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## THE TRAJECTORY OF INDIGENEITY POLITICS AGAINST LAND DISPOSSESSION IN INDONESIA

Noer Fauzi Rachman<sup>1</sup> and Hasriadi Masalam<sup>2</sup>

**Abstract:** Under the New Order authoritarian regime, the state endorsed terra-nullification of the customary territories had been the basis for the stipulation of the so-called state forest (*hutan negara*). After the fall of the General Suharto led regime in 1998 generated a new phase for the struggles of *masyarakathukumadat* (customary laws governed communities, or customary communities, for short) in different parts of the archipelago. This article examines the rise of indigeneity and counter-hegemonic legal maneuvering spearheaded by *Aliansi Masyarakat Adat Nusantara* (AMAN) against ongoing land dispossession in Indonesia since the fall of New Order authoritarian regime which included the indigenous mobilizations (strategy, organization and tactics) in the post-authoritarian state, including the avenue of new types of legal activism when it comes to the creative destruction of global capitalism today. It focuses on two modes of policy advocacy and campaign against land dispossession: (a) the production of the Constitutional Court Ruling No. 35/PUU-X/2012, a new legal landmark that establishes the constitutional norm of the citizenship status of *masyarakathukumadat* as rights bearing subjects, and the owners of their customary territory; and (b) the National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone held by the Indonesian National Human Rights Commission (*Komnas HAM*). Referring to the problem of state-izing peoples' territory, the article analyses the efficacy of the judicial review against the Law No. 41/1999 on Forestry, and the National Inquiry into the Right of Indigenous Peoples' on their Territories in the Forest Zone. It is concluded that the efficacy of this legal maneuvering is very much depend on the capacity of the movement to connect with the grassroots mobilization by continuously promulgating the resurgence of indigeneity politics.

**Keywords:** indigeneity politics; land dispossession; legal change, forestry law.

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## INTRODUCTION

The systemic land dispossession in Indonesia prompted by the *longue duree* of legal machination back to the colonial era and pursued under the post-colonial state today. Under the New Order authoritarian regime, the state endorsed terra-nullification of the customary territories had been the basis for the stipulation of the so-called “state forest” (*hutan negara*). It is a precondition to authorize forest commodification through the forest extractive license to state and private entities. The precariousness of the continuous dispossession and the opening-up of political opportunities after the fall of the General Suharto led regime in 1998 generated a new phase for the struggles of the customary communities in different parts of the archipelago. The establishment of *Aliansi Masyarakat Adat Nusantara* (AMAN/Indigenous Peoples' Alliance of the Archipelago) in 1999 provided a unified national movement platform for the localized and sporadic struggles to contest the state ignorance of their perennial claims. Since its early formation, AMAN and the indigenous movement constituents have been embracing the politics of indigeneity under the rubric of “indigenous peoples” as outlined by international human right instruments to frame the Indonesian *Masyarakat Adat*.<sup>1</sup>

This chapter examines the rise of indigeneity and counter-hegemonic legal

maneuvering spearheaded by *Aliansi Masyarakat Adat Nusantara* (AMAN) against ongoing land dispossession in Indonesia since the fall of New Order authoritarian regime. We examine indigenous mobilizations (strategy, organization and tactics) in the post-authoritarian regime, including the avenue of new types of legal activism when it comes to the creative destruction of global capitalism today. After providing a brief contextual background on the state-izing customary communities' lands and territories as well as the rise of indigeneity politics, the article dwells on indigenous mobilizations and their varied ways to articulate the demand for legal change toward property recognition over customary territories (*wilayah adat*) and against the state controlled forest zone (*kawasan hutan negara*).

The chapter focuses on two modes of policy advocacy and campaign against land dispossession: (a) the production of the Constitutional Court Ruling No. 35/PUU-X/2012, a new legal landmark that establishes the constitutional norm of the citizenship status of *masyarakat hukum adat* as rights bearing subjects, and the owners of their customary territory; and (b) the National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone held by the Indonesian National Human Rights Commission (*Komnas HAM*). We analyze the efficacy of these two legal activisms as the vehicle for the campaigning of land rights restitution for indigenous communities, and undoing the discriminatory categorization of Indonesian indigenous peoples. This article is primarily based on first author involvement with the *Masyarakat Adat's* movement in Indonesia

<sup>1</sup> Moniaga, S., ‘From BumiPutera to Masyarakat Adat: A Long and Confusing Journey’, in Davidson, J. and Henley, D. (eds.) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, Oxford and New York: Routledge, 2007. Pp 275–294.

since the early establishment of AMAN in various roles, including facilitating the first national congress in Jakarta in 1999 and recently as expert witness for the judicial review of The Law No. 41/1999 on Forestry.

