Status Quo of Protection and Rights of Indigenous Communities: A Review of Indonesia & Philippines.

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Competence, Equity, and Opportunity

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Abstract

The struggle of Indigenous People (IP) rights on international perspectives had been discussed since a long time ago. Progress has been made since early 2000s, including the official UN Declaration of the Rights of Indigenous People (DRIP). The statement took on the guideline of Free, Prior, Informed Consent (FPIC), ensuring IP completely mindful and ready to control their territories, customs, and etc. However, this significant change did not occur in several countries of the Southeast Asia region. The IP rights as citizens of their respective countries are still obscured, even though the Domestic Laws mentioned them. It caused the direct involvement of IP in decision-making processes remains questionable. This research aims to raise awareness of IP rights that are still inappropriately implemented. The method used is a qualitative method with literature and critical review approaches. This paper highlights the development of indigenous rights by comparing international laws and Southeast Asian domestic laws. The analysis aims to understand the relationship between IP law-making involvement and the protections of their existence in respective countries. This paper offers recommendations to the respective governments, local, and international organizations to improve the welfare of IP in Southeast Asia, especially in Indonesia and The Philippines.

Keywords: **Indigenous People, Indigenous Rights, Indonesia, The Philippines, Decision-making, Dmestic laws.**

Introduction

According to Cambridge Dictionary, the term "indigenous" means existing naturally or have always lived in a place; native.

The United Nations has not adopted a single official "definition" of Indigenous People yet due to the various diversity of indigenous communities. Instead, "Indigenous People" is a self-identification term. The United Nations stated that people and assemblies with historical continuity relations with pre-settler societies–who inhabited a country or region before different cultures or ethnic settlers came–use the term to identify themselves towards other communities. Indigenous people–shortened as IP–are the inheritors and key-holders of unique languages, cultures, knowledge, beliefs, and practitioners of invaluable knowledge for the sustainable management of natural resources practices.

The long-awaited international recognition of IP's rights had not arrived until the major campaigns regarding Free, Prior, and Informed Consent (FPIC) principles were issued. FPIC principles highlighted the importance of self-determination among IP as a fundamental basis for their involvement in decision-making processes about all the matters related to their existence and affecting their lives (FAO, 2021). FPIC consists of: 'free' means that any activities made by external stakeholders should earn the voluntary consent of Indigenous People without any pressure or threat; the consent should all be issued 'prior' to any Indigenous areas; the complete information regarding the scope and impacts of the activities should also be fully 'informed', without any manipulation towards the affected Indigenous communities; all concerns should result in the 'consent' from Indigenous people, whether the activities will impact them positively or negatively. Therefore, external stakeholders should respect IP's decision to give in or withhold consent (Earthworks, 2021).

Shortly, FPIC functioned as a requirement to consult and seek the Indigenous People' agreement towards any activities that might affect their lives, enabling them to practice their rights to participate in the decision-making process (Buxton & Wilson, 2013). FPIC has finally been established and adopted in several international laws, such as ILO Convention 169 on Indigenous and Tribal People in 1989 and the UN Declaration on the Rights of Indigenous People in 2007 (O'Faircheallaigh, 2012).

On June 27th of 1989, the International Labour Organization held a massive conference that resulted in the most advanced international treaty addressing the advancement of Indigenous people' rights (The Office of the High Commissioner for Human Rights, 2021). This treaty is now known as the International Labour Convention (ILO) on the Rights of Indigenous and Tribal People in Independent Countries, No. 169. In addition, the United Nations (UN) also decided to adopt the FPIC principle into an international declaration. On September 13th 2007, the UN successfully held the General Assembly that resulted in the United Nations Declaration on the Rights of Indigenous People (UNDRIP). The Declaration emphasizes the fundamental rights of IP within the framework of the general principle or right to self-determination, including the explicitly-stated right to FPIC, and others (The Office of the High Commissioner for Human Rights, 2021). This Declaration adopted FPIC principles, which are visible in Article 18 and 19.

Introduction

Based on the two primary international laws above, it is clear that international law has acknowledged IP rights. However, implementing self-determined decision-making processes and FPIC principles is considered heavy in several regions, including Southeast Asia.

As we learn from international perspectives, there might be a relation between the involvement of the law-making with the rights and protections of their existence in their own respective countries. Even if the Indigenous laws have been established evenly in Southeast Asian countries, such as Indonesia and the Philippines, the actual on-field practices of said protocols and IP's involvement in the domestic law-making process remain obscure. The unclear involvement might be harmful to the rights and protections of IP lives in their own country.

