law implementation and the political transition after the fall of Soeharto. It criticizes the conflicts which were caused by corporations and financial institutions policies. Then, in understanding the strategy framework, this research tries to map actors who involve in defending ethnic minorities and indigenous peoples, by looking the role or its existence, the network, and how do they respond to advocate the issue of indigenous peoples and ethnic minorities at local, national and international level.

- **Conceptual Framework of Indigenous Peoples and Ethnic Minorities: Indonesian Context**

This research will be carefully using the term of minorities, indigenous peoples and ethnic minorities. It is simply because it has different consequences, especially in applying international human rights law for both, minorities/ethnic minorities and indigenous peoples.

There is no universally accepted legal definition of ‘minority’, ‘ethnic minority’ and ‘indigenous peoples’. The perceptions of indigenous peoples and ethnic minorities are mostly interpreted as similar things or interchangeable, but actually they still have different characteristic.⁴

According Article 27 International Covenant on Civil and Political Rights 1966, states that:

“in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

The term ‘ethnic’ minorities above is not defined directly the meaning of ‘ethnic minorities’, but it includes the concept of protection of ‘minority’. The other provision, minority is

⁴ For understanding various concept and the differences, vide: Timo Makkonen (2000) *Identity, Difference and Otherness: The Concepts of ‘People’, Indigenous People’ and ‘Minority’ in International Law*. Helsinki: Forum IURIS, Faculty of Law, University of Helsinki.

defined as a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members --being nationals of the State -- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, tradition, religion or language (UN Doc.E/CN.4/Sub.2/384 and Add. 1-7, Aug. 1977).

Based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992 Art 2 (1), it mentions that persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

Minority in Indonesia, as published by 2000 Population Census, there is no explicit definition of an ethnic group (it is usually translated in Bahasa as *suku bangsa*). However, the data of this ethnic group is based on 'self-identification' of the offspring (Suryadinata 2003: 6). Although it used self identification, the identification of traditional communities or *adat* (indigenous) is still 'verified' or 'defined' by the State as mentioned on Article 18B verse (2) Indonesian Constitution. This article states that,

“The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

In this regard, 'self identification' does actually not show the real of people identification, because the State could politically intervene or influence in shaping 'formal identification' or 'recognized identification'. However, the BPS data is an important data when alternate data does not provide enough, as compiled by Suryadinata et al (2003: 7-9) below.

Table 1:
Ethnic Group of Indonesia Citizens:
 Indonesia, 2000

No	Ethnic Group	Number	Percentage
1	Javanese	83,865,724	41.71
2	Sundanese	30,978,404	15.41
3	Malay	6,946,040	3.45
4	Madurese	6,771,727	3.37
5	Batak	6,067,440	3.02
6	Minangkabau	5,475,145	2.72
7	Betawi	5,041,688	2.51
8	Buginese	5,010,421	2.49
9	Bantenese	4,113,162	2.05
10	Banjarese	3,496,273	1.74
11	Balinese	3,027,525	1.51
12	Sasak	2,611,059	1.30
13	Makassarese	1,982,187	0.99
14	Cirebon	1,890,102	0.94
15	Chinese	1,738,936	0.86
16	Gorontalo/Hulandalo	974,175	0.48
17	Acehnese	871,944	0.43
18	Toraja	750,828	0.37
19	Nias, Kono Niha	731,620	0.36
20	Minahasa	659,209	0.33
21	Buton, Butung, Butong	578,231	0.29
22	Atoni Metto	568,445	0.28
23	Manggarai	566,428	0.28
24	Bima	513,055	0.26
25	Mandar	504,827	0.25
26	Sumba, Humba, Tau Humba	501,345	0.25
27	Sambas	444,929	0.22
28	Peminggir	426,723	0.21
29	Kaili	412,281	0.21
30	Sangir	396,810	0.20
31	Komering	389,467	0.19
32	Rejang	333,635	0.17
33	Ngaju	324,504	0.16
34	Sumbawa, Semawa	319,423	0.16
35	Luwu	318,134	0.16
36	Using-Osing	297,372	0.15
37	Kendayan	292,390	0.15
38	Tolaki, Laki-laki, Lolaki	289,220	0.14
39	Pepadun	280,247	0.14
40	Serawai	279,154	0.14
41	Darat	275,914	0.14

42	Muna, Tomuna	267,722	0.13
43	Kerinci	254,125	0.13
44	Dawan	236,242	0.12
45	Kutai	224,859	0.11
46	Bolaang Mongondow	223,546	0.11
47	Dyak	221,957	0.11
48	Musi Banyuasin	213,918	0.11
49	Lamahot, Lamahot, Lamkolo	206,488	0.10
50	Belu, Teto	197,302	0.10
51	Rote, Roti	185,316	0.09
52	Pesaguan	178,933	0.09
53	Lio	170,949	0.09
54	Bakumpai	155,906	0.08
55	Tonteboan	134,543	0.07
56	Biak Numfor, Mafoorsch, Noe	126,070	0.06
57	Kei	125,954	0.06
58	Duri	121,688	0.06
59	Ambon	120,969	0.06
60	Dani, Ndani	120,745	0.06
61	Banggai, Mian Banggai	118,556	0.06
62	Gayo Lut	117,509	0.06
63	Selayar	93,183	0.05
64	Buol	91,034	0.05
65	Dompu	90,653	0.05
66	Lani	85,685	0.04
67	Abung Bunga Mayang	85,342	0.04
68	Gayo Luwes	81,172	0.04
69	Talaud	79,818	0.04
70	Seram	78,955	0.04
71	Lembak	77,241	0.04
72	Saluan	77,151	0.04
73	Saparua	68,194	0.03
74	Alas	67,424	0.03
75	Ekagi, Ekari	66,823	0.03
76	Sula	63,282	0.03
77	Makian	60,985	0.03
78	Bawean, Boyan	60,703	0.03
79	Katingan	60,171	0.03
80	Mentawai	54,419	0.03
81	Pasir	54,162	0.03
82	Galela	52,639	0.03
83	Yali	51,258	0.03
84	Maayan	50,505	0.03
85	Aru	48,261	0.02
86	Ngalum	46,130	0.02
87	Singkil	44,153	0.02

88	Simeulu	42,803	0.02
89	Bajau, Bajao, Bajo, Bayo	40,712	0.02
90	Yamdena	39,320	0.02
91	Donggo	38,050	0.02
92	Bukat, Buket, Ukit, Bukut	35,838	0.02
93	Tengger	33,838	0.02
94	Arab	33,498	0.02
95	Tonsawang	30,941	0.02
96	Halmahera	26,018	0.01
97	Baliaga	19,791	0.01
98	Laloda, Loloda	19,232	0.01
99	Morotai	13,968	0.01
100	Antinggola	4,681	0.00
101	Gebe, Gebi	2,903	0.00
	Others	13,972,741	6.95
	TOTAL	201,092,238	100.00

This table shows how the Indonesian society has many ethnic groups. The plurality of ethnic groups in this table also varies from one province to another. In understanding the ethnic groups, as minority, we should understand also the demography or composition of population in such provinces, because it could be a major ethnic group as minority in particular province.

As mentioned previously that the term of ethnic minority is different from indigenous peoples. In this regard, concerning indigenous peoples, there are estimated 300 million indigenous peoples in more than 70 countries worldwide (AIPP). José Martínez-Cobo, The Special Rapporteur to the Sub-commission on Prevention of Discrimination and Protection of Minorities, defines indigenous communities, peoples and nations are those which having an historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

Other comprehensive approach in defining indigenous peoples is also taken from ILO Convention No. 169,⁵ which mentions The Convention applies to: (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. In this convention, self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups.

In the context of Indonesia, the definition of indigenous peoples was formulated by Jaringan Pembela Hak-Hak Masyarakat Adat (Japhama/*The Network of Indigenous Peoples Rights Defender*) in 1993. According to Japhama, indigenous peoples is people group who have hereditary descendant in particular geographic, also have values, ideology, economic, politic, culture, and their own territory. This definition is formally adopted by The First *Nusantara* Archipelago Peoples Alliance (AMAN/*Aliansi Masyarakat Adat Nusantara*) Congres in 1999. Although AMAN has a definition, but the term 'definition' itself, sometimes, makes the limitation or restriction for indigenous peoples. Therefore the indigenous peoples groups prefer to free the people in defining themselves as indigenous peoples.⁶ For AMAN, they prefer identify themselves by using common features or element rather than the term of definition. Common features or element can be seen from table below.

⁵ International Labour Organization Convention 169 (1989): *Concerning Indigenous and Tribal Peoples in Independent Countries* Article 1

⁶ Emil Kleden and Rukka Sombolinggi, interview on 2/6/2006, Jakarta.

Table 2
Common Feature or Elements
Indigenous Peoples, Peoples, Tribal and Minorities
(Henriksen, 2004)

Common Features or Elements	Indigenous Peoples	Peoples	Tribal	Minorities
1. Linguistic historical tradition	●	●	●	●
2. Ethnic identity	●	●	●	●?
3. Cultural homogeneity	●	●	●	●?
4. Linguistic unity	●	●	●	●?
5. Religious or ideological affinity	●	●	●	●?
6. Territorial connection	●	●		
7. Common economic life	●	●	●?	
8. Consciousness to be a people	●	●	●?	
9. Institution to express People's identity (Self identification/self definition)	●	●	●?	
10. Occupation of ancestral land	●	●?		
11. Lived on the territory before the establishment of the State or Colonization (historical continuity)	●	●?		
12. Culture, language and or/ religion different from majority	●			●
13. Non-dominant sector of society (non-dominance)	●			●

Remarks:

- : Normally enjoy this common feature
- ? : Can in some cases enjoy this common feature
- Open space : Does not enjoy this common features

Even though the construction of elements might be different interpretation, but they believe that the process of understanding deeply could be openly discussed. By discussing the issue, specific theme, and context, it would be helpful for outsiders as well as the indigenous peoples themselves to understand the preferences.⁷ They also prefer to use the term of indigenous peoples rather than ethnic minorities in advocacy scheme, with the reason that indigenous peoples has a fit term in the context Indonesian socio-culture.

⁷ Bernandus Steny, a HuMa staff, said that although self identification itself is important for indigenous peoples existence, but it should be critical in applying this principle. It is because some cases have been showing the elite of indigenous peoples or university educated persons have manipulated people at field, such as initiating or supporting mining exploitations in ulayat rights. He referred small case in Seko, whose has initiated to exploit mining resources? It was not outsider, but from the member of indigenous peoples themselves (Focus Group Discussion at Daniel S Lev Library, 19/2/2007).

Henriksen (2006) explains that the importance on clarifying those concepts is because the consequence of application of international human rights standards. The term of minorities or ethnic minorities rights is defined as individual concept⁸, not refers to collective concept.⁹ In specific terminology on indigenous peoples, both in ILO Convention Number 169 and United Nation Declaration on Indigenous Peoples Rights which was adopted by UN Human Rights Council in July 2006, clearly stated indigenous peoples as collective rights as such. Article 3 (UN Declaration on IP Rights) states:

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

And Article 4 (UN Declaration on IP Rights) states:

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

In this regard, even though it analyses also ethnic minorities in the context of explaining structural conflict and violence in particular situations, but this research will focus on indigenous peoples problems and strategies, by using the features above which can be used as conceptual framework for this analysis.¹⁰ For those purposes, in the context of Indonesia, the term of indigenous peoples will strictly not be intertwined with the term ethnic minority.

⁸ Minority rights is applicable to all individuals, specific thematic individual rights, such as minority rights, and minority rights, under international human law are formulated as individual rights and freedoms. Vide: UN Declaration on the Rights of Minorities contains only individual rights, or Article 27 ICCPR and Article 30 CRC. In international human rights mechanism, it has advocacy consequence. For instance, if submitting a complaint to the relevant UN treaty body, individuals have to be identified and named in the complaint.

⁹ Collective rights concept refers to common article 1 (1) of ICCPR and ICESCR that mentions about “Peoples” Right of Self-Determination: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” In this provision 1, collective rights and freedoms are regarded for peoples as such, not for individuals and groups.

¹⁰ The common features or elements are very dynamic concept, meaning that this research is carefully interpreting the roles of the indigenous peoples in determining themselves. It is because every element should be scrutinized and explored deeply through various ways for strengthening their rights.

- **Research Scope**

The research focuses on the issue of indigenous peoples and studies the problems, strategies and how the actors involve to respond it. The research studies particularly after the fall of authoritarian military regime Soeharto (1998) until now. Nevertheless, the practice of policies in the past is also overviewed in order to get the comprehensive picture the situation of indigenous peoples.

Concerning ethnic minorities, this research will shortly tackle the issue of ethnic minorities non indigenous peoples, especially those individual or group who have been affected by systematic violence.

- **Significance of the Research**

As mentioned above, this research tries to deconstruct the oppressive policies which have been created by dominant power. The result of this research is expected in order to have a mapping on indigenous peoples and ethnic minorities in Indonesia, especially mapping to understand: (i) policies and legal discourse on indigenous peoples and ethnic minorities; (ii) conflicts and (iii) actors and strategies which have been applied by indigenous peoples groups and non-governmental organization.

This research would contribute a different perspective from the mainstream one, especially by using human rights perspective, to look at the situation of indigenous peoples and ethnic minorities in Indonesia. Therefore, it would be significance for advocating them in multi-level process by providing a set of policy recommendations and proposals for project strategies and intervention.



PART II

LEGAL POLICY AND ITS IMPACT ON INDIGENOUS PEOPLES AND ETHNIC MINORITIES: INDONESIAN CONTEXT

This part will overview the legal instruments by looking the status of Indonesia with respect to international instruments, standards and mechanism to the protection of human rights. It will be continued by describing the national framework on indigenous peoples and ethnic minorities. Lastly, it describes the impact of those legal policies to human rights, the existence of legal pluralism, and the influence to the rule of law system in Indonesia generally.

- **Ratification Status of International Human Rights Law**

Indonesia government has ratified almost all major international human rights law, which can be seen from table below.

Table 3
**Ratification Status of the Core International Human Rights Law:
Indonesia**

No.	International Human Rights Law	Adopted by UN	Indonesian Status
1.	International Covenant on Civil and Political Rights	16 Dec 1966	Ratified, 2005
2.	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	Ratified, 2005
3.	The Convention on the Elimination of All Forms of Discrimination Against Women	18 Dec 1979	Ratified, 1984
4.	The Convention on the Rights of the Child (CRC)	20 Nov 1989	Ratified, 1990
5.	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	Ratified, 1999
6.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	Ratified, 1998
7.	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	18 Dec 1990	Signature, 22 Sep 2004
8.	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966	-
9.	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec 1989	-
10.	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999	-
11.	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	-
12.	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000	-
13.	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002	-

Specific on the rights of indigenous peoples and minorities, there are two important legal instruments which can be referred to protect them.

Table 4
**Indonesian Status on Specific Legal Instruments
on Indigenous Peoples and Minorities**

No.	Specific Legal Instruments on Indigenous Peoples and Minorities	Adopted by UN/ILO	Indonesian Status
1.	Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59	1989, entered into force Sept. 5, 1991.	-
2.	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993).	1993	-

These statuses of ratified legal instruments are important to be known as part of legal protection for the indigenous peoples in Indonesia.