### **‘State-izing’ Customary Communities’ Territory**

The escalating legalized terra-nullification of the customary territories today goes hand in hand with the deepening commitment of the ruling elite to privilege the giant corporations and facilitate the formation of a corporatized state of Indonesia<sup>2</sup>. Furthermore, the state’s reliance on institutions and practices of natural resources extraction in accounting for the majority of revenues ‘evoke the continuities from colonial to postcolonial systems of multilayered exploitation and export to the center of the world-economy’<sup>3</sup>. The ramifications of the ‘abuse of public resources by rent-seeking elites’ in the era of the colonial capitalist East India Company (VOC) to today’s neoliberal ‘Indonesia Inc.’<sup>4</sup> explain the acceleration of the extractive regime as well as the intensification of today’s agrarian crisis in the post-colony.

During the Suharto authoritarian regime of more than three decades, the plundering of natural resources was implemented under legal protection of the state apparatus accelerated by the prevailing of “colonial laws in an independent country”<sup>5</sup>. The regime augmented the revival of colonial territorialization policy through the Basic Forestry Law of 1967 and the revised Forestry Law No. 41/1999 that defined and enforced boundaries, classified the forest zones for specific forms of use, and designated the rights to resources that provide the legal preconditions for dispossession. Not to mention the vulnerability of the land rights of local peoples within more than 33,000 villages after the government identified 70 % of Indonesia’s land as “forests”, mostly without clearly designated and mutually agreed boundaries (Departemen Kehutanan dan Badan Pusat Statistik, 2007, 2009). The Forestry Law declared no one is legally allowed to occupy the designated forest zones without official permission from the state, including the customary groups who had ancestral relation with the land.

Under such legal framework, the modern nation state of Indonesia is indeed pursuing “internal colonialism”<sup>6</sup>, in the name of catching up with the myth of modernizing capitalist conception of progress. This is particularly the case after the exclusion of access to land and forest that now turned into a contested landscape for largely capitalistic development purposes, such as industrial plantation and

<sup>2</sup> Robison, R., & Hadiz, V. R, *Reorganizing Power in Indonesia: The Politics of Oligarchy in an Age of Markets*, London: Routledge, Curzon. 2004.

<sup>3</sup> Anderson in Gellert, P.K, “Extractive Regimes: toward A Better Understanding of Indonesian Development”, *Rural Sociology* 75. (1), 2010. Pp 28-57.

<sup>4</sup> In a speech before the Asia Pacific Economic Cooperation (APEC) Summit 2013 at the Bali International Convention Center, on October 6, 2013, President of Indonesia (2004-2014), Susilo Bambang Yudhoyono, referenced himself as “the chief salesperson of Indonesia Inc.” <http://www.kemlu.go.id/Lists/SpeechesAndTranscription/DispForm.aspx?ID=807&ContentTypeId=0x01003EA9EEAD2C809F49A8A9E2B6786925C3>

<sup>5</sup> Laujeng, H. “*Hukum Kolonial di Negara Merdeka*”. Unpublished manuscript. 2010.

<sup>6</sup> Stavenhagen, R., “Classes, Colonialism, and Acculturation”. *Studies in Comparative International Development (SCID)*, 1(6), 1965.

mining. Therefore, the facts reiterate how the colonialism of power<sup>7</sup> is continuously in dialectical process with the accumulation by dispossession<sup>8</sup> as well as their positionality as development displaced people<sup>9</sup>. This is not necessarily a brand new phenomenon however, as history of capitalism begins with the transformation of land rights<sup>10</sup>.

The following brief overview of the transformation of the customary land and territories might attest to this argument. In 1602, the Dutch government established *Vereenigde Oostindische Compagnie* (VOC/ East India Company) with full authority to establish trading relations with the feudal kingdoms in the archipelago. The feudal system of land control, particularly in Java, was first embraced and then manipulated by the Dutch colonial regime in an attempt to reinforce their mercantilist imperial power. In 1799, the VOC was declared bankrupt and to recover the losses as soon as possible, the Dutch colonial regime introduced the *Cultuurstelsel* (Forced Cultivation System) and new tax system since 1830. In responding to the economic liberalism campaign in the Netherlands which demanded the Dutch government to pursue an ‘open door politic’ aimed at providing more opportunities for private business

entities, in 1870 the colonial regime introduced *Agrarische Wet* (Agrarian Act), which included the principle of “*Domein Verklaring*” (Declaration of State Domain) where any “land not legally claimed” could be “*Domeinvanden Staat*” (Declared as State Land). Prior to the enactment of the 1870 Agrarian Law, the colonial government released the forestry law of 1865 that intensified the exploitation of Java’s teak forest, which were later replaced by various ordinances including a series of laws and regulations of 1927 and 1932 on forestry in Java and Madura, which granted the stronger bases for defining the state forest zone (*kawasan hutan negara*) and delineating state forest lands by gazetting processes.<sup>11</sup>

These colonial legal infrastructures were indeed a much more aggressive process of land transformation whereby the state claimed the rights to grant *erfpacht* concession licenses to foreign companies; a prerequisite for facilitating expansive capital accumulation. The law symbolized a new era of the plundering of natural resources and labor, where global capital raced to the new frontiers in the Outer Islands of the archipelago, especially Sumatera, for large-scale plantation industry. In 1938, there were 2.400 private European and US plantation companies controlling 2,500,000 hectares of land producing tobacco, rubber and palm oil.<sup>12</sup>

<sup>7</sup> Quijano, A., “Colonialism of Power, Eurocentrism, and Latin America”. *Nepantla: Views from South*, 1, 3, 2000. Pp. 533-580.