This paper highlights the development of indigenous rights, comparing International Indigenous Laws and Southeast Asian domestic laws and actual cases from several Southeast Asian countries. The analyzed study case is only limited to Indonesia and the Philippines, since based on the Human Rights Watch & The Alliance of Indigenous Peoples of the Archipelago (AMAN) Report (2019), both countries have not ratified ILO Conventions of IP's Rights and have a weak implementation of IP Rights. The researchers analyzed the relation between the involvement of law-making with the rights and protections of IP's existence in their own respective countries.

Methodology

The method used in this study is a qualitative method. The data was gathered from relevant documents such as laws, reports, and article journals.

The data is being analyzed and compared to evaluate the problem and to suggest solutions In detail, the literature review is done by collecting, comparing, and analyzing data between international laws and domestic laws regarding indigenous people through the International Laws perspectives. Meanwhile, a critical review is used to evaluate the implementation of IP's rights, including the direct involvement in domestic law-making processes regarding them based on the International Laws Perspectives, specifically in Indonesia and The Philippines. This paper only focuses on the direct participation of IP in Indonesia and The Philippines in the decision-making process of the domestic laws as one of the IP rights as stated in International Standards by United Nations (UN) and International Labour Organization (ILO).

Objective of the Study

Our study aim is to examine the status quo of the indigenous communities with a focus on the following:

To understand the status and rights of Indigenous People based on international law context and its development through the years.

To understand the status and rights of Indigenous People on their respective countries' domestic law in the Southeast Asia region.

To compare the domestic law of Indigenous People in several Southeast Asia countries and the international law.

To perceive the involvement of Indigenous People during decision-making processes of Domestic Law and its implementation in several Southeast Asia countries.

ASEAN & Indigenous People

This segment discusses the current status of the indigenous people in the context of international domain

Rise and fall of Indigenous People movement

The fight of IP for deserved recognition was not all the same within every part of the world. Numerous past studies highlight the rise and continuation of Indigenous movements in various formats and tactics. Asia region, being an enormous home for approximately 250 million self-identified indigenous people–about two-thirds of the world's indigenous population (AIPP, 2014), also struggled on the same matter to protect themselves. Naturally occupied by earth's mighty resources in their ancestral lands and territories, it is inevitable that Asian Indigenous communities are faced with assault, attack, even militarization from particular corrupted parties in order to gain exploitative profits.

Currently, Indigenous movements have incorporated the use of technology and social media to raise their voice. The initial trigger of Indigenous activism development started in the early 1970s. There are significant changes in industrialization practices, yet indigenous consent of projects affecting their lands, resources, and properties remain overlooked. This led to IP attempts on amplifying said matter until it reached the eye of international laws. The principle behind Indigenous activism is the Free, Prior, and Informed Consent (FPIC). Its establishment sparked Indigenous rights legal recognition and validation, with ILO and UN adopting FPIC into their legal implementation.

FPIC implementation in ILO can be found within the ILO Convention 169 on Indigenous and Tribal People, as the result of the ILO monumental conference on June 27th 1989, was ratified by more than 170 countries (OHCHR, 2021). Similar adoption can be found in the 2007 United Nations Declaration on the Rights of Indigenous People (UNDRIP). With the exception of Indonesia and The Philippines, almost all ASEAN countries have ratified ILO 69 and UNDRIP, though its implementation is not always transparent (AIPP & RRI, 2020).

ILO Convention of Indigenous People Rights

This Convention affirms articles regarding consultation and participation which are based on FPIC principles, such as Article (2), (6), and (7). Article (2) emphasized on the Government's responsibility regarding Indigenous consent, "Governments shall have the responsibility for developing, with the participation of the people concerned, co-ordinated, and systematic action to protect the rights of these people and to guarantee respect for their integrity" (ILO No.169).

Article (6) focused on the consultation, consideration, and participation of IP through appropriate procedures and equal participants from other parties at all levels of decision-making for any policies and programmes involving them. Meanwhile, Article (7) addressed IP rights to sort their priorities for policies and programmes from the national or regional development plans that directly affect them (International Labour Organization, 1989).

UN Declaration

FPIC Principle that being adopted by the UN Declaration on The Rights of Indigenous People (20007) can be notified in Article 18, "Indigenous people have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions." and Article 19:

"States shall consult and cooperate in good faith with the indigenous people concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them" (United Nation, 2007).

ASEAN & Indigenous People

This segment discusses the current status of the indigenous people in the context of domestic law of Indonesia and Philippines.

Indonesia: Indigenous People Bill, Sectoral Laws, and Regional Regulations.

The recognition and acknowledgement of Indigenous People in Indonesia has been stated in the 1945 Constitution of the Republic of Indonesia, Article 18B Paragraph (2) and Article 28I Paragraph (3) after The 2nd Amendment of the Constitution in 2000. Satriastanti (2020) stated that the constitution acknowledged IP–addressed as Masyarakat Hukum Adat (Customary Law Communities)'s traditional existence and way of life:

"The state shall recognize and respect customary law communities units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which shall be regulated by laws." (1945 Constitution of the Republic of Indonesia).