Responding to those legal instruments, a Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1999/68/Add.3), made by Ms. Radhika Coomaraswamy, and Special Rapporteur on racial discrimination (E/CN.4/1999/15), have addressed the violation of ethnic Chinese women during May riot 1998 in Jakarta. The Special Rapporteur concerned rape of ethnic Chinese women and psychological trauma caused by violence against women.

Concerning regulations, the Report of Special Rapporteur on violence against women, its causes and consequences also urged the Government of Indonesia for repealing regulations that discriminate against the Chinese minority, many of which violate the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Laws with regard to minorities should conform to international standards as set out in international documents (paragraph 120 E/CN.4/1999/68/Add.3).

Rape and other human rights violations against ethnic Chinese minority, particularly Chinese women, is one of serious example of violation against several major international human rights instruments, including International Covenant on Civil and Political Rights (1966), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), The Convention on the Elimination of All Forms of Discrimination Against Women (1979), International Convention on the Elimination of All Forms of Racial Discrimination (1965), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1993).

Although legally, Indonesia government should respect and protect indigenous peoples as consequence in ratifying those international instruments, but these have no specific impact in changing the situation of indigenous peoples and ethnic minorities. Meaning that, the indigenous peoples and ethnic minorities are still unprotected enough.

- **National Legal Framework**

After showing the international legal instruments and Indonesian status of ratification, then, what is actually the Indonesian legal development or policies concerning indigenous peoples protection?

The development of law and its dynamic to the local laws in Indonesia, especially concerning indigenous peoples, it has long historical context. Before independence in 1945, Indonesia citizenship was divided into three groups, namely: West-European (*Eropah Barat*), East Foreigner (*Timur Asing*), and *Bumiputera*. When we call the concept of *Bumiputera*, it does not always refer to indigenous communities, but also those people who life as various ethnicity in many places throughout Indonesia. This division was dealt with the role of law which was applied depending on groups division. This division has been influencing the law system (included national law system) after promulgation of independence in 1945.

Since the promulgation of independence in 1945, Indonesia started to draft the constitution, namely *Undang-Undang Dasar 1945* (UUD 1945/Indonesian Constitution). Under this first

constitution, there was no explicitly recognition to indigenous peoples. In human rights provision context, this constitution has minimal articles on human rights.¹¹

In that context, on the other side, Indonesia has more than 250 local territories with its original structure of local governance (*zelfbesturende, volksgemeenschappen*) such as *Marga* in Palembang, *desa and dusun* in Java and Bali, *Gampong* in Aceh, *Negeri* in North Sulawesi and Mollucas, *Temukung* in West and East Nusa Tenggara, *Yo* in Papua, and *Nagari* in Minangkabau. The existence of local governance at local communities was significantly influencing the local values and its laws.¹²

The first time of legal recognition over the existence of indigenous peoples and its law were formulated 15 years after UUD 1945. It was Agrarian Basic Law (Law No. 5/1960) which recognized “indigenous peoples and indigenous lands” (*hak ulayat, beschikingsrecht*). Agrarian Basic Law promoted land reform progressively in Indonesia and it recognized *adat* land by conditionalities, particularly the adjustment to the ‘national interest’.¹³ It meant that, during Soekarno regime, both UUD 1945 and Agrarian Basic Law had responded legal pluralism by recognizing and respecting *adat* rights.

Even though the recognition of indigenous peoples and its *adat* laws were strongly emphasized into constitution and ‘umbrella law’, but in its implementation, these laws were contravened with operational or more specific laws. The contradiction of law at implementation level has been often happening during Soeharto regime since 1967. For instance, Law Number 5/1967 concerning Forestry and Law Number 11/1966 concerning Mining. Both laws, although recognized *adat* laws, but the gradation of recognition decreased from ‘national interest’ to the ‘achievement of (those) laws’. In the context of New Order regime, the standard of normative recognition over *adat* laws was based on multi-

¹¹ Concerning Minimal Human Rights Provision On Indonesian Constitution, Vide: R. Herlambang Perdana Wiratraman (2005) “Konstitusionalisme & Hak-Hak Asasi Manusia: Konsepsi Tanggung Jawab Negara Dalam Sistem Ketatanegaraan Indonesia.” *Jurnal Hukum Yuridika*, No. 1 Tahun 2005, Fakultas Hukum Universitas Airlangga.

¹² Cornelius van Vollenhoven mentioned about ‘*adat* law communities’ (*rechtsgemeenschap* or *adatrechtsgemeenschap*).

¹³ Even though Agrarian Basic Law recognized the *adat* laws, but it should be adjusted with the greater national interest for social welfare. This perception can be interpreted that the *adat* law is not absolute in the frame of unitary system of the State. The explanation of this perception can be referred from Article 3 and Part II Number (3) Explanation of Law Number 5/1960.

layers of conditionalities. The problems of recognition over indigenous peoples actually have violated fundamental freedom for identifying and determining rights and its existence themselves. Unsurprisingly, policies and laws during New Order regime have legitimized to plunder and to expropriate indigenous land rights.

In the case of State Forestry, the government declared state forestry territory approximately 70 percent of land in Indonesia. The State assumed that there was no one or group of people life inside forest (the concept of 'empty forest'), without getting permission from the government. The conflict of State Forestry announcements were occurred in South Sulawesi, especially Moronene peoples who were removed from Rawa Opa National Park. Also, Katu and Lindu peoples who hereditary live in Lore Lindu National Park in Center Sulawesi, they were expelled.

The expulsion of indigenous peoples have been more seriously happening post the enactment of Regional Government Law (Law Number 5/1974) and *Desa* Government Law (Law Number 5/1979). Structurally, the local governance should refer to Javanese style of governance, by adopting *desa* (village) and applying it to all of local governance at local level in Indonesia. These governance policies were designed under the politic of uniformity, in order to be controlled and driven easily by the center government (Jakarta). However, the politic of uniformity has destructed massively the values and local system of governance, including the role of *adat* laws and governance.

In short can be said that during the authoritarian military regime Soeharto or New Order, the existence of indigenous peoples and its laws were destroyed culturally, socially, economically, and politically by dominated structural policies at center government. It has serious impacts on human rights violations, discrimination, and expulsion which systematic and widespread happened.

How is about the legal framework after the fall of Soeharto in 1998, whether the recognition over indigenous peoples become better and more progressive than previous one.

In 1998, the Assembly of People Representative (*MPR/Majelis Permusyawaratan Rakyat*) announced MPR Decree Number XVII/MPR/1998 concerning Human Rights. This decree became a basic law for enforcing human rights in Indonesia, then a year after, the government enacted Law Number 39/1999 concerning on Human Rights. Especially under Article 6 Law Number 39/1999 mentions,

- (1) In the frame of human rights enforcement, the distinct and need in indigenous peoples should be concerned and protected by society and state law.
- (2) Cultural identity of indigenous peoples, including indigenous land rights is protected in accordance civilization development.

The concept of recognition in this human rights legal framework is actually similar to the concept of UUD 1945 (before amendment) and Law Number 5/1960, but it is more focused on applying the principles of justice and social welfare. The requirement of recognition for indigenous peoples law is based on not contravene with existing law and legislations in the frame of Rule of Law.¹⁴ This style of recognition is used also in Law Number 41/1999 concerning on Forestry.

The Indonesia Constitution, or UUD 1945 post amendment, Article 18B Section (2) explains that,

“The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

And, the Article 28I section (3), states that,

“The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.”

These articles mention that the recognition over traditional communities and its rights are based on: (i) societal development; (ii) the principles of the Unitary State; and (iii) the development of times and civilizations. These requirements for the existence of indigenous

¹⁴ Vide: The Explanation of Law Number 39/1999, Article 6.

peoples in Indonesia are slightly dangerous, because the role of State and its bureaucracy dominantly interpret, influence, control political decision in considering whether or not the indigenous peoples exist. It has seriously consequences if the State limits or marginalizes the indigenous rights (especially rights to access natural resources for their daily live). Legitimacy of law under constitutional can be arbitrarily done by the government in favoring the developmental projects.

Nevertheless those articles under UUD 1945 post amendment can also be used to advocate the indigenous peoples, by reasoning that indigenous peoples (cultural identities and rights of traditional communities) are constitutionally recognized, at least as constitutional rights or fundamental rights in Indonesia context.

Briefly, the role of recognition law which was adopted by the Indonesia government can be used as legal modality for strengthening rights of the indigenous peoples. The table below shows the law or legislation which is usually proposed in defending rights of indigenous peoples.

Table 5
**Indonesia Legislation or Regulation
Concerns Indigenous Peoples Rights**

No	Legislation/Regulation	Concern	Article
1	UUD 1945 post Amendment	Indigenous peoples as constitutional rights/fundamental rights	Article 18B Section (2) & Article 28I section (3)
2	MPR Decree No. IX/2001	Agrarian and Natural Resources Management Reform	-
3	Agrarian Ministry/National Land Bureau Chairperson Regulation No. 5/1995	Resolution Guideline on Indigenous Peoples Land Rights Problem	-
4	Law No. 39/1999	Human Rights	Article 6

In conclusion, the laws since 1945, during Soeharto regime as well as post 1998, the legal recognition style over indigenous peoples and their rights still inherit the old ideology which stigmatizes the indigenous peoples as uncivilized peoples who should be facilitated to be civilized people. This assumption means that indigenous peoples is not subject or actor who

have cultural and economy ability to manage their own governance and natural resources. This assumption should be deconstructed because it was applied into *Agrarische Wet* (Agrarian Law) in 1870 when the Dutch colonial government introduced *domeinverklaring*.

The other thing, the regulation and legislation at national framework are not well defined, although in the other side the role of those legislations also can be used to advocate the indigenous peoples. It means that the law could be “double sword” which potentially threatens the existence of indigenous peoples. This situation has been worsened by the dominant doctrine of rule of law. The rule of law stressed the importance of supremacy of law, which mostly understood as state law (state based law, not community based law). Although it is not true, the state law usually is associated with the written law rather than unwritten law. This simplify perspective on supremacy of law under the doctrine of rule of law may have pressed the existence of non-State law. Unsurprisingly, the doctrine of rule of law with positivistic paradigm in implementing law system, it is understood by indigenous peoples as threatening law system.¹⁵ On the other word, the formal justice system practically discriminates against indigenous peoples and guarantees their rights.

- **Recognition over Adat Law**

“Indigenous law (adat law) could automatically not longer exist if the State does not recognize indigenous peoples anymore.”

Is there access to indigenous customary laws and indigenous institutions of justice, including recognition of these processes of justice by the state? This question is dealt with the existence of adat law, as a character of indigenous legal system in Indonesia. Adat law (*adatrecht; hukum adat*) is a term that is used to mention indigenous legal system. Adat law is related to the existence of indigenous governance, tenurial system or natural resources rights, married legal system, and many others. This section will describe the recognition of adat law in many forms, by looking at whether the current policies in Indonesia respect and protect the existence of adat law. By understanding the recognition of adat law, we can see one of source of conflict dealing with the recognition of indigenous peoples in general.

¹⁵ Hasnan Singodimayan (Osing community leader), interview, Banyuwangi, 20/10/2006.

Undeniable, after the fall of Soeharto, the project of state legal reform in Indonesia has been prominently influencing as the major agenda. Many new legislations were created and replaced the old legislations, especially the regulations in the past which were designed by Soeharto regime. The spirit of reform has been corroborated by political momentum of democracy transition after authoritarian regime. In order to identify the recognition over adat law, we have to check the role of legislation which is focused on indigenous legal system of indigenous peoples and ethnic minorities, especially on the issue of access to indigenous natural resources rights as dominant issues. Nevertheless, non-tenurial legal system is also important to be seen, such as indigenous governance, married system, heritage system, and other socio-culture rights. All of those legal systems under adat law are underpinned by local or indigenous judicial system.

Natural resources rights of indigenous peoples or indigenous tenurial system is a dominant issue which influencing to most of indigenous peoples in Indonesia. Indigenous peoples groups have a tenurial legal system, which is understood as at least three elements: (i) access to natural resources rights; (ii) rights to benefit the natural resources; and (iii) rights to involve or participate in decision making process over natural resources management (Dietz 1996).

Mentioned as dominant issue is because many land rights and other natural resources have been arbitrarily taken by the State or corporations. In responding to deprivation of land and other natural resources rights, the existence of Article 3 of Basic Agrarian Law should be questioned. This article mentions:

“...the implementation of ulayat rights and other similar rights of indigenous (law) peoples, in accordance with its existence, have to adjust with the State and national interest, which base on nation unity and not contrary to the Law and superior legislations.“

The stronger provision in protecting the rights of indigenous peoples over ulayat rights, is stressed under Article 6 (2) Law Number 39/1999 concerning human rights, states:

“Cultural identity of indigenous peoples, including indigenous land rights is protected in accordance civilization development.”

Even though under Article 3 Basic Agrarian Law and Article 6 (2) Human Rights Law recognized the indigenous peoples textually, especially over *ulayat* rights (indigenous land rights), but in the other side, this provision is contrary to the reality or its implementation. In critical perspective, both legislations above can be said as the legal expression which limits the indigenous peoples rights. The limitations of rights in the frame of the ‘state and national interest’ and ‘civilization development’ have opened and shown the eviction to the *ulayat* rights, such as in the case of forestry concession, agricultural expansion, and mining exploitation. The case of deprivation of Dayak people in Kalimantan against forestry concession, the violation and criminalization of Toa Kajang people in South Sulawesi in the case of agricultural expansion, and Freeport exploitation that deprives indigenous peoples in West Papua are examples of serious marginalization over indigenous community.

The conditionalities recognition (*‘pengakuan bersyarat’*) is actually emphasized by Constitution, and then adopted by other legislations. For indigenous peoples, conditionalities recognition is actually against with right to self identification. It is because identification whether indigenous peoples exist or not depending on local government decisions.

In reality, the access to natural resources which includes the indigenous rights to ancestral territories, but this access is often deteriorated by the involvement of military or police forces, even though well known in the era of reform agendas or democracy transition. Deprivation of land rights in this case does not only affect the *ulayat* rights, but also affects the local social system, environment or ecological dimension. Briefly, those deprivations impacted on basic rights fulfillment.

This situation is highly contradictive, because since the fall of Soeharto, the number of legislation and its reform which ‘recognize’ indigenous peoples rights are increasing, but on the other hand it could not reduce the conflict and deprivation of indigenous rights. In this context, although there were many textual recognition over indigenous peoples and its law, but in implementation, *adat* law was systematically denied and subverted by dominant state

legal system. In this context, the politics of legal recognition should be an agenda for indigenous peoples struggle throughout Indonesian archipelago.