<sup>8</sup> Harvey, D., *The New Imperialism*, Oxford: Oxford University Press, 2003.

<sup>9</sup> Rajagopal, B., *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003.

<sup>10</sup> Araghi, F., & Karides, M., Land Dispossession and Global Crisis: Introduction to the Special Section on Land Rights in the World-System, *Journal of World-Systems Research*, 18(1), 2012. pp. 1-5.

<sup>11</sup> Rachman, N. F., *The Resurgence of Land Reform Policy and Agrarian Movements in Indonesia*, Berkeley: University of California, 2011.

<sup>12</sup> Muttaqien, A., Ahmad, N., & Wagiman, W., *Undang-Undang Perkebunan: Wajah Baru Agrarische Wet*, Jakarta: Elsam, 2012. p. ix.

Large-scale natural resource concessions for the extraction of raw materials was perpetuated as key strategy of the extractive regime in Indonesia, pursued through the politics of territorialization by the state in order to control the population and their activities by creating geographical divisions which prevented access for certain groups while permitting or banning activities along such divisions of territory. There were essentially three stages of territorialization: (1) claiming all lands belonged to the state; (2) stipulating land boundaries determining as state-owned lands; and (3) creating programs whereby the forest was distributed in accordance with its' scientific functions, which in turn lead to the stipulation of the political forest, i.e. designation of boundaries between agricultural and forest land and state claiming over all forest land<sup>13</sup>. The politics of territorialization also led to the creation of an economic enclave system with large export-oriented plantation estates as the centers of colonial and post-colonial exploitation.

To facilitate this massive land appropriation, the Suharto regime adopted the colonial concept of *political forest* and combined it with the *industrial forest*<sup>14</sup> as the main means for gaining control over land and forest resources. In order to accelerate natural resource extraction, the government approved the Basic Forestry Law of 1967 and the revised The 1999 Law

No. 41 on Forestry, which endorsed the emergence of forest capitalism aimed at sustaining lucrative global production and consumption to accumulate wealth from exploitation of primary forest for timber in Sumatera, Kalimantan, Sulawesi, and Papua islands. With the massive capital expansion to the rural frontiers, the resistance of the affected social groups is also escalating, particularly after the fall of Suharto. Down to Earth (2002) reported a study during the period of 1998–2001 documented over 800 arrests, over 400 cases of torture, and 12 deaths in connection to land conflicts with plantation sector alone.

### Contemporary Indigeneity Politics in Indonesia

Despite the grim portrait of the ongoing accumulation by dispossession, it would be a serious flaw to neglect the perseverance of the subaltern in 'offer[ing] a local and indigenous (and therefore culturally-legitimate) way of questioning the violence of the postcolonial developmental state'<sup>15</sup>. The indigenous movement in Indonesia, which is primarily germinated from the local resistance against the accumulation by dispossession<sup>16</sup> from their customary lands and territories, substantiates this line of thought. The long precarious 'trisula of dispossession'<sup>17</sup>, i.e. massive capital intervention, centralization of power, and

<sup>13</sup> Peluso, N. L., and Vandergeest, P., 'Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia, and Thailand', *Journal of Asian Studies*, 60, 2001. pp. 761–812.

<sup>14</sup> Peluso, N. L., *Rich Forests, Poor People: Resource Control and Resistance in Java*. Berkeley, CA: University of California Press, 1992.

<sup>15</sup> Rajagopal, B., *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003. Pp 254.

<sup>16</sup> Harvey, D., *The New Imperialism*, Oxford: Oxford University Press, 2003.

<sup>17</sup> Topatimasang, R., *Orang-orang Kalah: Kisah Penyingkiran Masyarakat Adat Kepulauan Maluku*, Yogyakarta, Indonesia: Insist, 2004.

imposition of values, for more the three decades under Suharto authoritarian centralistic power provided shared aspirations among the separate customary groups in their struggle for recognition over their territorial sovereignty in different parts of archipelago. This is particularly the case with customary groups in the Outer Islands, especially in Sumatra, Sulawesi, Kalimantan and Papua, where approximately two-thirds to three-quarters of the land in the rural frontiers of these regions are under the jurisdiction of the Forestry Department. The expropriation of customary communities from their lands and territories positioned the constant disputes with extractive industries and large-scale development projects related to mining, forestry, plantations, transmigration, dams and tourism, as well as the fortress conservation.