As well as stated in Article 28I Paragraph (3), "The cultural identity and rights of traditional communities shall be respected in line with the times and civilizations." These articles are the legal basis for the 2012 Constitutional Court Decision No. 35 stipulating that customary forests, which is the IP home, are no longer part of state forests but part of the private forest (Virgy et al., 2021). This brought IP one step closer to the rights they are fighting for.

Later, President Joko Widodo had issued the Indigenous People Bill back to the discussion of the House of Representatives. In 2013, the draft of the Bill started to be arranged (Sastriastanti, 2020). In this draft, IP addressed as Masyarakat Adat. The bill (Dewan Perwakilan Rakyat Republik Indonesia, 2017) is supposed to regulate the rights of IP, such as acknowledgement, protection, and empowerment based on participation, justice, gender equality, transparency, humanity, national interest, conformity, also preservation and sustainability of environmental functions. Unfortunately, the bill has not been ratified yet.

The bill is in debate between investment or development and the socio-cultural rights of IP, including the protection of customary rights. According to official news from Setjen DPR RI (2021), The Chairman of the Working Committee for the Bill on Indigenous People, Willy Aditya, said "this bill was never ratified due to the lack of political will, both from the president and the House of Representative". Whereas it seems the existence of the Indigenous will become an obstacle to development and investment. In practice, it is reported that big corporations were worried about the bill due to the land grabbing of customary land that has occurred by certain companies (Wardah, 2021).

ASEAN & Indigenous People

However, more than 14 national sectoral laws provide equal guarantees of acknowledgement towards IP's customary rights to land and forest (Thontowi, 2013). As example, Basic Regulations on Agrarian Principles No. 5 of 1960, regulates "the ownership of land, water, and resources used under Indonesian territories can be given to the Indigenous Community if the customary rights implementation is in-line to the interests of national and State". Other examples are the Water Resources Law No.7 of 2004, stipulates the rights of water resources used for IP, and Forestry Law No. 41 of 1999, which explicitly mentions the IP's way of life as an element of their law.

The absence of legal affirmation at the national level causing difficulties on Indigenous rights recognition. It led to the establishment of regional regulation regarding IP, which is needed to establish local laws within the local jurisdiction to enable their rights for lands and forests (Department of Economic and Social Affairs Indigenous People of the United Nations, 2021). 109 Customary Regional Regulations exist in 27 provinces in Indonesia regarding the acknowledgement of IP and their customary rights (Thontowi, 2013).

Even though the constitutional base and regional regulations have existed, the fate of IP communities has not gone through any significant changes. The acknowledgement of IP as stipulated in the Constitution has not been implemented. The legal position of IP remains unclear as they are considered non-legal subjects. IP do not have the authority to control a property nor litigate in court, which costs them an inability to obtain their Constitutional rights (Thontowi, 2013).

ASEAN & Indigenous People

The Philippines: The 1987 Constitution & Republic Act No. 8371.

Among 85 million people in the Philippines, Indigenous population makes up 15% of it. Currently, there are 172 sociolinguistic groups with various quantities of population (Hirtz, 2003). Despite the vast population of IP, The Philippines relies on one policy regarding Indigenous rights, the Republic Act No. 8731 or Indigenous People Rights Act (IPRA). It was established in 1997 by the government. However, The Constitution dictate an article that featured IP or Indigenous Cultural Communities (ICCs) and their position way before IPRA's establishment. The 1987 Constitution of The Philippine State Section 22 of Article II stated, "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

Ten years later, The IPRA law was established to enhance IP recognition and it quickly became the staple cornerstone of The Philippines' Indigenous policy. It recognized Indigenous rights to maintain and protect their ancestral lands, with the providence of Certificate of Ancestral Domain Titles (CADT) for every domain registered. The law would collectively give the jurisdiction of each registered domain to the National Commission on Indigenous People (NCIP).

The IPRA law would approve the issuance of CADT if the domain passed every criteria. To be approved, the respective communities must submit proofs such as perimeter map and Ancestral Domain Sustainable Protection Plan (ADSPP) through NCIP (De Vera, 2007). This was established in the late 1990s and it has proven The Philippines' advancement on IP's rights.