Concerning indigenous judicial system, actually it has been legally developed and recognized since Dutch colonialism. The recognition of indigenous judicial system (*inbeemse rechtspraak; peradilan adat*) was mentioned by Article 130 IS (Indische Staatsregeling) and Article 3 Ind. Staatsblad 1932, Number 80. This legal instrument regulated indigenous judicial system in outside the Java and Madura. Although it has been changed because the process of unification and codification of law (private law and public or criminal law), the local practices of indigenous judicial system are still exist. The existence of indigenous judicial system can be enforced as long as it does not contrary to the Unitary State legal system.

The role of indigenous judicial system in the context of Indonesia is extremely important, especially for indigenous community at grassroot level. Moreover, the indigenous judicial system can be an alternative justice system while the State legal system has weakened and been distrusted. The possibility to establish and strengthen the role of alternative justice system in indigenous communities, particularly in the frame of human rights enforcement, is clearly provided by Article 6 (1) Law Number 39/1999 concerning human rights. It states that,

“In the frame of human rights enforcement, the distinct and need in indigenous peoples should be concerned and protected by society and state law.”

Based on this provision, the State could not arbitrarily transplant and enforce dominant legal system into local judicial system. This provision also mentions that the dominant legal system and the ruling government should respect the existence of legal pluralism. Shortly, Article 6 (1) Act Number 39/1999 has very strong legal basis for the protection of indigenous peoples and its adat law.

Nevertheless, the degradation of indigenous peoples laws actually has been influenced by the role of long period of legal development projects during Soeharto regime and legal reform under the '*reformasi*' (reform) agendas. Moreover, the denying of legal pluralism is not only

constructed at policy level, but also at legal education in higher education. The spirit of purification of law in most of school of law has deteriorated the existence of several law studies, such as anthropology of law and sociology of law. Unsurprisingly, the development of adat law, step by step, is being eroded.

Although the adat law has quite strong legal basis, but in practice, the existence of adat law has been threatened and attacked by two sides of policies. First, policy at bureaucracy level through political power technology has threatened adat law, especially by reproducing the dominant legal system which subverts local legal system and judicial system. Second, the abolishing of anthropology of law and sociology of law has weakened to the legal studies and understanding of indigenous peoples and its adat law. This is the 'way of academic' process in disempowering the role of local justice legal system.

In this context, it can be concluded that the dominant role of state legal system, machinery of law through bureaucracy and positivistic mainstream of law education at higher level may have subverted, and finally would impact, threaten and disempowered the role of adat law and indigenous judicial system at local society. These are the challenges for (re)claiming indigenous rights recognitions.



PART III

HUMAN RIGHTS VIOLATIONS AGAINST INDIGENOUS PEOPLES AND ETHNIC MINORITIES AND POLITICAL-ECONOMIC INFLUENCES

***“Untuk mempertahankan hidup dengan berladang di tanah leluhur dan adat saja,
kami dituduh sebagai pencuri”***

(just for surviving our livelihood by farming at hereditary and indigenous land only, we are suspected as thief)

This statement above is told by a ‘Tomakaka’¹⁶, an indigenous leader in Sando Batu, Sidenreng Rappat, South Sulawesi, when their existence and *ulayat* (land rights) are not recognized anymore by the State. Unbelievable for local community who have been living and cultivating for hundreds years, but since their *ulayat* was stated as Forest Protected Area in 1985, their indigenous activities are categorized as stealing. This is an example issue on human rights which common happening in indigenous peoples in Indonesia.

Human rights are important issues for understanding the role of the State and the existence for people within the State. This is especially dealt with violent conflict situations throughout the world due to the manipulation of ethnic differences and inequalities. This chapter addresses the issues of indigenous peoples and ethnic minorities situations in relation to human rights, particularly as beneficiaries of international human rights law. It will be

¹⁶ Bandulu (Tomakaka, indigenous leader at Sando Batu), *interview*, 13/11/2006, Wala-Wala, Sidrap.

described into three specific themes: first, equal rights and self determination of peoples; second, the protection and fulfillment of social, economic, and cultural rights; and third, the government responses to the indigenous peoples and ethnic minorities rights development.

- **Equal Rights and Self Determination of Peoples**

Common Article 1 of both International Covenant on Civil and Political Rights (CCPR) and International Covenant on Economic, Social and Cultural Rights (CESCR) reaffirm that all peoples have the right to self determination and establish that by virtue of that right they are free to choose their political status and may pursue their economic, social and cultural rights.

Nevertheless, the ‘self determination’ and the beneficiary ‘peoples’ have never been defined (Rosas 2001:111-118). The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities does not address the question of self determination. However, the paragraph 5 the Preamble of ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries recognizes “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages an religions, within the framework of the States in which they live”.

In the context of Indonesia, the ‘self determination’ is more interpreted by indigenous peoples as the existence of autonomy, especially autonomy over local governance, social culture system and natural resources management. For indigenous peoples in Indonesia, the term of ‘secession’ is not suitable for them, because their perception on autonomy is simple, but very meaningful for their livelihood.

The AMAN Statute (1999) highlighted about the history of human rights violation over indigenous peoples in Indonesia. It stressed that indigenous systems have been marginalized and destroyed systematically by outsider intervention. Oppressing values, conquering, colonialization, and exploitation by political regime with capital owner which monopolize the truth meaning partially are still exist and as a source of suffering for indigenous peoples

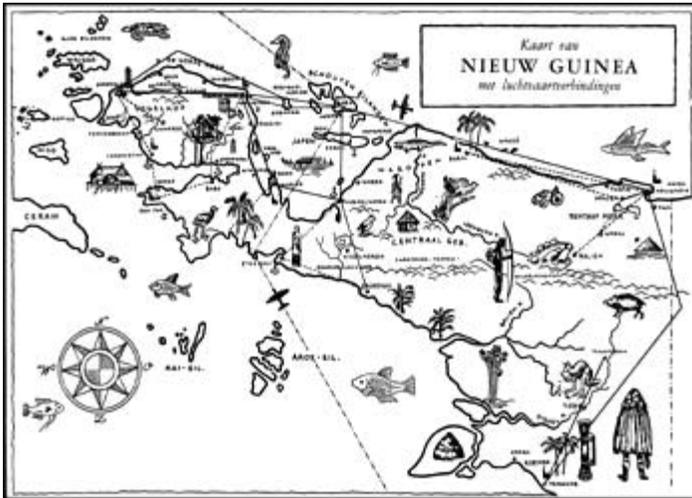
throughout archipelago. This statement is very strong articulation in struggling rights to self determination and free from oppression.

Nevertheless, the situation and condition of indigenous peoples at local level were far different. Indigenous peoples have been marginalized and destroyed their livelihood by structural policy which involved the central government, foreign or local capital owner, and the violation instruments (police, military, and paramilitary). The case of Aceh and West Papua are the significant issue for this situation, and it has been happening since authoritarian military regime of Soeharto (New Order). It will be overviewed specifically below.

- ***Aceh and West Papua***

In Aceh and West Papua there are exploitation over natural resources and grave marginalization of local people, as major serious problem in this context. West Papuan and Acehnese peoples rights to access equally were systematically denied, thousands to million peoples were arbitrarily deprived in order to support massive exploitation of natural resources. Both cases, there were the involvement also multinational corporations, such as Freeport McMoran Corp. (West Papua) and Exxon Mobil Oil (Aceh). And ironically, the police and army enjoyed impunity for acts of torture and ill-treatment.

The other fundamental problems for indigenous peoples are also related to self governance which is not fully recognized. In the past during New Order, Act Number 5/1975 concerning Local Government and Act Number 5/1979 concerning Village Government, the government has uniformed model of governance, by transplanting Javanese model of governance (Desa). The local governance, especially outside Java island, should adopt 'Desa' as single government which is recognized by Central Government. Nevertheless, the effect of 'Javanization' or transplanting model of 'desa' has systematically destroyed indigenous peoples institutions and the role of self-governance. Although the destruction of local governance is recognized by new regulation on local government (Act Number 31/1999 jo. Act Number 32/2004), but the impact of social system has been still largely influencing to the indigenous governance system.



Map source: www.westpapuamap.com

These cases above are dealt with the question of ‘equal rights’ and ‘self determination’, where the existence of local peoples, particularly indigenous peoples has been structurally and systematically marginalized by central government. Unsurprisingly if the issues about ‘equal rights’ and ‘self determination’ are still critically questioned.

The current situation in West Papua is related to the importance of ‘special autonomy’ (*otonomi khusus/Otsus*) for autonomous or self governance, because for long period, the government in West Papua has always been ruled and driven by mostly Javanese people. Javanese in this province is minority in term of number but dominant in various political and economic positions. After the fall of Soeharto, the People Representative Council (Parliament, or DPR/*Dewan Perwakilan Rakyat*) enacted Act Number 45/1999 (4 October 1999) on dividing of Papua Province into three region, Papua (formerly Irian Jaya), Irian Jaya Barat, and Irian Jaya Tengah. Then, the DPR (Parliament) and the President enacted Act No. 21/2001 on Special Autonomy for the West Papua Province (21 November 2001). At that time, there were two major concerns on the issue of autonomy. Some of the West Papuan demanded for the independent status from the Republic of Indonesia, and some other West Papuans are pleased with the new Law which recognizes the indigenous peoples of West Papua.

Although the central government recognized the existence of *Majelis Rakyat Papua* (MRP or the Papuans Peoples Assembly) as one of the high level governance institution in the Papua province, but their rights over the land and other natural resources (and also human rights)

were still largely marginalized. Moreover, before the law being implemented, the President issued a Presidential Instruction No. 1/2003 on the Speeding up the Process of Dividing the Province into three by 2003. The Presidential Instruction that referred to Act No. 45/1999 jo. Act No. 5/2000 on the similar issues created confusion, anger and fought among the West Papuans.¹⁷

In the case of Yapen Waropen could be a lesson learned in implementing special autonomy and Papua development, a development marginalization in the name of regional development. In the past, three regions (Biak, Yapen dan Waropen) were unified in a district, Biak District. In the process, this district is divided into three districts. If the division of regions is based on decentralization spirit would be better, but the problem is the division on districts into three regions unfortunately aimed to control local governance by justifying political reasons. The most serious consequence of centralistic control is the enlargement of KODIM (Military District Commando) in every district. Security and political issues are seen more important than development and empowerment. This is because Papuan people (especially indigenous peoples) seen as rebel, separatists or opposition by the central government (Down to Earth 2005). In other case, Illegal Logging Operation based on Act Number 41/1999 without considering socio-political context of Papua would be suffering Papuan peoples, and contravening special autonomy spirit. As well known, that the military roles and control in many social, politic, and economy is too over (Down to Earth 2005). It has caused the trust of central government is so weak. In addition, military has been involved in many businesses in Papua, including security business which has caused many human rights violations, such as killings, arbitrary arrest, torture, kidnap, rape, and widespread exploitations of social economic rights.¹⁸

In this situation above, the Papuan people are systematically being discriminated and victimized as genocide in many sectors (economic, social, education, politic), and if there is

¹⁷ The Chair of the West Papuan Parliament filed a case to the Constitutional Court in January 2004 for a constitutional review.

¹⁸ Mientje DE. Roembiak (Member of Papuan Peoples Assembly), interview, 28/11/2006.

unseriousness of central government in implementing special autonomy would potentially cause a disintegration.¹⁹

The crucial issue for these legislations above was the denial of special characteristic of local governance, particularly the existence of indigenous law and traditional rights of people. Social dynamics and political conflict, and followed by separatist movement are more caused by unparticipatory 'Jakarta decision' and unjust policy which have massively destroyed the people, rights, legal pluralism and natural resources in West Papua. These are the roots of structural conflict in West Papua, which actually bias to the interest of capital adventurer and political elite. Recently, the verdict of the Constitutional Court has canceled the enactment of Act Number 45/1999, and it would be very expected to reduce and solve the root of structural conflict in West Papua.

As the experience of Aceh, arm conflict in Aceh is also designed by Jakarta. Since the finding of natural gas in Arun, North Aceh, in 1970s, Aceh was one of the largest natural resources and the highest income contributor for the State. Nevertheless, under the role of centralistic model of policy during Soeharto regime, these natural resources have not enriched Acehnese peoples at all.

This was one of the reasons for the establishment Liberal Aceh Movement (Gerakan Aceh Merdeka/GAM) in 1976. Adversely, the Indonesian government announced Aceh region as Military Operational Region (DOM) in order to fight GAM, and because of this operation, the arm conflict and human rights violation have worsened the situation in Aceh. Even though it is very limited, this situation has changed after the fall of Soeharto in 1998, when the Jakarta started to negotiate with GAM in Helsinki. Especially after tsunami disaster in 2004, the Memorandum of Understanding (MoU) between Indonesia government and GAM through meeting many times has finally agreed several points. The most important for Acehnese is about the special autonomy of Aceh governance and the disarmament Indonesian military in this region. Although this policy (included the role of regulation for special autonomy governance, Act Number 44/1999 jo. Act Number 18 2001) is incomplete,

¹⁹ Alex Sanggenafa (AMA-Papua) in interview with Down to Earth (DTE 2005); and Leonard Imbirri (General Secretary of Papuan Indigenous Council), interview, 27/11/2006.

but indigenous system (law and governance system) for Acehnese people (kemukiman/gampong, Wali Naggroe and Tuha Naggroe, etc.) has been legally recognized.

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The special autonomy governance in the case of Aceh and West Papua is fundamentally a character of pluralism of governance system in Indonesia, which every ethnic group has own social and political systems. For instance, the system of Hota/Horja/Bius in Batak Toba land, Nagari in Minangkabau, Lembang/Penanian in Tana Toraja, Banua, Binua, Ketemenggungan, Balai, Lowu, Lewu in Borneo/Kalimantan, Marga/Kebatinan/Negeri in South and Center Sumatra, Laggai/Uma in Siberut, Mentawai island, and Ratchap/Ohoi in Kei island.

- ***Chinese and Tionghoa Peoples***

In this section, it is also important to note the current situation over ethnic Chinese or Tionghoa minority, as ethnic minorities (non-indigenous peoples) in Indonesia. It is because their existence has been often violated and discriminated also by authoritarian regime of Soeharto.

The most serious problem was the sexual abuse, rape and killings over ethnic Chinese women when Jakarta turmoil in 1998. Unfortunately until now, the law enforcement for opening that case is still blurred, although there was a strong international pressure. The international pressure has been progressively done during and after the Special Rapporteur on Violence against Women, Its Causes and Consequences (1999), Ms. Radhika Coomaraswamy.

In its report, the Special Rapporteur has deeply concerned to the systematic human rights violations. She has drawn very clearly and correctly regarding to ethnicity situation, especially

²⁰ Special autonomy status actually was enacted by Act Number 44/1999 concerning Special Governance of Aceh Region (*Penyelenggaraan Keistimewaan Daerah Istimewa Aceh*), then General Session of MPR (People Representative Assembly) in 2000 recommended the need to draft special autonomy for Aceh governance (vide: MPR Decree Number IV/MPR/2000). After this recommendation, the Indonesia government enacted Act Number 18/2001 concerning Special Autonomy for Naggroe Aceh Darussalam Province (*Otonomi Khusus Bagi Provinsi Daerah Istimewa Aceh Sebagai Provinsi Naggroe Aceh Darussalam*).

picturing Chinese women as victim at social context (para 62-74). In her analysis, after meeting with numerous non-governmental organizations and human rights activists, has also put strong position to see sexual rape case as structural conflict or problems rather than 'cultural' problems, especially in analyzing 'racism' in Jakarta riot (para 62-74). It means that structural conflict and sexual rape have been involving the state roles and other authority who have power politically or economically to drive certain situation. Nevertheless, unfortunately there is still never responsibility from the authority to respond seriously in this case.