In facing the long repressions of the militaristic corporatized state apparatus under Suharto regime, the customary groups, who mostly rely on forest resources and swidden agriculture, continued to challenge the natural resource extraction companies and local authorities usurping their lands. In West Kalimantan, the Dayak Simpang people have resisted palm oil development and logging concessions on their customary lands. In East Kalimantan, Dayak Bentian fought against logging companies clearing their forests and thereby ruining their rattan gardens. In Central Sulawesi, the rising protests against the government plan to build a hydro-electric power station in the Lore Lindu National Park led to the abandonment of the project. In the same region, the Katu people managed to reclaim their customary territory which had been allocated as part of the Lore Lindu National Park based on their

arguments of indigenous rights.

In many of these local resistances, women played important roles in mobilizing series of direct actions at the grassroots level. In late 1980's, a group of women led by Nai Sinta from Sugapa Village, North Sumatra, opposed PT Inti Indorayon Utama (now PT Toba Pulp Lestari), a pulp and paper company who was granted the permit to convert a local forest into a timber plantation. In East Nusa Tenggara province, Aleta Baun from Netpala Village led the local resistance against a mining company since 1996. In Papua, Mama Yosepha led the struggle of the Amungme people against the state supported dispossession and oppression by the Freeport multinational mining company. In addition, around the same time in late 1990's, the local indigenous peoples' organizations and indigenous advocacy NGOs blossomed, such as Yayasan Citra Mandiri by young Menta-waians in West Sumatra, Lembaga Bela Banua Talino (LBBT) by young Dayak in West Kalimantan and Lembaga Bina Benua Putijaji in East Kalimantan, Baileo Maluku in Central and Southeast Moluccas, and LPPMA (Lembaga Pengkaji dan Pemberdayaan Masyarakat Adat) in West Papua. Moreover, two regional indigenous peoples' organizations were founded during this period, in West Kalimantan and East Nusa Tenggara<sup>18</sup>.

The magnification of localized direct actions and protests against the precarity of state endorsed dispossession and the opening up of political opportunities after the fall of Suharto provided a strong basis for a nationally coordinated social

<sup>18</sup> Moniaga, S., *Note*, 2007.

movement through the declaration of Indigenous Peoples Alliance of the Archipelago (AMAN). The establishment of AMAN is expected to address three key issues that the localized struggles of masyarakat adat have been facing, i.e. “a lack of guarantees for indigenous peoples’ land rights; pro-capital policies of resource management; and involvement of the military in resource conflicts” (Sangaji, 2007). Such a situation called for a wider-ranging movement that goes beyond local boundaries driven by permanent organizational forms with institutionalized and democratic leadership. Initiated by AMA Kalbar, JKPP and JAPHAMA, this congress was organized by the local and regional coalitions of customary groups, with the support of the environmental, human rights and agrarian activists. After the first AMAN congress in Jakarta, the regional groups thrived even further, for instance the establishment Aliansi Masyarakat Adat Sulawesi Tengah (Alliance of Adat Communities of Central Sulawesi, AMASUTA) on 16–20 May 2000, which then facilitated the formation of local masyarakat adat alliances at sub-provincial level, including the Aliansi Masyarakat Adat Togian (AMAT) in the Togian islands and the Dewan Adat Masyarakat Dondo (Dondo Adat Community Council, DAMD) in Toli-Toli.

The first author observed AMAN since its early foundation in the First Congress of Indigenous Peoples of the Archipelago (KMAN) in mid-March 1999 in Jakarta. As the executive committee of Agrarian Reform Consortium, one of the organizations supporting the congress, the first author facilitated a session where AMAN’s motto was clearly articulated: “If the state does not recognize us, we do not recognize

the state”<sup>19</sup>. The motto concisely and precisely represents the problematic and contingent relation of indigenous people to the state, and formulates that the prime cause of their suffering experience, i.e. ‘the denial of the existence of customary communities as part of the citizens of the Republic of Indonesia’, as elaborated further in AMAN’s statement of fundamental views as follows: ‘In the political affairs, the customary institutions regulating the Indigenous Peoples were devastated by the imposition of local and rural government agencies applied uniformly to the whole region by the Regional Government Law No. 5/1974 and Village Government Law No. 5/1979. The forced concept of ‘*desa* (village)’ has caused tensions and conflicts in the communities that already have its own autonomous system of traditional governance. The customary territories were split and merged into new units, which politically demonstrated the lack of recognition of customary institutional autonomy in managing the internal and external affairs.

In the legal affairs, the concept of state control over land, water and natural resources has become a powerful tool to eliminate the sovereignty of Indigenous Peoples. There are various laws, such as The 1960 Law No. 5, The 1967 Law No. 5, The 1967 Law No. 11, basing itself on the concept of the State Right to Control which is a form of power of the State to take over the sovereignty of indigenous peoples over land and natural resources. The holders of this Right to Control, in this case is the central government, in practice, are issuing decisions that open up opportunities for the occurrence of serious human rights

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<sup>19</sup> Rachman, N. F., *Note*.

violations. Under the militaristic New Order regime, Indigenous Peoples have suffered direct violence, intimidation and torture, even to eliminate the lives of Indigenous Peoples especially when Indigenous people struggle for sovereignty and against state and private projects.

In the economic affairs, the rich land and natural resources of Indigenous Peoples has been the object of government and investors to run gigantic projects. Without any consultation, the government gave the rights for corporations and other management bodies who are foreign to Indigenous Peoples. Various laws, such as The 1960 Law No. 5, The 1967 Law No. 5, The 1967 Law No. 11, have made it easier for private entities to take the land and exploit the natural resources belonging to indigenous peoples. On the other hand, the sovereignty and the rights of indigenous peoples to land and natural resources were taken over by the state and private sectors. Hostile concepts such as 'state land' or 'state forest' have become a powerful tool to abolish Indigenous sovereignty over land and natural resources.

In the socio-cultural affairs, a variety of indigenous knowledge belonging to Indigenous Peoples have been harassed, removed and stolen. The understanding and control of Indigenous Peoples to natural resources has been destroyed by policies imposing uniform socio-cultural life. Indigenous knowledge in the management of Indigenous Peoples lives were disregarded as by the so called modern sociocultural.

Indigenous women are among those who suffered the most from political, economic and socio-cultural repressions

above. Indigenous women suffer from the increased workloads due to loss of land and natural resources, as well as direct violence in the form of harassment and rape.' (Fundamental Views of First AMAN Congress 1999).

The establishment of AMAN generated a unified collective action frame to strengthen the visibility of the customary group suffered from the appropriation of all or part of their customary forests due to the licenses and concessions for the extraction of timber production and natural resources as well the conservation and ecosystem restoration issued by Ministry of Forestry. Thus for customary communities, AMAN does not only serve as a good ally to articulate their position and concerns, but also provides a frame, a stage, resources, network, and political leverage by which customary communities could strategically use the rubric of *masyarakat adat* in their everyday struggle over land, resources and territory. AMAN has positioned itself as a driving force for the common struggle of indigenous peoples to enforce the customary rights, existence and sovereignty to regulate itself in fair and sustainable manners to govern their territories.

Through high-profile strategies, AMAN leaders have managed to make use of the changing political spaces within which they work, and succeeded to develop effective networks within indigenous peoples' organizations at regional and international levels. When the political atmosphere in Indonesia moved to introduce more democratic decentralization governance, AMAN leaders developed workable mechanisms to seize local political opportunities, which include advocating for



local regulations to recognize and protect customary communities' territories and bringing customary leaders to become local parliament members.

### Counter-Hegemonic Legal Maneuvering

This section will discuss the two creative modes of policy advocacy to counter land dispossession spearheaded by AMAN: (a) to submit judicial review against few articles in the Law number 41/1999 on Forestry; (b) to arrange the National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone held by the Indonesian National Human Rights Commission (*Komnas HAM*). Each mode becomes an effective reference for social movement activism to articulate indigenous peoples' land claim, and to produce effective policy changes. The first one is about legal formulas, and the second one is more complex because of the arrangement involve ethnographic inquiries on 40 (forty) land grabbing cases, and seven public hearings in different places within which testimonies of the victims of land grabbing present their story, and the relevant parties are also invited to present their views.

### Judicial Review against The Law No.41/1999 on Forestry

For indigenous people in the forested regions of Indonesia, the Forestry Law is deemed as the most immediately threatening laws, as it terra-nullifies their agroforestry holdings or reserved areas as 'empty' and 'abandoned' land, and outlawed their swidden cultivation system<sup>20</sup>. AMAN is

fully cognizant on how this living legacy of colonial law has been a tool for accelerating the legal theft of people's lands. Thus in responding to customary communities' position in their localized struggles AMAN together with two of its community members, Kasepuhan Cisitu from Banten and Kenegerian Kuntu from Riau, submitted a judicial review to challenge the constitutionality of article 1.6 and several other articles of The 1999 Law No.41 on Forestry to Constitutional Court in March 2012.