In current situation, particularly under Susilo Bambang Yudhoyono regime, the policies concerning the protection of ethnic Chinese or Tionghoa are getting better. As explained by Sidharta, a prominent human rights activist on the issue of Chinese ethnic says that generally, the law on protection the minority is relatively better, by enacting Act of Citizenship, but practically still many discriminations and other uncomfortable situations for ethnic minority to have equal rights in government and law.²¹ Similar statement was given by Prayogo, who stressed that the government does not yet progressively active in promoting plurality and recognizing rights to be not discriminated as human rights. He added that Indonesia is not only Chinese as ethnic minority, but Indonesia consists of many cultural-social diversity, including indigenous peoples. In this situation, the element of struggle against discrimination in reducing and eliminating any kind of discriminations is the importance to make common platform in defending the rights of minorities.²²

In the past, the problem has been largely occurred in relation to mostly citizenship administration. Discrimination in serving Chinese ethnic, additional bureaucracy for applying passport, and many other things which finally they were asked to give amount of money for government officials, were typically instances human rights violation against the Chinese ethnic in Indonesia.²³ The problem in current situation is more caused by discriminatory policies especially in recruiting labor/worker for public institutions, such as public officials (pegawai negeri) or military. And more significant, the issue of freedom of religious believes

²¹ Sidharta (a Chinese, human rights activist in Surabaya), interview, 24/11/2006.

²² Hendro Prayogo (an activist for defending Chinese ethnic, PSMIT), interview, 24/11/2006.

²³ Papang Hidayat (a Chinese, KontraS activist), interview, 21/11/2006.

is also under pressured by a fundamentalist group or people who have violated right to have different religion or believes. Islamization of local regulations is one of trend examples which potentially escalate the conflict and human rights violations against indigenous peoples and ethnic minorities.

Another example showing the Chinese ethnic is also victim of stereotype, such as Tionghoa ethnic or Cina Benteng. They are community who live in Jakarta-Tangerang border. They have been ten generations living in this area, but their social economy is extremely poor. They are living in poverty, without adequate houses, and ironically they do not have identity as Indonesia citizen. They do not get equal access from the government because stereotype that Chinese is rich, stingy, hard workers, and other stigmatization. This is still significantly occurred in the context of Indonesia.²⁴

- **The Protection and Fulfillment of Economic, Social and Cultural Rights**

Indonesia has ratified two major international covenants on civil and political rights as well as economic, social and cultural rights in 2005. Even though these covenants were ratified, these do not automatically guarantee the protection and fulfillment of human rights. This part will look deeply the specific situation how the protection and fulfillment of human rights, particularly economic, social and cultural rights can be enforced in responding to indigenous peoples rights.

As mentioned previously that recognition over indigenous peoples is the most important for the existence of the people, rights, law, land and other local social system. It will affect seriously to human rights while the State fails to implement the value of human rights.

- ***Ulayat rights (tenurial and social system rights)***

The major conflict beside *adat* governance (indigenous/local autonomous governance system) which has been occurring in the context of indigenous peoples is recognition over

²⁴ Papang Hidayat (a Chinese, KontraS activist), *interview*, 21/11/2006.

ulayat (indigenous land rights). The *ulayat* is a tenurial and social system with relate to the land, natural resources, and rights over it. Usually, *ulayat* right is owned collectively by indigenous peoples group, such as in Kajang, Lebong, Manggarai, Baduy, Dayak, and Amungme.

In the case of Indonesia, the *ulayat* has been systematically deprived by the State and firms through legislations. There are thousands cases of land disputes in Indonesia, and many cases involved the killings against indigenous peoples, such as in the case of Bulukumba (South Sulawesi) and Manggarai (East Nusa Tenggara).

Majelis Permusyawaratan Rakyat (MPR), or the Peoples Assembly, recognizes the grave extent of the conflict on natural resources issues. This is reflected in its Decree No. IX/MPR-RI/2001 on Agrarian and Natural Resource Management Reform. In this decree states that: (i) ongoing agrarian/natural resource management conflicts cause environmental quality degradation, imbalance in agrarian structure and various conflicts; (ii) the existing laws and regulations concerning agrarian/natural resource management are overlapping and contradictory; (iii) Just, sustainable and environmental friendly management of agrarian/natural resources has to be developed in a coordinative, integrated way, which accommodates the people's dynamics, aspirations and participation, and also resolves outstanding conflicts.

Indigenous peoples in Indonesia have been facing continuous deprivation, especially dealt with forestry concessions, logging (legally or illegally), mining, agriculture, or firmed status of 'protected forestry area' (*kawasan hutan lindung*) or 'productive forestry area' are instances of dominant issues in depriving *ulayat* rights. These conflicts can be easily found at local level where the government decided to determine its projects in *ulayat-ulayat* areas (see: data base bellow).

Table 6:
Deprivations of *Ulayat* Rights in Indonesia²⁵

No.	Area of <i>Ulayat</i> Rights (Ancestral Lands)	Place	Deprivation Actors	The Conflict Interest or Issues
1	Tana Toa (Kajang)	Bonto Mangiring, Bulukumba District, South Sulawesi	London Sumatera Corp.	Agriculture
2	Sando Batu	Leppangan, Sidenreng Rappang District, South Sulawesi	Forestry Department (Government)	Status of 'forestry protected area' or 'productive forestry area'
3	Tana Toraja	Tana Toraya, South Sulawesi	Forestry Department (Government)	Status of 'protected forestry area' or 'productive forestry area'
4	Seko	Seko, Luwu Utara District, South Sulawesi	Forestry Department, Mining Company, Seko Fajar Plantation Corp and Kendari Tunggal Timber Corp.	Mining and 'forestry protected area', and Forestry Concession
5	Katu and Lindu	Central Sulawesi	Forestry Department (Government)	Status of 'protected forestry area' (Lore Lindu National Park)
6	Moronene	Moronene, Southeast Sulawesi	Forestry Department (Government)	Status of 'protected forestry area' (Rawa Opa National Park)
7	Kontu	Kontu Naga, Muna Southeast Sulawesi	Forestry Department (Government)	Status 'productive forestry area'
8	Dayak Siang	Kalimantan (Borneo)	Indo Mura Kencana Inc. (Aurora Gold)	Gold Mining
9	Dayak Bentian	Jelmu Sibak, East Kalimantan	Kalhod Utama Inc. (Kalimanis Group); Hutani Mahligai Inc.	HPHTI (Exertion Rights of Industry Plantation Forestry)
10	Dayak	Kalimantan	Kelian Equatorial Mining Corp.	Gold Mining Concession
11	Dayak Simpang	Ketapang District, West Kalimantan		Palm oil plantation development and logging concession
12	Dayak Pitap	South Kalimantan	Sari Bumi Sinar Karya Corp.	Depriving ulayat rights and holy land
13	Dayak Meratus	South Kalimantan	Forestry Department	Status of 'protected forestry area' (Pegunungan Meratus National Park)
			PT Meratus Sumber Mas	Gold Mining

²⁵ This table is referred from various data, report, journal, newspaper, and field research. The data was formulated and crossed check from many organizations, especially AMAN, WALHI, JATAM, and HuMa. This table is still not enough yet to picture the real situations of deprivations and violence against indigenous peoples in Indonesia.

			(Placer Dome International, Corpion Placer Dome)	Concessions
14	Dayak Benuaq	Muara Nayan, Jempang, East Kalimantan	London Sumatera International Corp. (Lonsum Group)	Palm oil agricultural concession
15	Dayak	Along Malaysia-Indonesia border in West Kalimantan, Central Kalimantan, and East Kalimantan	Central Government / Forestry Department	The plan of agricultural concession for palm oil plantation
16	Mentawai	Siberut, Mentawai, West Sumatera	Koperasi Andalas Mandiri Incorp.	Forestry Concession
			Forestry Department (Government)	Mentawai National Park
17	Batak Toba	North Sumatera	Inti Indorayon Utama Corp. (Toba Pulp Lestari)	Timber plantation for pulp and paper mill
18	Rimba People	Jambi and Riau	Forestry Department (Government)	Bukit Tiga Puluh National Park
19	Meler Kuwus	Manggarai, East Nusa Tenggara	Forestry Department and Local Government	Status of 'protected forestry area' and 'forest-tourism project'
20	Mollo People	Fatumnasi Sub-district in Mollo, South Central Timor District, East Nusa Tenggara	Teja Sekawan Corp	Marble Mining
21	Wairkung (Utang Wair), Peniat-Tuli (Likonggete, Talibura), Mapitara Tana Ai (Pembantu Talibura, Blidit Maumere)	Flores, East Nusa Tenggara	Local government	
22	Wasior	Wondoboi Village, Wasior, Wasior District, West Papua	CV Vatika Papua Perkasa (VPP) and Police at Irian Jaya Province	Forestry Concession
23	Amugme and Kamoro (Koteka People)	Timika, West Papua	Freeport McMoran Corp. or Freeport Copper & Gold, Inc. based in New Orleans, USA.	Gold Mining
24	Mooy	Mooy, Sorong, West Papua	Kayu Lapis Lestari Corp.	Forest concession, without any compensation
25	Assue	Asmat, West Papua	Police at Irian Jaya Province	Exploiting Gaharu Wood
26	Biak Timur	Tanjung Barari, Biak Numfor, West Papua	Navy-Military	Samudera Port in Tanjung Barari Bay
27	Kao and Malifut (ethnic Pagu, Madole, Boing, Towiliko Kao)	Kao, Halmahera Utara, Mollucas	Nusa Halmahera Mineral Corp.	Exploiting ulayat
28	Sawahlunto/ Sijunjung	Sawahlunto/ Sijunjung, West Sumatera	Tambang Batubara Bukit Asam	Coal Mining Concession
29	Rejang	Lebong Selatan Sub	Forestry Department	Kerinci Sebelat

		District, Suka Negeri Village dan Rimbo Pengadang Village		National Park (TNKS)
30	Serawai	Serawai, Seluma Sub District, Bengkulu Selatan	Forestry Department	Agricultural plantation, mining, and protected forestry area
31	Lembak Delapan	Pondok Kelapa Sub District, Tanjung Terdana dan Pondok Kubang Village	Forestry Department	Forestry Park (Tahura "Rajo Lelo")
32	Enggano	Enggano Island, Bengkulu	Laras Eka Mulia Corp. and Enggano Dwipa Persada	Palm Oil Plantation
33	Kikim	Lahat, South Sumatera	Multrada Multi Maju Corp and Perjapin Prima Corp.	
34	Adat Riau	Riau	Sumatera Makmur Lestari Corp, Areva Sepakat Corp., Kencana Amal Tani Corp.	Palm Oil Plantation

Based on this database above, *ulayat* rights were not recognized and respected seriously by the State and corporations. A political conspiracy has been constructed in the light of deprivation over indigenous peoples. This conspiracy has structurally involved the role of law instruments, state apparatuses, and repressive policy to enforce and pressure the people. Even though the authoritarian regime of Soeharto has stepped down, the existence of authoritarian roots at local level has arbitrarily influenced indigenous peoples. This conspiracy in marginalizing *ulayat* rights represents the role of capitalists and politicians in the name of 'development', 'investment', and also in the name of securing environment, forest, and other protected areas.

The major problem of *ulayat* rights has been always accompanied by massive exploitation which never considered the existence of the relationship between natural resources and the local people who access from those natural resources. For instance, in the mind and believe of indigenous peoples in Papua, land is 'mama' (mother) who has head, breast, and foot. Head means the holy land, because it is a head of women. Breast means a place of milk which gives food for the children. And the foot is a place for hunting and living. This division of land has been integrating the believes of local people with land (*ulayat*). According to Tom Beanal, the Amungme people and their social system has been victimized by the central government (Jakarta) because Freeport Inc. destroyed mountain which is known by

local people as head of mother or holy land. Unsurprisingly, the Amungme people are being suffered, hungry and angry to the government.²⁶

Ironically, this worse situation were predominately and continuously facilitated and controlled by the government that actually should protect, respect and fulfill rights of indigenous peoples. While the government fails to protect *ulayat* rights, it would be potentially threatening not only land rights, but also other affected rights, such as water rights, right to access natural resources, right to life and sustainable livelihood, and traditional rights or social systems which related to land/*ulayat*.

The resistance of indigenous peoples in defending their ulayat rights has given tremendous effect to other rights. In the case of Wasior (West Papua), Police of Irian Jaya has arbitrarily arrested, tortured and killed against indigenous peoples, at least six people, and also there was a “displaced kampong” in Isu, Kabou, dan Kublar. The police has also destroyed and burned 51 local houses in Wasior, Wondama, Wondiboi, Senderawoi, Sanoba, Wombu, dan Isey. This case is instance of violation against rights to live, right to housing, rights to survive their livelihood in the hereditary local social system.

- ***Rights to Education***

Under Indonesian Constitution post amendment (UUD 1945), it states clearly that “every citizen has the right to receive education”, and “every citizen has the obligation to undertake basic education, and the government has the obligation to fund this.”²⁷ However, the implementation of this constitution remains extremely poor, especially for those community who live far away from city as well as village (sub-district). Whereas, mountains and kampongs are mostly home for indigenous peoples in Indonesia.

The situation for indigenous peoples formal education is beside poor in terms of facilities and number of lecturers, also pressed to stay out from local culture system. Formalization

²⁶ Tom Beanal (indigenous leader in West Papua), a discussion on Archipelago Indigenous Peoples, Jakarta, 15-16 March 1999.

²⁷ Chapter XIII concerning Education, Article 31 sub-article (1) and (2).

and uniformization over education contents also influenced to the indigenous peoples. Indigenous education system has been banned and replaced by 'official' education and content from the state.

Den Upa' Rambelayuk has supported to encourage indigenous peoples to revitalize its local social system for educating indigenous children through indigenous institutions.²⁸ At local level, such as in Wala-Wala (Sidenreng Rappat), learning adat is revitalized through formal education, and it should be taught in order to transform the indigenous values for defending their rights, land, and culture for themselves.²⁹ The current situation for formal education at local level is the raise and pressure of implementing 'Islamization' and or religious bases education. It is known as *Perda 'Syariah Islam (Syariat)'* (Local Regulation concerning on Islamic Law). According to Arna, the *Perda Syariat* was legalized widely, and totally number of regulations achieved at least 300 *Perda Syariat*.