In his expert testimony before the constitutional court, the first author elaborated the two main mechanisms in pursuing the legal machination by which *masyarakat adat* are dispossessed. Firstly, people's land are categorized as State Land (*Tanah Negara*) or State Forest Zone (*Kawasan Hutan Negara*), this categorization is indeed a case of 'state-izing' customary communities' lands and territory (*negara-isasi tanah-tanah dan wilayah adat*). Secondly, through this categorization the ministers, governors, or district heads deploy their legal authority to allocate the land for business entities through license (*izin*). When the license holder decides to work on the ground, to transform their licenses become concession, they exclude forcefully people's actual access to the land by the help of bureaucracy and police, or sometime military, through the exercise of state "monopoly of violence and definitions of legality"<sup>21</sup>. Then, in its turn they start to change the land use to produce global commodity through a capitalistic mode of production, and deploy the State penal

<sup>20</sup> Ruwastuti, M. R., "Sesat Pikir" Politik Hukum Agraria, Membongkar Alas Penguasaan Negara atas Hak-hak Adat', Noer Fauzi (ed). Yogyakarta: Insist Press, KPA dan Pustaka Pelajar, 2000.

<sup>21</sup> Harvey, D., Note, p 145.

power to criminalize the existing peoples' access to their land, resource and territories in the area, which are already under the legal control of corporate entities. These tactics are often used to deny local people's land claims or to transfer control over land, natural resources and territories into the hands of these giant corporations for their projects/concessions. They also exclude local people from, or limit their access to, land, natural resources and territories (Rachman 2012).

The Constitutional Court Decision, MK 35/PUU-X/2012, which partially accepted the judicial review of Forestry Law No. 41 of 1999, is an important landmark in the struggle of indigenous people for the recognition of their rights, as it corrects the colonial living legacies of *domeinverklaring* by explicitly declaring that the indigenous forest is not state forest. The court decision is an embodiment of the aspiration of the founding fathers to maintain "... the ability and skill of the Indonesian nation in maintaining the traditional land rights systems, as demonstrated by the legal arrangement in 21,000 villages in Java, 700 Nagari in Minangkabau, the composition of the Negeri Sembilan in Malaya, as well as in Borneo, in the land of Bugis, in Ambon, in Minahasa, and so forth. The fundamental compositions of these structures are so powerful that it cannot be torn down by influence of Hindu, the influence of feudalism, and influence of the Europeans"<sup>22</sup>

<sup>22</sup> Yamin in Bahar, S., A.B. Kusuma, and N. Hudawati (eds), *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI), Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945–22 Agustus 1945*,

Thus the Constitutional Court has declared a "correction" for the status of indigenous peoples as "right bearing subject", the owners of customary territory. Constitutional Court ruling opens the possibility to change the route of the chronic, structural and widespread agrarian conflicts throughout Indonesian archipelago, and more than that opens the door for a variety of efforts to uncover discrimination against indigenous peoples. After the Constitutional Court's decision on case No. 35/PUU-X/2012, the biggest challenge now is to make potent ways that the erratum manifests in government institutional practices.

### **National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone**

Following the Ruling of the Constitutional Court No. 35/PUU-X/2012, various efforts made by AMAN constituents to ensure the immediate implementation of constitutional correction of state policy on the territorial rights of indigenous people in forest. The National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone is one part of the efforts to strengthen the argument and policy initiatives for accelerating the implementation of the mandate of the Constitutional Court Ruling and structural resolution of agrarian conflict. The prime cause is a lack of legal certainty and full recognition of the indigenous people rights and territory in the forest area by the state, which generates structural agrarian conflicts in forest areas and requires fundamental change of the political

Edisi III, Jakarta: Sekretariat Negara Republik Indonesia, 1995.

paradigm on natural resources management, as well as national policies reform related to the management of natural and agrarian resources.

The National Inquiry is a breakthrough methodology for approaching the issue of human rights violations and formulating policy recommendations. The inquiry is very important because it becomes a way to approach and contribute to the settlement of complexity of the dispossession of indigenous people in Indonesia. It is an exclusive tool of the Human Rights Commission to examine systemic human rights violations in the midst of the Ministry of Forestry denial and reluctance to implement the Constitutional Court ruling. It was conducted as part of the activities to fulfill the mandate of the Commission in a transparent way and involving the public, and includes public evidence of witnesses and experts, and directed toward the investigation of a systemic pattern of human rights violations and the identification of recommendations for solving the violations. AMAN and the indigenous people movement constituents fully supported the National Inquiry, where AMAN was actively involved in this process, especially providing data, and together with other civil society organizations conducted extensive research.

The inquiry included data and information gathering, study and examination of cases, public hearings and dialogues with government and company officials. The Inquiry involved public hearing held openly in seven regions (Sumatra, Java, Bali, Nusa Tenggara, Sulawesi, Kalimantan, Maluku and Papua) presenting more than 40 (forty) cases related to plantation companies, forestry companies,

and conservation areas. The cases revealed the expulsions, restrictions on access, discrimination, violence due to the criminalization of indigenous territories.

The findings from the series of regional public hearings showed individual and collective human rights violations against indigenous peoples, with indigenous women and children in the most vulnerable position. The problems were wide-ranging and often unresolved, including but not limited to: unclear and overlooked boundaries of indigenous peoples' territories; overlapping licenses; manipulation of licenses by the government and companies; unresolved legal cases brought against defendants for various forms of violence against, criminalization and systematic crimes against indigenous peoples; the bias and consolidated use of military and private security guards by corporations; and a lack of just, thorough and multi sector conflict resolution. The Commission's conclusions also noted that all cases also contained significant internal conflicts fostered by companies and governments in order to take advantage of community divisions.

### **Mobilization at Multiple Scales**

In addition to examples of AMAN's roles in the two examples of counter-hegemonic indigenous legal maneuvering presented above, the localized struggles of indigenous communities and indigenous organizations that are members of AMAN are increasingly involved in land reclaiming, either by reoccupation and other direct confrontation and negotiation actions with regard to contested land and natural resources with business entities production and conservation authorities. For many consti-

tments of indigenous movements who are mostly residing in remote regions, AMAN helps them to ensure their struggles against expropriation of their lands and territory expand beyond the border of their villages to reach the district offices, even Jakarta. Through these agrarian conflicts, AMAN members develop their repertoires in

indigenous mobilizations (strategy, organization and tactics) in confronting the concessionaires, local and central bureaucracies supporting those concessionaires, the security apparatus (official and unofficial ones) guarding the concessions, and the rent-seekers involved in this cycles of structural agrarian conflict.

#### **40 Cases by the National Inquiry the Indigenous Peoples' Rights on their Territories in the Forest Zone**

No	Affected Groups	Location	Key Actor of Dispossession	Concession Sector
1.	KaronsieDongi	South Sulawesi	PT International Nickel Indonesia (INCO) Tbk	Nickel Mining
2.	Mattekkoi	South Sulawesi	PT AdimitraPinusUtama	Pine Trees Extraction
3.	BarambangKatute	South Sulawesi	PT. Galena SumberUtama	Gold Mining
4.	Sedoa	Central Sulawesi	Lore Lindu National Park	Conservation
5.	Tau TaaWana	Central Sulawesi	PT KurniaLuwukSejati	Palm Oil Plantation
6.	Pandumaan&Sipituhuta	North Sumatera	PT Toba Pulp Lestari, Tbk	Pulp Production
7.	Margo Semende	Bengkulu	Bukit Barisan Selatan National Park	Conservation
8.	Margo Bathin Bahar	Jambi	PT Asiatic Persada; PT. MajuPerkasaSawit (MPS); PT. Jammer Tulen.	Palm Oil Plantation
9.	MukimLango	Aceh	PT. Raja Garuda Mas	Logging
10.	TalangMamak	Riau	PT. Selantai Agro Lestari;	Palm Oil Plantation
11.	MargaBelimbing	Lampung	PT. AdhiniagaKreasinusa;	
12.	IbanSemunying Jaya	West Kalimantan	PT. Ledo Lestari	Palm Oil Plantation
13.	Batulasung (DayakMeratus)	South Kalimantan	PT. Kodeco Timber;	
14.	Nanga Siyai	West Kalimantan	Bukit Baka Bukit Raya National Park;	Conservation
15.	DayakBenuaq-KampungMuara Tae	West Kalimantan	PT. Borneo Surya Mining Jaya; PT. MunteWaniq Jaya Perkasa;	Palm Oil Plantation

16.	JanahJari(DayakMaanyan)	Central Kalimantan	PT. SendabiIndah Lestari.	Rubber Plantation
17.	PunanDulau	North Kalimantan	PT. Intracawood Manufacturing;	Logging
18.	Citorek	Banten	GunungHalimun-Salak National Park	Conservation
19.	Karang			
20.	Cibedug			
21.	Cirompang	Banten	GunungHalimun-Salak National Park	Conservation
22.	Cisitu			
23.	Ciptagelar	West Java		
24.	Aru	Maluku	PT. Menara Group.	Sugar Plantation
25.	NegeriTananahu	Maluku	PTPN XIV	Plantation
26.	PulauRomang	Maluku	PT. Gemala Borneo Utama.	Gold Mining
27.	Sawai	North Maluku	PT. Weda Bay Nickel.	Nickel Mining
28.	Pagu	North Maluku	PT. Nusa Halmahera Minerals	
29.	TobeloDalam	North Maluku	AketajaweLolobata National Park	Conservation
30.	Pekasa	West Nusa Tenggara	Minister of Forestry & Environmental Affairs	Conservation
31.	Talonang	West Nusa Tenggara	PT. Pulau Sumbawa Agra.	Perkebunan Tanaman Sisal
32.	CekBocekSelesekReenSury	West Nusa Tenggara	PT NewmontNusaTenggara	Mining
33.	Golo Lebo	East Nusa Tenggara	PT. ManggaraiManganise.	Mangan Mining
34.	Colol	East Nusa Tenggara	Minister of Forestry & Environmental Affairs	Conservation
35.	Tanah Sembahulun	West Nusa Tenggara	Rinjani National Park	Conservation
36.	Daiget (Arso)	Papua	PTPN II	Palm Oil Plantation
37.	Wolani, Mee&Moni	Papua	PT. MadinahQurrata'ain; CV. Komputer; PT. Martna Mining;	Gold Mining
38.	Yerisiam	Papua	PT. NabireBaru; PT Sari WamaAdi Perkasa; . Sari WamaUnggulMandiri.	Palm Oil Plantation; Logging