This regulation practically threatens indigenous children, especially those who are not Moslem or different followers practice of Islam (different school of thought). For instance, ability certification in reading Al Qur'an for students who are willing to continue his/her study, as mentioned by District Decree of Tasikmalaya Number 421.2/Kep.326 A/Sos/2001 concerning The Requirements for Entering Basic School (SD), *Madrasah Ibtidaiyah* or *Sekolah Lanjutan Tingkat Pertama* (SLTP), and Madrasah Tsanawiyah (MTs) (high school) in Tasikmalaya District. The other example, the requirement for students to read Al Qur'an, based on Local Regulation of Bulukumba District Number 06/2003.³⁰ In this regard, actually, the role of government should respect pluralism of society and religion, and should protect minorities who have self values and preferences in determining themselves, including to promote rights to preserve their social culture systems.

²⁸ Den Upa' Rombelayuk (Chairman of National Advisory Board, Archipelago Indigenous Peoples Alliance/AMAN), interview, 13/11/2006.

²⁹ Lina (Sando Batu villager and teacher at Basic School of Leppangan/SDN Batu II, Sidrap District), interview, 14/11/2006.

³⁰ Peraturan Daerah Kabupaten Bulukumba Nomor 06 Tahun 2003 tentang Pandai Baca Al-Qur'an Bagi Siswa dan Calon Pengantin Dalam Kabupaten Bulukumba (Reading Smartly of Holy Qur'an for Student and Groom/Bridal in Bulukumba District)

- *Rights to Health*

Similarly to education rights, the implementation of health rights for indigenous peoples is also extremely poor. Lack of facilities, lack of medical workers, expensive medicines, and also unseriousness to tackle rapidly the widespread disease in the specific indigenous communities.

For instance, in the case of Assue indigenous peoples, particularly Auyu and Wiyagar people, the government in Merauke and Mappi do not serious in tackling the HIV/AIDS issue, and also do not handling comprehensively the disease of malaria (mosquito disease). As known by many official researches, Papua is the highest rate for HIV/AIDS in Indonesia, and mostly affected to the indigenous peoples.³¹ In Tengger community is found also the case of child mortality cases. As interviewed to a mother in Dusun Ranupani, she sadly told that actually she has 10 children, but 6 were died when just born. It was because lack of doctors, health facilities, and sub-hospital (small medical clinic) did not well-function.³² She said also that beside the risks of child mortality, the lack of adequate health services also threatens maternal mortality. This is situation occurred in Java where the infrastructure is more relatively well developed than outside Java. So that is why, highly possibly outside Java could be more serious in the case child mortality as well as maternal mortality because the poor infrastructure (hospitals, doctors, medicines, transportations, etc.), especially in Eastern Indonesia.

These cases above contravene with the constitutional rights of indigenous peoples, which stressed every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.”³³ This constitutional law basis does not be fully and seriously implemented by the State, and this is serious human rights violation over health rights which affects commonly to the indigenous peoples in Indonesia.

³¹ Province People Representative Council of Papua (2005) Fact Finding Team for Assue Case, Mappi District. Jayapura: A Report, p. 67-68.

³² A mother (Ranupani villager, Tengger indigenous community, Lumajang), interview, 26/10/2006.

³³ Chapter XA (Human Rights), Article 28H sub-article (1).

- **Violating Civil and Political Rights of Indigenous Peoples**

The State violence to the indigenous has often happened, not only marginalizing economic, social and cultural rights, but also civil and political rights. The structural conflict for indigenous community is dominantly caused by the role of the State which massively exploiting or facilitating corporations to exploit natural resources. “In the name of securing public interest”, the government often manipulates forestry concessions, mining contract, and other natural resources exploitations.

In securing the big capitalists, the government always uses the role of violence instruments, by deploying police personnel or military troops. Unsurprisingly if the systematic human rights violation is an usual model of violence in repressing indigenous community. Rivai, a non-governmental organization activist in Padang, states that the forestry concession is always accompanied by police and or military forces. In his experience when he has been defending indigenous community in Mentawai, particularly in Siberut island (western part of West Sumatera), he found the police involved structurally in securing Koperasi Andalas Mandiri Corp.³⁴

In this regard, it is frequently indigenous peoples being victim of structural violence, as showed on table below:

Table 7:
Crimes against Indigenous Peoples Rights

Year	Indigenous community	Victims	Involved violators	Additional information
2001	Wassior, West Papua	At least 6 killed, 16 tortured, 3 kampongs were removed (Isu, Kabou, Kublar), 51 indigenous houses were burned and destroyed (in Wasior, Wondama, Wondiboi, Senderawoi, Sanoba, Wombu, dan Isey), and terror.	Province Police in Irian Jaya	The case is related to forestry concession.
2003	Kajang, Bulukumba	3 killed (Barra bin Badulla (41), dan Ansu bin Musa (25), one is unreported), and also other were shot by police (Sallasa bin Tarigu (25), Saddar bin Lahaji (40), Sembang bin Sumbu (40), and	District Police in Bulukumba, and supported by District Police in Sinjai, Bantaeng, Car Brigade from	Operation was headed by Vice of District Police, AKP Gatot Budi Gunawan. The police also targeted

³⁴ Rivai (Citra Mandiri Foundation, Padang), interview, 20/11/2006.

		also criminalization over indigenous peoples.	Bone and Makkasar	NGO activists. This case is dealt with Lonsum Corp.
2004	Manggarai, NTT	6 killed (Stefanus Magur (60), Fitalis Jarut (23), Domi Amput (40), Yoseph Tatuk (23), Maximus Tio (33), Frans Atuk (45), 28 were shot, and tenths were criminalized.	Bupati (Head of District) and District Police in Manggarai	The accident was happened at front of police office. This case is dealt with forestry department also.
2002-2004	Assue, West Papua	Many indigenous peoples member were killed by mafia of Gaharu wood business	Military, police and local government	This case is caused by Gaharu wood exploitations.
-	Kutai, Kalimantan Timur	11 members of Masyarakat Adat Benuaq (Jempang) were arrested without reason ³⁵	Military and District Police in Kutai, Kalimantan Timur, London Sumatera Group	Deprivation of ulayat rights
-	Bau-Bau	9 elderly/respected leader Suku Moronene peoples were arrested	District Police in Bau-Bau	Deprivation of ulayat rights
-	Lembak Delapan Pondok Kelapa Sub District, Bengkulu	9 indigenous peoples member in Tanjung Terdana were arrested because they did not want to receive compensation.	District Police	Deprivation of ulayat rights, taken for Tahura (Forestry Park)
-	Adat Kikim, Lahat District, Sumsel	Indigenous peoples member were arrested by Police Provincial Level.	Police in South Sumatera	Ulayat rights was taken away by Multrada Multi Maju Corp and Perjapin Prima Corp.
-	Barito Utara, South Kalimantan	6 indigenous peoples member were arrested when they were defending their land rights	Barito Utara District Police	The indigenous peoples against Indo Muro Kencana Corp.

Based on those examples above, the violation of civil and political rights is more influenced by natural resources exploitations. The human rights are often violated in this case including right to life, right to be free from discrimination, right to be free from torture or cruel, inhuman or degrading treatment or punishment, and right to have fair trial.

- ***Women Rights***

In a 1999 meeting, at least 15 indigenous women representing indigenous peoples from Lampung, Aceh, East Nusa Tenggara, West Nusa Tenggara, Banten, Central Kalimantan, East Kalimantan, West Kalimantan, North Sumatera, Betawi, Central Sulawesi, North

³⁵ Statement of Aliansi Masyarakat Adat Kalimantan Timur (Sempekat Aliansi Masyarakat Adat Kalimantan Timur/East Kalimantan Indigenous Peoples Alliance), Putak, 20 August 1999.

Sulawesi, South Sulawesi, Papua, and Riau, have told their dominant problems on indigenous women. They divided the issue of indigenous women rights into 4 issues (First, environment; Second, human rights; Third, local autonomy, and Forth, Adat law) (Kartika and Gautama 1999: 194-199).

In the environment issues, they concluded that many corporations, including mining corporations, forestry corporations, palm oil corporations, and other big industrial groups, have caused negative impacts or destructions to the indigenous peoples environment. Those impacts are environmental degradation which suffering women health, contractual married practices, indigenous land expropriation, sexual rapes and other abuses, and burdening the double roles of the women. Ironically, the government tends to defend those big corporations rather than helps and protects women rights. The team of human rights group identified major issues: including the pressure of government project on 'Keluarga Berencana' (Planned Family), by injecting and planting contraception tools; sexual rapes and abuses; forbidden and hazardous medicines; and marginalizing political and economic position of the indigenous women.

On the issue of local autonomy, the indigenous women concluded that because centralistic model of governance, it caused many natural resources were exploited. Ironically, the government has never considered the holy place, local economic systems, and other indigenous practices. And also on the issue of adat law, the government has arbitrarily pressed the indigenous community to obey national law, and to leave their indigenous law. It has influenced to the practice of married process, indigenous property rights, and local judicial mechanism to solve the social problems.

Box: Sexual Rape against IPs Woman

In 1988, in Barewe village, Long Ikis sub district, Pasir District, East Kalimantan, there was a sexual rapes which conducted by eight workers of Telaga Mas Kalimantan Company Corp. After raping such woman, her genital was given sands. When the victims was sent to Tanah Grogot Hospital, from her genital was sucked 200 grams. Her parents have sued the company, but the company compensated only 2.500.000 rupiahs (\pm US \$ 250), and the workers who raped her still working at that company and never proceed.

The current situations which are threatening indigenous women rights dealt with the increasing number of legalization of ‘syariah’ (Islamic law). As mentioned previously in the section of education rights, the role of legalization of ‘syariah’ through local regulations, qanun (Aceh), policy letter, and local government decrees have affected to the indigenous women. This is because those legislations imposed the women to wear Islamic scarf or female headgear in order to respect moral obligations, restricting the women to leave her house at midnight time due to the protecting for sexual abuses and stopping commercial sexual. For indigenous women, or might be for women generally, those legislations have positioned the women as objects of law, not the subject. Beside that, the women are suspected as primary reason for sexual abuses. This fundamentally discriminates women to chose their freedom and violates the government obligation principle which basically the government’s role to protect women citizen. Until today, there are 56 syariah local regulations announced and enacted (see some instances on table below).

Table 8:
Legalization of *Syariah* (Islamic Law)
(10 Instances)

No	Region	Regulation Forms	Title	Specific Provisions
01	Bulukumba (South Sulawesi)	Local Regulation (Perda) Number 04/2003	Muslim and Muslimah (for women) Dress	Women should wear scarf
02	Enrekang (South Sulawesi)	Local Regulation (Perda) Number 6/2005	Muslim Dress	Women should wear scarf
03	Cianjur (West Java)	Policy Decree (Surat Edaran) No. 025/3643/ Org No. 061.2/2896/ Org	Working Time and Requesting Uniform Working Dress	Women is asked to wear Islamic dress
04	Solok (West Sumatera)	Local Regulation (Perda) Number 6/2000	Obligation for Wearing Islamic Dress	Women should wear Islamic dress
05	Padang (West Sumatera)	Local Government Instruction No. 0451.442/Binsos-III/2005	Obligation for Wearing Islamic Dress	Women should wear Islamic dress
06	Maros (South Sulawesi)	Local Regulation (Perda) Number 15,16,17/ 2005	Holy Qur’an Illiteracy, Islamic Dress, and <i>Zakat</i> Management	Women should wear Islamic dress
07	Gowa (South Sulawesi)	Local Regulation (Perda) Number 7/2003	Prohibition for Women to Walk Alone or Outside House without her <i>Mubrim</i> (allowed relationship)	Restricting women freedom
08	Tangerang (Banten)	Local Regulation (Perda) Number 8/2005	Prohibition for Women (who suspected as prostitute) in Public Space	Restricting women freedom
09	Aceh (provincial level)	Provice Qanun/ Local Regulation Number	Prohibition ‘ <i>Khalwat</i> ’ (meeting with other who	Restricting women freedom

		14/2003	not <i>Mubrim</i>)	
10	Kupang (East Nusa Tenggara)	Local Regulation (Perda) Number 39/1999	Ordering Prostitution Area	Restricting women freedom

For indigenous peoples and other ethnic minorities, the imposition to wear Muslim dress does not respect the plurality of society and discriminate for non-Muslim societies. Indigenous peoples in South Sulawesi for instance, they have many traditional clothes which do not request to wear scarf, and surely the politic of uniforms would deny and destruct the plural social systems and cultural diversity. And it is really sinister for hundreds indigenous groups throughout Indonesia.

- **The Government Responses to Indigenous Peoples Rights Development**

In the past, indigenous peoples had been pressed by the government through many development projects. One of the most serious problems in suffering indigenous peoples was the project of Resettlement Alienated People (Proyek Pemukiman Kembali Masyarakat Terasing), a project under Department of Social. This project has systematically removed many indigenous peoples and destroyed their land, social systems and its livelihood. Moreover, the government has tremendously exploited natural resources, and mostly in projecting 'in the name the development', the government uses oppressive policy and apparatus. Unsurprisingly, under New Order regime, there were about 80 million indigenous peoples got systematic and widespread violence and discrimination (Simarmata, ND).

After Soeharto stepped down in 1998, the policy on indigenous peoples basically does not change significantly. Although Indonesia has better constitutional provision on human rights than previous one, including other specific instruments on human rights, but still the existence of indigenous peoples and ethnic minorities are still largely threatened. Initiative for protecting indigenous peoples, indeed, should be appreciated, such as the role of government and parliament member to draft The National Legislation Planning 2005-2009 which has planned the enactment of Indigenous Peoples Act. However, this still needs to be strongly struggled.

At least three indicators we can say that the government does not yet seriously respect, protect and fulfill the rights of indigenous peoples. First, there are many human rights violations, attacking indigenous peoples for depriving them from their *ulayat* rights. Criminalization and deprivations of economic and social rights are mostly happened with the help of police and military forces. Secondly, government policies prefer to facilitate massive exploitation of natural resources in order to gain instantly investment and income rather than protect indigenous peoples. In addition, in the process of decentralization or local autonomy after the enactment local government (Act Number 32/2004, replace Act Number 22/1999), bureaucracy elites have hijacked the decision to gain self-opportunity/interests without considering local peoples, cultures, environments and values. Thirdly, although political elites and regulations had changed, but the oligarch system is still strongly exists. The oligarch system in this context is dealt with the role of business network and its influences to the government, political party, parliament, and many other state or non-state institutions. The oligarch network has been driving from old regime to new regime, and it has controlled many big corporations, particularly those corporations which own forestry concession rights, mining, industrial projects, and agricultural concession.

In this context, the new government should consider whether natural resources would be preserved by using right based approaches, particularly in responding indigenous peoples interests. Or adversely, the government would be exploiting massively natural resources for gaining income, 'public interest', debt repayment, and supporting development projects.

The priority of policy would be depending on economic and political situation, including how it responds globalization mainstream. Indonesia, as developing country which has very rich natural resources as the highest income sector, tends to facilitate free market, by opening the foreign investment, liberating global trade, privatizing public services and deregulating economic policies. This is highly possible occurred because the government has designed massively 'market friendly legal reform paradigm', especially during 'reformasi' (reform) agendas. The enactment of PerPU (Act) No. 1/2004 concerning the permit for mining within the forest conservation and protected forest areas which were issued prior to

the enactment of Act No. 41/99³⁶, and Act Number 7/2004 concerning Water Resources are instances and indicators that the government priority to serve market liberalization. Water privatization is one of target for restraining the role of the State in managing water resources, and it is clearly a form of controlling from debt projects to global capitalism mainstream (Wiratraman 2003).