39	Malind	Papua	PT. Selaras Inti Semesta; PT. DonginPrabhawa; PT. CendrawasihJayaMandiri.	Logging; Palm Oil Plantation
40	Wondama	West Papua	PT. Dharma MuktiPersada	Logging

**Source:** Komisi Nasional Hak-hak Asasi Manusia, *Inkuiri Nasional Hak-hak Masyarakat Adat atas Wilayahnya di Kawasan Hutan*. Jakarta: Komnas HAM 2015.

With more than 200 community members, 20 provincial regional branches, and 81 district offices spread throughout the Indonesian archipelago, AMAN is in good position to “mobilize at multiple scales, targeting laws and institutions of state power at the same time as organizing the grassroots” (Peluso, Afiff, Rachman 2008: 377). The legal victory at national level inspired *masyarakat adat* movement constituents to accelerate campaign for local regulation at the district level on recognition of indigenous peoples rights over their territories, such as in Bulukumba District, South Sulawesi and in Malinau District in East Kalimantan.

At the grassroots level, in responding to Constitutional Court Ruling on *hutan adat*, *masyarakat adat* across the Indonesian archipelago initiated self-implementing actions through *plangisasi*, a colloquial term for placing a placard or banner up, in their respective indigenous territories, both in the production forest and conservation areas. For example, those installed by residents Pandumaan-Sipituhuta in HumbangHasundutan Regency, North Sumatra: “Announcement: Traditional Forest of Pandumaan and Sipituhutais no longer under State Forest!” AMAN members also conducted participatory counter mapping in their respective customary territories which in many cases have been granted by the state as concession areas for extractive

industries. The customary groups in Muara Tae, East Kalimantan, planted trees in palm oil plantation as the counter-conduct to reclaim their *hutan adat* which have been deteriorated by the plantation companies. In Pattalassang, Gowa district, South Sulawesi, the *masyarakat adat* in that village agreed to require every newly-wed couple in that village to plant at least ten trees, not only to preserve their customary forest and territory as critical component of their means of production, but more importantly as an attempt to promote the resurgence of customary values and institutions within their community.

These examples demonstrate the struggles of the *masyarakat adat* to transform the spirit of recognitions of their rights, restoration of their citizenship and state deterritorialization, as reflected in the Constitutional Court Ruling, into organized collective actions to reclaim their lands and territories. In light of the massive capital expansion to rural frontiers for production of global commodities, such initiatives can be interpreted as part of the attempts to cope with the limits of recognition and distribution politics in the context of *masyarakat adat* movement against neoliberal state governance in Indonesia that tended to transform a political maneuver into technical measures, for instance the procedure to define the indigenous peoples criteria as the precondition of granting rights. In that

context, the counter-hegemonic legal maneuvering should be treated more as trigger for these localized initiatives to continue the resurgence of *masyarakat adat* sovereignty in generating counter living practices and system of knowledge and wisdom to the capitalistic modernizing socio-cultural imperatives promoted together with the massive capital impositions.

## CONCLUSION

The efficacy of the counter hegemonic legal maneuvering is attested by capacity to mobilize against continues dispossession of indigenous peoples at multiple scales to continue making bargaining power to pressure the state in fulfilling their rights. As demonstrated in above examples, the capacity to make strong national and international visibility is precipitated by the ongoing localized resistance by the customary groups affected by the massive expansion of capital to rural frontiers in Indonesia. At the same time the two modes of counter-hegemonic indigenous legal maneuvering discussed in this chapter national provide stronger platform for the grassroots local struggles in pressuring the local government to recognize their customary rights, as well enrich their strategies for direct actions.

The capacity of AMAN constituents to mobilize at multiple scales and arena prevent the tendency of elitist legal struggle which often pacify the resistance by making the constituents of the movement being occupied with the confusions of legalistic debates by integrating juridical action into broader

political mobilization. This has had a counter-hegemonic effect against the state-izing of indigenous people rights over land, resources and territory in Indonesia, by demonstrating the horrific impacts of living legacies of colonial legal infrastructure in the post-colony. The efficacy of legal struggles is very much depend on the capacity to connect with the grassroots mobilization by continuously promulgating the resurgence of indigeneity politics against the destructive impacts of corporatized state under the servitude of global capitalism, the indigenous movement constituents in Indonesia.

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