In this regard, as explained by Kleden that there is a 'contested paradigm' in responding conflict over natural resources which influences to the indigenous peoples. Preferential paradigms are between whether the government will represent its citizens, including indigenous peoples or represent free market interests (Kleden 2004: 15-16). If the government prioritizes market liberalization, this is a situation that indigenous peoples political representation is denied, surely then they should struggle their rights by securing themselves.

³⁶ Originally in Bahasa, Perpu (Peraturan Pengganti Undang-Undang) or Regulation of Replacing Act, with the legal status is equal to Act.



PART IV

ACTORS IN DEFENDING THE INDIGENOUS PEOPLES RIGHTS

In understanding the struggle for indigenous peoples and its rights, we have to identify also the role of actors who consistently defend and concern on indigenous peoples rights. In the context of Indonesia, actors in defending indigenous peoples are complex, because it involved various network, non-governmental groups, researchers, and also especially indigenous peoples group themselves. They advocate at multi-layers strategies, at local, national and international level, but also configure political movement in struggling recognition for indigenous self governance.

In this part, it overviews three sections, first, the role of indigenous peoples; second, the role of non-governmental organizations and ethnic minorities groups/network; third, the strength and challenges for defending indigenous peoples and ethnic minorities. This explanation will limit the context of activism since New Order regime until 2006.

- **The Role of Indigenous Peoples Groups and Network**

The network of indigenous community was stated by groups at local level, based on actual cases, and mostly for resisting their rights which were marginalized by the State. Although

under Article 28 Indonesian Constitution (before amendment) said that “The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law”, but practically, during authoritarian military regime of Soeharto (1967-1998), right to unite, to organize, to assemble the community had been strictly restricted. No one organization or community groups can exist, except if the organization has affiliation to the regime at that time.

By defending “in the name of stabilization”, the Soeharto regime had been disciplining the political parties, people organizations, including indigenous peoples group at local level. Moreover, in 1985, there was well known and controversial regulation, namely a “bundle of three political Acts”, including Act concerning Society Organization (*Organisasi Masyarakat*). Under this Act, the organization should have and accept ‘Pancasila’ as single ideology which can exist, in order to resist communism. Nevertheless, this was just political design of Soeharto regime in order to oppress any people organization and political movement against him. In this context, the regime enforced various laws and regulations as a means of political control under ‘Democracy of Pancasila’. However, this kind of democracy has pull out indigenous peoples from their land and access to natural resources, and the regime has projected many concessions, such as timber concessions, mining concessions, and plantation concessions. Military and police have been systematically involved in oppressing indigenous peoples.

In response to the local struggles and the authoritarian state attitude, as mentioned by Moniaga, WALHI (the Indonesian Forum for Environment) and WALDA-Toraja facilitated a meeting in 1993 in Tana Toraja which was attended by a number of indigenous peoples leaders such as Nai Sinta from North Sumatra, Petinggi Aris from Simpang Hulu, L.B. Dingit from East Kalimantan, Den Upa Rombelayuk and Pak Sombolinggi from Tana Toraja, Oom Ely from Haruku and Tom Beanal from Amungme Peoples in West Papua. The meeting was also attended by human rights and environmental advocates (mainly the young indigenous ones) who, with the indigenous leaders, went on to establish JAPHAMA (Moniaga 2005).

The meeting also agreed to use the term ‘masyarakat adat’ as a common expression to refer to indigenous peoples in Indonesia. This term has been known and used by many indigenous peoples in Indonesia, and means: “*peoples who have ancestral origin of a particular geographical territory and have a system of values, ideology, economy, politics, culture, society and land management*” (Moniaga 2005). Then since that meeting, step by step, the indigenous peoples movement has risen and been consolidated, although the movement was low profile.

This repressive situation has significantly changed after Soeharto move down in 1998. Since 1999, especially when the first congress of the Indigenous Peoples’ Alliance of Archipelago (AMAN) was held in Jakarta, March 1999, the raise of awareness of indigenous peoples to organize and defend their rights has been becoming stronger movement. This congress was attended by at least 200 participants representing a large number of indigenous peoples from all over Indonesia.³⁷ At the end of this congress, the participants made a strong and astonishing statement: “As the state does not recognize us, then we will not recognize the state”.

In the second congress, held in Tanjung Village, Tanjung Sub-District, Lombok Barat District, West Nusa Tenggara, in September 2003, was attended by 600 indigenous people’s representatives who came from throughout the archipelago of Indonesia. The Congress was a culmination of a long process, including a series of local and regional meetings of AMAN members. The meeting discussed and agreed on policy and organizational issues. The representatives reaffirmed their concerns over the unresolved conflicts, including conflicts over rights to and the management of the land and other natural resources (Moniaga 2005).

Various indigenous peoples congress at local level have been done in many places. For instance the congress was done in South Kalimantan (2003), in South Sulawesi (2003), in Papua, etc.

³⁷ According to Moniaga, a coordinator of Congress and former Director of HuMa, the first Congress was originally initiated by AMA Kalbar (Indigenous Peoples Alliance in West Kalimantan), JKPP (Participatory Mapping Network) and JAPHAMA (Indigenous Peoples Rights Defender Network) and received strong support from the other regional indigenous peoples organizations and national NGOs networks. The Congress that was held in the heart of Jakarta gained large media coverage and resulted in the establishment of Aliansi Masyarakat Adat Nusantara (the Alliance of the Indigenous Peoples of the Archipelago). The challenge was accepted, as a proverb says: *gayung bersambut, kata berjawab* (Moniaga 2005).

In South Kalimantan for instance, there was the first and four days Dayak Meratus Congress in 2003, attended by at least 750 peoples from more than 300 *balai* (sub-ethnic governance). In this congress, they strongly refused 'Jakarta policy' concerning on mining concessions for 14 corporations, including gold mining concession for PT Meratus Sumber Mas (Placer Dome International, Corpion Placer Dome). They also rejected the status of 'protected forestry area' (Pegunungan Meratus National Park) which marginalized the indigenous people. Both the mining concession and status of protected forestry area threatened them, especially Dayak Meratus in Hampang, Kota Baru and Dayak Samihim in Kotabaru.³⁸ In this congress also, they established an indigenous peoples organization, namely PERMADA Kalsel (Persatuan Masyarakat Adat Kalimantan Selatan/Indigenous Peoples Union of South Kalimantan), and as Chairman of Adat Council is Damang Udas and Operational Chief is Zonson Masri (Kompas, 27 June 2003).

In South Sulawesi, in 1999, before leaving for the first Congress of AMAN in Jakarta, they made a coordination meeting at province level. They prepared indigenous peoples alliance from South Sulawesi delegation. The congress for AMA Sulsel (South Sulawesi Indigenous Peoples Alliance) at province level (South Sulawesi and West Sulawesi) was held in Makassar September 2003, attended by indigenous peoples from 121 communities.³⁹ It was also before leaving for Mataram or AMAN 2nd Congress. In the second congress, AMA Sulsel participants were the largest delegation from all over indigenous peoples participants (90 participants and 4 observers, from 600 all participants). In Sulawesi island, there are three indigenous peoples network so far as member of AMAN: first is AMA SS/Sulsel (Indigenous Peoples Alliance of South Sulawesi); Second, AMASUTA (Indigenous Peoples Alliance of Central Sulawesi), and Third, AMATRA (Indigenous Peoples Alliance of Southeast Sulawesi).

³⁸ Some part of Protected forestry Area has been changed as Limited Production Forestry, based on Letter of Ministry Decree (Menhutbun) No. 741/kpts-II/1999. For further and deep explanation, vide: Rahmina (2004). This situation has worsened when many purposes claimed to have rights to exploit Meratus, such as mining company and palm oil company. For instance gold mining company: Meratus Sumber Mas dan Pelsart Tambang Kencana; coal mining company: Interex Sacra Raya; iron mining: Wesi Artha Loka. Also 14 palm oil companies, such as Bumi Pondok Air Corp., Buana Karya Bakti Corp., Bersama Sejahtera Sakti Corp. dan Laguna Mandiri Corp. (Permada et al, press release, 2 June 2006).

³⁹ Mahir Takaka (Operational Chief of AMAN Sulsel), interview, 14/11/2006.

AMAN has a alliance regional level, totally 35 organizations, and 14 organizations at provincial level, and 777 communities from various province in Indonesia. The alliance of AMAN can be seen below.

The Alliance of AMAN

(www.aman.or.id)

	Regional Level	Provincial Level
Sumatera	1. Jaringan Kerja Masyarakat Adat (JKMA) Aceh Selatan	1. Jaringan Komunitas Masyarakat Adat (JKMA) Aceh
	2. JKMA Aceh Tenggara, JKMA Aceh Besar	2. Persatuan Masyarakat Adat Sumatera Selatan (PERMAS)
	3. Badan Perjuangan Rakyat Penunggu Indonesia (BPRPI)	3. AKA Jambi
	4. PERSAGE/Persekutuan Masyarakat Adat Batak Timur Serdang Hulu - Sumatera Utara	4. AMA Bengkulu
	5. Aliansi Masyarakat Adat (AMA) Peduli Mentawai - Sumatera Barat	5. AMA Riau
Jawa	1. Kesatuan Adat Banten Kidul	1. Paguyuban Masyarakat Adat Pulau Jawa (PAMAPUJA)
Bali-Nusra :	1. Persekutuan Masyarakat Adat Lombok Utara (PEREKAT OMBARA) - Nusa Tenggara Barat	1. Aliansi Masyarakat Adat -NTB
	2. Aliansi Masyarakat Adat Lombok - Nusa Tenggara Barat	2. JAGAT - NTT
	3. Forum Perjuangan Masyarakat Adat Saga (FOPERMAS) - Nusa Tenggara Timur	
	4. Serikat Petani dan Masyarakat Adat Manggarai (SPM Manggarai) - Nusa Tenggara Timur	
	5. Aliansi Masyarakat Adat Tiwu Telu (AMATT) - Nusa Tenggara Timur	
	6. Forum Masyarakat Adat Watu Ata (FORMATA) - Nusa Tenggara Timur	
Kalimantan	1. Forum Komunikasi Timanggong Binua Kabupaten Landak - Kalimantan Barat	1. Aliansi Masyarakat Adat (AMA) Kalimantan Timur
	2. PAKAT - Kalimantan Barat	2. Persatuan Masyarakat Adat (PERMADA) - Kalimantan Selatan
	3. Persatuan Masyarakat Adat Iban Jalai Lintang - Kalimantan Barat	3. Aliansi Masyarakat Adat (AMA) Kalimantan Barat
	4. STADDES (Serikat Tani Adat Dayak Desa) - Kalimantan Barat	
	5. PUSAKA (Pusat Advokasi Kampung) - Kalimantan Barat	
	6. Jaringan Penguatan Masyarakat Adat Eks Kewedanan Sekadan - Kalimantan Barat	
	7. Lembaga Ketemengungan Bonua Mayao (LKBM) - Kalimantan Barat	
	8. Aliansi Masyarakat Adat Barito	

	Selatan - Kalimantan Tengah	
	9. Persatuan Masyarakat Adat (PeMA) Paser - Kalimantan Timur	
Sulawesi	1. Aliansi Masyarakat Adat Toraya (AMAT) - Sulawesi Selatan	1. AMAN Sulawesi Selatan
	2. Aliansi Masyarakat Adat Kondosapata - Sulawesi Barat	2. AMA Sulawesi Tengah (AMASUTA)
	3. Dewan Musyawarah Adat To Tana Lalong - Sulawesi Selatan	3. Aliansi Masyarakat Sulawesi Tenggara (AMATRA)
	4. Komite Akselerasi Persatuan Peduli Masyarakat Adat Mandar (KAPPMAM) - Sulawesi Barat	
	5. Dewan Pemangku Adat Sallombengang Seko (DPASS) - Sulawesi Selatan	
	6. Aliansi Masyarakat Adat (AMA) Togean - Sulawesi Tengah	
	7. Aliansi Masyarakat Adat (AMA) Banggai - Sulawesi Tengah	
	8. Aliansi Masyarakat Adat (AMA) Kamalisi - Sulawesi Tengah	
	9. Dewan Adat Masyarakat Dondo (DAMD) - Sulawesi Tengah	
	10. Aliansi Masyarakat Adat Bolaang Mongondow (AMABOM) - Sulawesi Utara	
Maluku :	1. Persatuan Latupati Pulau Buru – Maluku	
	2. Lembaga Masyarakat Hibua Lamo - Maluku Utara	
Papua	1. Lembaga Masyarakat Adat Malamoi Sorong (LMA - MS) – Papua	
	2. Dewan Adat Biak – Papua	

This alliance would be largely expanded, because there are still many indigenous peoples group at various levels going to join with this alliance. Although every indigenous peoples group has autonomous governance, but the alliance of AMAN is one of the largest alliance of indigenous peoples in the world, and so that is why the role of AMAN governance and network important to be taken into account, not only by the Indonesian government but also the role of international institutions in deciding policies.

Politically, AMAN has a pretty strong bargaining position with the government, especially in influencing government policies. For instance, in South Kalimantan, Zonson Masri from PERMADA (Indigenous Peoples Union) is really famous and influence when he says or

urges something relation to indigenous peoples rights in South Kalimantan.⁴⁰ In West Papua, Dewan Adat Papua (Papua Indigenous Council) has significant roles in bargaining the existence of indigenous peoples for Papuan peoples, especially when they talk and ask special autonomy or people sovereign. According to Nababan, the most influential movement on indigenous peoples is in West Papua, particularly the movement and roles of Dewan Adat Papua and Majelis Rakyat Papua (Papuan Peoples Assembly), it is because the social economic solidarity of Papuan peoples and political position are really helpful in advancing the rights of peoples. And it has made the position of indigenous peoples in West Papua better, although there are still many violations.⁴¹ Actually their roles were supported also by many other organizations and networks, including their demand to West Papua independence. This movement has been involving many organizations (Melanesia News, ND), including West Papua Council⁴², Papua Presidium Council/PDP⁴³, Papua Panel (Panel)⁴⁴, LMA (Lembaga Masyarakat Adat - Papua Customary Council)⁴⁵, Free Papua Movement (OPM)⁴⁶, The Koteka Tribal Assembly Council (Demmak)⁴⁷, The Mamberamo-Tami Tribal Council (Mamta)⁴⁸, Alliance of Papuan Students (AMP International), The West Papuan Community (WestPaC), The Group 14 (14 Stars Group)⁴⁹, Melanesian Council, Melanesian Solidarity (Melsol), PDP (Pacific Committee and Europe Committee),

⁴⁰ Erlina (Former WALHI Staff, now she is a lecturer at Constitutional Department, Faculty of Law, Lambung Mangkurat University, Banjarmasin, South Kalimantan), *interview*, 22/11/2006.

⁴¹ Abdon Nababan (Former Operational Secretary of AMAN 1999-2003), *interview*, 21/11/2006.

⁴² The umbrella organisation of all political organisations and guerrilla organisations in West Papua, established on 1 December 1961.

⁴³ Established on 26 February 2000 in a Grand Tribal Assembly of Tribal Leaders and Papuan Politicians. PDP is the single and legitimate political organisation that represent all groups of tribes and political ideologies. The mandate from the Papuans was fully given to the PDP to peacefully and democratically resolve West Papua political problems, with Dialogue as the main means. The Chairperson is Theys Hiyo Eluay (Sentani Big Tribal Leader) and Deputy Chair is Thomas Beanal (Tribal Leader of Amungme).

⁴⁴ Consists of 501 - 511 seats/ members, representing tribes and pillars as well as places of origin, including transmigrants (emigrants) who live and would like to live in West Papua after independence.

⁴⁵ Established in 1980s when the late Governor Barnabas Suebu (from Sentani Tribe) was the Governor of Irian Jaya (the name of West Papua at that time). LMA's chair was the late Ondofolo Dorthays Hiyo Eluay.

⁴⁶ OPM is the single, famous and very long independence organisation, and the mother of all independence movement organisations in West Papua. In this movement, the role of OPM Liberation Army (IPN) is important for them in struggling independence, including OPM Revolutionary Council, an institution which is based in Madang Papua New Guinea.

⁴⁷ Demmak is the alliance of all highlanders of West Papua, who suffer more human rights than other tribes in West Papua, who are the least developed (exploited), whose natural resources are mostly exploited by multinationals, established in early 1999.

⁴⁸ Mamta represents tribal groups in Mamberamo River and Tami River Territories, including West Papua Capital - Port Numbay.

⁴⁹ Existed since 1960s, with the famous leader, Dr. Thom Wainggai, who declared Great Melanesia in 1984 was then arrested and imprisoned for 20 years in Jakarta. He died due to food poisoning in early 1996 and buried in West Papua.

WathPapua (Ndungu Ndungu Research and Publications Institute)⁵⁰, ELSHAM Papua (Institute of Human Rights Studies and Advocacy), LEMASA (Lembaga Adat Masyarakat Amungme or Amungme Tribal Council), LAMASKO (Lembaga Adat Masyarakat Kamoro/Tribal Council of the Kamoro Tribe of West Papua Highlands), and DAP (Dewan Adat Papua/Papua Tribal/Indigenous Council).

Moreover, AMAN also developed linkages with various international indigenous peoples organizations. In Asia, AMAN became the member of Asia Indigenous Peoples Pact (AIPP) and during World Summit on Sustainable Development, they joined the Indigenous Peoples Caucus which was one of the most organized and effective civil society's major group. AMAN has been working closely with International Working Group on Indigenous Affairs (IWGIA) both for supporting their work and joint international advocacy. When this report was being written, AMAN and its NGO coalition⁵¹ were preparing the submission document for the United Nations Committee on the Elimination of Racial Discrimination and asking Special Rapporteur or Working Group to assess the current situation of Kasaba (Kalimantan, Sarawak, Sabah), because the Indonesian Government will develop palm oil plantation along Malaysia-Indonesia border in Kalimantan island, 850 kilometers.

- **The Role of NGOs and Its Network**

The role of non-governmental organizations is also important and significant in defending the rights of indigenous peoples. During authoritarian regime of Soeharto, when repressive approach has been often used to threaten communities, including indigenous peoples.

There were two non-governmental organizations in early 1990s, WALHI and YLBHI that have more seriously concerned and initiated to defend indigenous peoples rights, especially while indigenous peoples have been massively suffered at the expense of development projects. At the first time, both organizations deployed two activists who running the special

⁵⁰ The first Papuan research and publishing institute legally established in Java Island of Indonesia on 01 October 2002. It is the publisher of books, cassettes, CDs, films, cards, papers, etc., in effort to educate the global community of the roots of problems in West Papua.

⁵¹ The NGOs that involve in this submission are Sawit Watch Association, ELSAM, WALHI, HuMa, with the help of HRWG (Human Rights Working Group).

task in defending indigenous peoples rights, Sandra Moniaga and Boedhi Wijardjo. Both of them are lawyer background. Sandra Moniaga is a woman and environmental activist, graduated from Faculty of Law, Parahyangan University, deployed in West Kalimantan. Boedhi Wijardjo is a lawyer at Surabaya Legal Aid Institute (LBH Surabaya), graduated from Faculty of Law, Airlangga University, deployed in East Kalimantan. Both of them have facilitated the establishment and strength of non-governmental organizations, Moniaga facilitated LBBT (Lembaga Bela Binua Talino) and Wijardjo facilitated LBPP (Lembaga Bela Binua Putijaji), both of them were established in Kalimantan. Their roles are significant initially in defending and promoting indigenous peoples rights in Indonesia, especially in making a network of indigenous peoples and NGOs.⁵²

During the authoritarian and oppressive Suharto regime has been ruling, in 1993, there was a meeting in Tana Toraja, South Sulawesi, initiated by WALHI (the Indonesian Forum for Environment) and WALDA-Toraja. The meeting was held informally and safely in the house of a progressive village chief, Pak Sombolinggi, who had the traditional authority and capability to control the area from the government and military possible intervention (Moniaga 2005). The meeting concluded that the large number of cases of indigenous peoples rights violations in Indonesia have to be confronted with a mass organized movement. The Toraja meeting was a great values in initiating, consolidating and strengthening the movement, particularly by agreeing that each participant was obligated to socialize the concept, the term and the advocacy strategy 'quietly' to their own constituencies, and the role of JAPHAMA (Indigenous Peoples Rights Defender Network) was mandated to support the development of indigenous peoples organizations and internalization of indigenous peoples concerns by as many NGOs and other institutions as possible (Moniaga 2005).

Moniaga noted that in 1993 onward was the era where more indigenous peoples organization and indigenous advocacy NGOs were established all over Indonesia, in addition to those that already existed, such as in West Sumatra young Mentawaians founded Yayasan Citra Mandiri and in Maluku with Baileo Maluku, which later become a network of indigenous peoples organizations and indigenous NGOs in Central and South-east Maluku.

⁵² Rikardo Simarmata (former HuMa staff), interview, Jakarta, 12/11/2006.

Also in West Papua some young lawyers established LPPMA (Lembaga Pengkajian dan Pemberdayaan Masyarakat Adat/The Institute for Indigenous Peoples Studies and Empowerment).

Then, various non-governmental organizations and networks were growing and taking up indigenous peoples rights as one of their priority concerns, such as 'Jakarta-Bogor-Bandung' based organizations: WALHI, YLBHI, JATAM, KPSHK, Jaring Pela, Telapak, INFID, KPA, ELSAM, and HuMa. The support of indigenous peoples at regional level were founded and strengthened, because their roles were very important directly in tackling the problems of rights at grassroots level. Just to mention several organizations, such as Yayasan Citra Mandiri (West Sumatera), LBBT (West Kalimantan), Plasma and LBB Putijaji (East Kalimantan), Yayasan Bantuan Hukum Bantaya and Yayasan Tanah Merdeka (Central Sulawesi), and LPPMA (West Papua).

Current situation in defending indigenous peoples, cross-cutting issues and share responsibilities are significantly important in helping the problems of indigenous peoples rights comprehensively and strategically. The interesting case in this context is an example of the development of indigenous peoples groups and non-governmental organizations coalition in response to Sando Batu, Sidenreng Rappang (Sidrap), South Sulawesi. They established 'Aliansi Pembela Masyarakat Adat Sando Batu' (Indigenous Peoples Defender Alliance of Sando Batu), which consist of: AMAN South Sulawesi, Jurnal Celebes (Environmental Journalist Network), LBH Makassar (Legal Aid), WALHI South Sulawesi, BLPM, YTMI, Lapar, eSeL, LBHR (Legal Aid), YLBHM (Legal Aid), PeRAK Institute, Essensi, CJI, Kontras Sulsel (The Commission for the Disappeared and Victims of Violence), LeKAS, YPPR.⁵³ Beside regional/provincial network in defending the case, they established network with many non-governmental at national level, such as with HuMa (for critical legal education), WGT/Working Group for Tenure (for analyzing forestry policy). In this case, the role of Jurnal Celebes (journalist network) is very important, especially in

⁵³ They chose AMAN Secretariat, Makassar (Jl. Bougenville Raya No. 63 Komp. Mayzonette Makassar) as central of communication and consolidation for defending Sando Batu people. This strategy was practiced also by 'Solidaritas Perjuangan untuk Rakyat Mollo' (Solidarity Struggle for The People of Mollo), which established by LMND EW NTT, PIKUL, DPK SRMK, SINODE, Rumah Perempuan, Cis Timor, PMPB, KURSOR. They have central secretariat in Kupang (Arjuna Number 9 Kota Baru Kupang, East Nusa Tenggara).

campaigning the case and advocacy development, not only strategic for other indigenous peoples groups and network, but also for the policy makers at local as well as national level.⁵⁴ For indigenous peoples, the role of Jurnal Celebes is strategic for enlarging the promotion of indigenous peoples rights and their existence, including the activist thoughts through articles or opinions which are printed and published virtually.⁵⁵

On the issue of Chinese ethnic, the strong coalition and network was established in responding the case of systematic human rights violation in Jakarta riot 1998. Various organizations and activists have credibility, reputable, and involved on various vitality of civil society and the women's movement. For instance, Dr. Karlina Leksono-Supelli (Tim Relawan), Ms. Dwi Ria Latifia, Ms. Nursyahbani Katjasungkana Indonesian Women's Association for Justice (APIK) Ms. Yenny Thamrin Chairperson of Yayasan Sosial Caritas (CARITAS Social Foundation) Mr. Judi W. Leonardi Indonesian Chinese Social Association, Indonesian Women's Coalition for Justice and Democracy (KPIKI), and Mr. Munir (The Commission for Disappearance Person and Violation Victims/KontraS).

The movement against discrimination has been widespread, particularly in making solidarity among Chinese or Tionghoa ethnic. The network among Chinese or Tionghoa ethnic can be referred from the institutions such as Social Association of Tionghoa Ethnic in Indonesia (PSMTI/Paguyuban Sosial Marga Tionghoa Indonesia). In Indonesia there are about 300 Tionghoa ethnic, and about 160 Tionghoa ethnic in Jakarta. The other movement also was initiated by Nusa Bangsa Solidarity (SNB), LADI, GANDI (Anti Discrimination Movement), Makin (Surabaya), and many others. The role of those NGOs have been significantly influencing not only for people awareness, but also for promoting the anti discrimination policies.

The new coalition for defending social and ethnic plurality has been promoted by Aliansi Bhinneka Tunggal Ika (Bhinneka Tunggal Ika Alliance), which consists various elements of the movement from many issues, such as women movements and indigenous peoples

⁵⁴ Basri Andang (Jurnal Celebes staff), interview, 15/11/2006.

⁵⁵ Mahir Takaka (AMAN Sulsel Operational Chief), interview, 25/11/2006.

alliances. They established a coalition especially for responding the religious based policies and laws, which have tried to make uniformity of social pluralism in Indonesia.

- **The Strength and Challenges for Defending Rights**

After the establishment of AMAN in 1999, and also the raise of indigenous peoples alliance and advocacy groups or networks, the movement of indigenous peoples rights in Indonesia have been growing. There are numbers of factor of strengths situation that support indigenous peoples movement.

First, there is growing consciousness among minorities in the region and networks, and then it increased interest amongst different actors in responding human rights. Secondly, although the constitution required the 'conditionalities recognition' over the existence of indigenous peoples, but there are numerous articles which provided human rights provisions. As we have known that Indonesian Constitution (*Undang-Undang Dasar 1945*) is the highest of law or as fundamental law which should be referred by other legislations and regulations. Concerning human rights, it is also strengthened by ratification of two major international covenants on human rights, civil and political rights and economic, social and cultural rights in 2005. These completed the legislation and hopefully would be adopted by any policy of government. Third, specific legal instrument on indigenous peoples rights was emphasized by MPR Decree No. IX/2001 concerning Agrarian Reform and Natural Resources Management. This decree is very important and valuable perspective due to the recognition over rights of the indigenous peoples, dealt with agrarian/natural resources, legal pluralism, human rights.⁵⁶

Nevertheless, the challenges for indigenous peoples are tremendously serious. There are numerous challenges being faced by indigenous peoples movement in resisting their rights. The first one, as mentioned by Fauzi, the most serious problem concerning agrarian life today is neo-liberal capitalistic political economy structure which continuously dispossessing

⁵⁶ MPR Decree No. IX/2001 concerning Agrarian Reform and Natural Resources Management emphasized the issue of: respecting and revering human rights; respecting the supremacy of the law by accommodating diversity in legal unification; recognizing, respecting, and protecting the legal customary rights of the society and the diversity of the national culture over agrarian resources/natural resources.

public ownership asset, including widespread capital accumulation through production, trade and consume expansion (Fauzi 2006). Secondly, even though there are many legislation and law recognizing indigenous peoples, but in reality many these recognitions are only symbolic. The recognition does not automatically result in a changed attitude on the part of the state apparatus, so that is why, unsurprisingly that many human rights violence are being faced by indigenous peoples. For example, in the case of Mollo people, repressive forces (the military, police and paid thugs) are always guards for each of the capitalist's interests. They carry weapons, approach the people and intimidate them so they will not demonstrate and will reject those from outside Mollo who come to give solidarity for the people's resistance.⁵⁷

Third, as consequence of symbolic recognition, it affects to Indonesian laws, which favor to investment interest and development projects. This situation has shown the ambiguity of law in responding the existence and rights of indigenous peoples in Indonesia. For instance, on March 11, 2004, the President announced the signing of PerPU (Act) No. 1/2004 to revise the Act No. 41/99 to accommodate a new article that legalized the permit for mining within the forest conservation and protected forest areas which were issued prior to the enactment of Act No. 41/99.

And lastly, in current situation there have been threatening Indonesian society related to cultural movements which wanted fundamental changes on local legislations or regulations, by injecting Islamic law ('syariah') that regulates community attitude. As explained previously, Islamization of regulations have affected to indigenous community and discriminated minority groups. And, Islamizing the regulations has seriously affected to women, who often discriminated as object of law in those regulations.⁵⁸

⁵⁷ Position Statement, signed by Gregorius Dalla (Field Coordinator), Kupang, 08 November 2006.

⁵⁸ For instance, in South Sulawesi where almost all district apply 'Perda Syariah', it was responded by Statement Position of South Sulawesi Women Activists, by requesting to cancel all 'Perda Syariah'. The statement was signed on 17 Juni 2006 by Forum Pemerhati Masalah Perempuan Sulawesi Selatan, Koalisi Perempuan Indonesia Wilayah Sulawesi Selatan, Solidaritas Perempuan Komunitas Anging Mamiri.



PART V

STRATEGIES IN DEFENDING THE RIGHTS

“As the state does not recognize us, then we will not recognize the state”

(The First Congress of the Alliance of the Indigenous Peoples of the Archipelago/ AMAN, March 1999)

This statement above was very influence among indigenous peoples in Indonesia, and it also has been well known by policy makers, at local, national and international level. This is a motto for strengthening the position and existence of indigenous peoples who have been deprived and violated their rights by central government.

The last part of this report overviews the strategies that have been applied by indigenous peoples movement, particularly in responding policies, conflicts and human rights violations which suffered them.

- **AMAN Programs**

After Second Congress of AMAN in 2003, AMAN still believed that the situation development has been influenced by the interest which potentially expropriates rights of indigenous peoples. In response to dangerous situations, AMAN programs focus on principles to: (i) guarantee the safety of indigenous offspring (‘anak-cucu’); (ii) guarantee

indigenous social practice by doing regeneration; (iii) protecting land and natural resources as indigenous peoples livelihood areas; and (iv) restoring indigenous peoples from various social culture and ecology destructions (AMAN 2003).

In supporting the program focus, AMAN strategically planned the program on: (i) restoring indigenous peoples rights; (ii) revitalizing and recognizing adat judicial systems; (iii) socializing gender equity; (iv) natural resources management; (v) education; (vi) economy; (vii) politic; and (viii) organization management education.

In restoring indigenous peoples rights, AMAN assists many specific programs, one of the program is critical legal educations at kampong level. This education is expected to enlarge the promotion and critical awareness in struggling indigenous peoples rights. This program is needed for not only indigenous peoples, but also for indigenous peoples rights defender, because not all of NGO activists have law skills and background.⁵⁹

At grassroots level, critical legal education became very important and effective because it would transform critical legal awareness for self defense. HuMa, under the Critical Legal Thought Development Program (Program Pengembangan Pemikiran Kritis tentang Hukum), has taken this strategy to support indigenous peoples group, NGOs, and also academicians at university level.

Opy MR (Council Chairman of Indigenous Peoples Alliance in South Sulawesi), is facilitating a critical education for indigenous community in Sando Batu, Sidrap
(Photo: Herlambang, 12/11/2006)



⁵⁹ Sirajudin (KontraS Sulsel), interview, 14/11/2006.

In revitalizing and recognizing adat judicial systems, it is programmed by organizing documentation local knowledge and wisdom, then revitalizing indigenous values, norms, judicial system and its institution.

AMAN in its program also has promoted the program for indigenous women, such as (i) involving women in formulating policy and making policy, at kampong level, district and provincial level; (ii) encouraging the indigenous women representation at legislative and executive level; (iii) educating women rights awareness for indigenous peoples; and (iv) establishing and strengthening indigenous women network (AMAN 2003). Den Upa Rombelayuk, an elderly respected leader in Toraja and Ashoka Fellow in Women Rights Empowerment, says that the role of indigenous peoples should be encouraged and strengthened, because without their participation, indigenous peoples movement would never strong.⁶⁰ In her experience, she encouraged the indigenous women to have a better position in indigenous peoples institutions, including in religious institutions. In addition, it is also important for indigenous women to have economic development activities, in order to have significant role in making policies, including position at indigenous governance system.

- **The Role of Community Based Strategy**

The key movement of indigenous peoples is at grassroots level as frontline in responding and resisting conflicts. The local power of indigenous group is vital and strategic in tackling the real situation that threatening their rights. In this context, community based strategies are relevant to build a significant role in protecting rights of the people.

There are many strategies based on community thoughts, such as following examples. In Landak District, indigenous peoples agreed to push the government to adopt local values of tradition, language, local wisdom, adat law, into basic school curricula. In addition, indigenous peoples should be involved in preparing curricula and teaching process. For revitalizing indigenous institution, they asked the government to support the strengthening

⁶⁰ Den Upa Rombelayuk (Chair of AMAN Council), interview, 14/11/2006.

of indigenous peoples institutions, adat law and indigenous judicial system. One of the strategy is the enactment of Local Regulation concerning on Binua Governance System. Then finally, the Landak people asked returning indigenous peoples land which was taken away during New Order.⁶¹ This strategy is pretty similar with East Kalimantan Indigenous Peoples Alliance of Sempekat, which emphasized education by adopting indigenous peoples values.⁶²

This experience also has been done by Dewan Adat Papua and AMA Papua, as mentioned previously, the most significance movement on indigenous peoples is the role of network and institutions to bring together their problems. For the Papuan people, although the Indonesian government recognized formally the existence of indigenous peoples, but in reality there is no serious political will in implementing and protecting the rights.⁶³ This situation has shown ambiguous policy over indigenous peoples in Papua. For instances the impact of Act Number 41/1999 concerning Basic Forestry, which the indigenous land of Papuans has been interpreted as State Forest status, and authority in managing the forest has been fully controlled by the State.⁶⁴ This problem has invited the more serious concern on recognition issues. Although the Indonesian Constitutions says the recognition over indigenous peoples (*masyarakat hukum adat*), but in implementation has controversially shown unserious commitment because there have been genocide and many grave violation of human rights.⁶⁵

Their indigenous peoples land system were destroyed, the people were removed, many indigenous women were abducted and raped, criminalization, and horizontal conflict among indigenous peoples which designed by the State, are examples of human rights violations in West Papua. Until today, the most significant conflict which has seriously affected Papuan people is still concerned on natural resources exploitation. The government, including

⁶¹ Position Statement of Landak Indigenous Peoples (Bahaupm Aya' participants), Nangka, Menjalin Sub-District, Landak District, West Kalimantan, 27 February 2004.

⁶² Position Statement of East Kalimantan Indigenous Peoples Alliance, Putak, 20 August 1999, Sempekat of East Kalimantan Indigenous Peoples Alliance.

⁶³ Leonard Imbiri (General Secretary of Papuan Indigenous Council/Dewan Adat Papua), interview, 26/11/2006; Mientje DE. Roembiak (Member of Papuan Peoples Assembly), interview, 28/11/2006

⁶⁴ Leonard Imbiri, interview, 26/11/2006.

⁶⁵ Leonard Imbiri, interview, 26/11/2006.

present regime of Susilo Bambang Yudhoyono, still does not enough give progressive protection for Papuan peoples.⁶⁶

In this regard, for Alex Sanggenafa, an activist who defending rights of indigenous peoples in Papua, a development key which comprehensively should be implemented is the seriousness Special Autonomy of Papua, including serious advancement in developing human resources and strengthening people participation in development.⁶⁷

The development of the movement at grassroots level has given great contribution in defending rights of the indigenous peoples, but at the same time their roles have been often threatened directly by repressive instruments. So that is why, increasing awareness and advancing skills capacity are also important to be developed at grassroots level, because it would be progressing and sustaining the movement at regional context.⁶⁸ These are important concerns for those who are defending peoples at grassroots movement.

- **National Strategy for Defending Indigenous peoples and ethnic minorities Rights**

In the context of indigenous peoples rights, since 1999 the AMAN has stated at level national, especially to the networks for, first, strengthening AMAN position as a tool of indigenous peoples unity which has been threatened in relation to elite political power, defending indigenous peoples and taking policies which commits for indigenous peoples. Second, strengthening AMAN organization by self-empowerment and enlarging the networks; Third, having distinct or clear position with the government at any level; Fourth, stopping immediately all forms of violence in Indonesia; and Five, exploring indigenous peoples aspirations for being adopted in AMAN assemblies (DAMAN 1999).

Concerning indigenous women rights, this issue was highlighted since the first AMAN Congress. In the DAMAN political statement, there were raised several strong points,

⁶⁶ Mientje DE. Roembiak (Member of Papuan Peoples Assembly), interview, 28/11/2006.

⁶⁷ Alex Sanggenafa (AMA-Papua) in interview with Down to Earth (DTE 2005)

⁶⁸ Abdon Nababan, interview, 26/11/2006.

including the urgent action for stopping violence which were conducted by State apparatuses to indigenous peoples, including rapes over indigenous women by military. AMAN also urged to stop women trafficking throughout Indonesia and enforce (judicial process) for the violators without any exception. And urgent action for enforcing the law for rape actors and sexual abusers who violated indigenous women in Aceh, West Papua and other conflict sites, including East Timor (DAMAN 1999). The issue of indigenous women protection has been arising after the first AMAN congress, and at that moment there were many ethnic minority especially Chinese women raped. Until now, this case has not received serious responses, especially in relation to punish actors who involved sexual rapes.

Since the first AMAN Congress, the wave of indigenous women protection has been growing and enlarging throughout Indonesia, and became important issues for indigenous peoples empowerment.⁶⁹ This issues are often discussed and becoming an obligation theme for indigenous peoples meeting at various level. In Kalimantan meeting, AMAN Council of Kalimantan in position statement mentioned that everyone should respect indigenous peoples as human who has the right to access opportunity for doing and socializing in their environment. And also, not using religious and tradition/customary practice as tool of oppression for the women rights, especially in implementing freedom of speech and taking roles in various life aspects (AMAN Council of Kalimantan 2000). It was also highlighted in AMAN Sumatera Region, by stressing that discrimination over women should be eliminated (AMAN Sumatera Region).

At national level, AMAN hands in hand with other networks have pushed the national policy which respects to the indigenous peoples. It was stressed by AMAN, that concerning law or policies which are potentially marginalizing rights of the indigenous peoples, the indigenous peoples alliance urged the Indonesian government to invalidate or cancel legislations which inconsistent with indigenous peoples sovereign (AMAN 1999; DAMAN 1999). The similar roles have been played by Social Association of Tionghoa Ethnic in Indonesia (PSMTI/Paguyuban Sosial Marga Tionghoa Indonesia). They defend the rights of ethnic minority especially for those who are belong to Chinese peoples or Tionghoa. Just recently, Indonesian government passed the new legislation on citizenship (Act Number 12/2006

⁶⁹ Den Upa Rombelayuk (Chair of AMAN Council), interview, 14/11/2006.

concerning Citizenship). According to Secretary of PSMTI (East Java), Hendro Prayogo, mentions that even though the substance of Citizenship Act is better than previous one, but it does not mean protection will be given automatically, because the government still have other agendas to pass numerous legislations which related to their rights and recognitions, such as the draft Act concerning Anti Discrimination, Act of Population Administration, and Act of Immigration. In this regard, ethnic Chinese or Tionghoa would be wondering about those new legislations draft.⁷⁰ In addition, at implementation level there have been found unseriousness of government officials to eliminate discrimination over Chinese peoples. In this regard, they have established coalition and solidarity movements in order to support human rights protection.

Lastly, as mentioned before, the new coalition for defending social and ethnic plurality has been promoted by Aliansi Bhinneka Tunggal Ika (Bhinneka Tunggal Ika Alliance), which consist various elements of the movement from many issues. This national coalition would be expected effectively influencing the policy makers in any level of government, especially in recognizing social plurality and revitalizing the spirit of nation: Bhinneka Tunggal Ika (Diversity in Unity).

- **International Advocacy of Indigenous peoples and ethnic minorities Rights**

In this international advocacy strategy, once again, the role of network is very important. Many activism and experiences in international level have been done, and many networks were established.

On the issue of indigenous peoples, AMAN has developed linkages with various international indigenous peoples organizations. In Asia, AMAN became the member of Asia Indigenous Peoples Pact (AIPP) and during World Summit on Sustainable Development, they joined the Indigenous Peoples Caucus which was one of the most organized and effective civil society's major group. AMAN has been working closely with International Working Group on Indigenous Affairs (IWGIA) both for supporting their work and joint international advocacy.

⁷⁰ Hendro Prayogo (Secretary of PSMTI), interview, 24/11/2006.

In current situation, when this report is being written, AMAN and its non-governmental organizations coalition⁷¹ are preparing the submission document for the United Nations Committee on the Elimination of Racial Discrimination and asking Special Rapporteur or Working Group to assess the current situation of Kasaba (Kalimantan, Sarawak, Sabah), because the Indonesian Government will develop palm oil plantation along Malaysia-Indonesia border in Kalimantan island, 850 kilometers. This preparation is helped by HRWG (Human Rights Working Group) and highly possible the network at regional or international level.

The role of advocacy at international level is being developed because it needs a special experience and skills to understand standard and mechanism, which mostly indigenous peoples defenders for instance, do not know much these standard and mechanism. This is an agenda which would be important, strategic and effective for further development of revitalizing local knowledge and values, as well as advancing human rights protection, especially in Indonesia.

- **New Challenges from A Paradigm Softening Human Rights Violations**

The trend of human rights violation against indigenous peoples is also influenced by the role of international institutions, such as donor states or institutions, including also the role of multinational corporations that supported them. The fail of Indigenous Peoples Declaration in 2006 was unsurprisingly played by those institutions, especially by using formal agreement or international bodies at UN level.

The issue of “minoritization” of indigenous peoples through various projects is considered one of threatening situation for indigenous peoples movement. It is simply because it has different consequences on international human rights advocacy, especially the denial of collective rights struggle for indigenous peoples and the issue of self determination. For AMAN, this issue is quite clear, that indigenous peoples do not always belong to ethnic

⁷¹ The NGOs that involve in this submission are Sawit Watch Association, ELSAM, WALHI, HuMa, with the help of HRWG (Human Rights Working Group).

minorities, and they prefer claim themselves as indigenous peoples (*masyarakat adat*) rather than ethnic minorities.⁷² “Minoritization” projects of indigenous peoples would affect seriously to the development of indigenous peoples movement, especially in context of Indonesia.

Nevertheless, according to human rights lawyer from YLBHI, Patra M Zen, he has no worry about the problem of “minoritization” projects of indigenous peoples. According to him, indigenous peoples can be an ethnic minority, which has actually different concept. It does not necessary to confront those terms, the most important thing is “to protect them”.⁷³ This statement actually has liberal proposition and does not really consider the consequences to the indigenous peoples grassroots movement, such as how to protect the indigenous peoples if collective rights are not considered as important values and principle for self determination (?).

The other challenge is dealt with the issue (and project) on access to justice. The access to justice project becomes popular in transition to democracy, because it tackles judicial processes formal and informal process. Informal process recognizes the role of indigenous judicial system in resolving the problem, and it would affect to the community at large. Nevertheless, the specific access to justice that focuses on judicial process would simplify structural and institutional responsibilities, including political aspect of the government in responding the conflicts. For instance, is “reclaiming movement” considered as access to justice? Reclaiming movement as indigenous movement in claiming land rights could not be longer considered as fair process under access to justice projects in accessing land. In this regard, this report would like to remain that there are numerous powerful projects which mystify (read: manipulate) the rights of the people through reproducing “claims” and “knowledge”, and it would affect to protection system for human rights in general.

⁷² Indigenous peoples translation into Bahasa is not really fit with the term of ‘masyarakat adat’, because ‘masyarakat adat’ in the context of Indonesia has a different context to other country. Moreover, according to Emil Kleden, AMAN clearly does not consider themselves as ethnic minorities (Emil Kleden, *interview*, December 2006).

⁷³ Patra M. Zen (Director of YLBHI), *interview*, Surabaya, 4/1/2007.

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