However, the IPRA law had faced difficulties since its formation, one of which was caused by the lack of proper skills and resources on NCIP. As a vital part of IP relationship towards the government, this obstacle caused an undistributed providence to the IP sectors. The CADT issuance was targeted to hit the minimum 100 domain titles by 2002, but it failed because NCIP did not issue any CADT. Moreover, NCIP approved a remarkable number of mining applications and issued community consent for each with no information transferred to IPs. Despite its problems, The Republic Act No. 8371 remains the domestic administrative law to manage IP's rights. Since 2002, NCIP has issued 18 administrative orders. The latest issued administrative orders, Administrative Order No. 01 series of 2020, addressed the 'Rules on Delineation and Recognition of Ancestral Domains and Ancestral Lands' and other processes (National Commission on Indigenous People Republic of The Philippines, n.d).

Comparative Analysis

The Comparison of Indigenous Domestic Law and International Law in Indonesia and The Philippines.

Indonesia

There are some articles on the draft bill (Dewan Perwakilan Rakyat Republik Indonesia, 2017) stating the process of IP acknowledgement, its requirement to be recognized by the state and involvement on decision-making process, such as Article 21, "Concerning the rights to traditional territories stated that the Indigenous people have the right to participate in determining the planning, development and sustainable use of their ancestral territories under local wisdom." and Article 25:

"(1) concerning the development rights stated that the Indigenous People have the right to participate in the development program of the Regional Government in their Customary Territory from the planning, implementation, up to control stages.

(2) Indigenous People have the right to obtain information regarding development plans to be implemented in the Indigenous Territory by the Regional Government and/or other parties, which will impact territorial integrity, preservation of natural resources, culture, and customary government system.

(3) Indigenous People have the right to refuse or submit proposals for changes to the development plan implemented in Indigenous Territories based on the agreement.

(4) Indigenous People have the right to propose other developments in line with the aspirations and needs of the Indigenous Territory concerned by mutual agreement." (Indigenous People Draft Bill by Dewan Perwakilan Rakyat Republik Indonesia, 2017).

The Philippines

The State Constitution of 1987 highlighted ICC's position only within the national framework. The ICCs' involvement is stated later on Section 2 of the Republic Act No. 8371 entitled Declaration of State Policies, as stated below:

"The State shall take measures, with the participation of the ICCs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population." (IPRA, 1997).

It also emphasized ICCs right to self-governance, implying participation in their own social, cultural, economic growth, and development within domestic decision-making processes that affect their lands and resources. It is stated on Section 16, Chapter IV of IPRA, entitled Right to Self-Governance and Empowerment:

"ICCs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives, and destinies through procedures determined by them as well as to maintain and develop their indigenous political structures. Consequently, the State shall ensure that the ICCs shall be given mandatory representation in policy-making bodies and other local legislative councils."

Any decisions that affect IP rights should be made with considerations from ICCs representatives. The IPRA also stated that ICCs should also be mandatorily involved in policy-making bodies, which are assumed to be on a national level. On paper, it is believed that the Philippines' IP have had the keystone to ensure their rights to be heard and recognized.

Comparative Analysis

The Comparison of Indigenous Domestic Law and International Law in Indonesia and The Philippines.

Indonesia

Since the bill has not been ratified, the available IP laws come from regional or local law. As example, the Local Regulation of Bengkayang Regency No.4 of 2019 concerning Recognition and Protection of Bengkayang Regency Customary Law Communities. With this regulation, the regency government recognizes and protects the IP Community in Bengkayang Regency based on human rights principles, including participation (Local Regulation of Bengkayang Regency No.4 of 2019). The participation principle shows through Article 16 concerning development rights and Article 19 concerning environmental rights.

These articles stated that IP and Tribal Communities could participate in extending development in line with their local needs and wisdom, discussion regarding socio-economic and political development, and environmental management and protection. They have the right to obtain complete and accurate information regarding the development program from the local government, business, and other parties outside the IP Community, which will impact the IP's land, territories, and resources. The IP has the right to reject program development that is against their local wisdom.

However, the substance of each Regional Regulation regarding IP acknowledgement and rights might be different depending on the situation of respective regional governments.

Involvement in Decisions

This segment will dive into the real level of involvement of indigenous communities in decision making in the legal domain in Indonesia and Philippines.

Based on the international perspective, two articles from Indonesia's IP bill draft concerning their involvement in the decision-making process of development and land use are in line with the articles of ILO Convention and UN Declaration. The two articles affirm IP's right to be involved in the decision-making process in the development and land use process that affect their lives, from planning and implementation stage to monitoring stages aligned with the international laws stated above.

In contrast, the implementation of the FPIC principle is still not as firm as it should have been. The principle of participation stated on the draft bill means full and effective participation of IP in all stages of development, turning them as the decisive party in making decisions on all programs in their area. However, there are no articles of IP involvement in the policy-making, such as laws and regulations related to their lives. Additionally, the articles regarding the consequences of violating IP's rights to be involved in the decision-making or the lack of implementation of FPIC cannot be found.

According to the Madani Report (2021), IP involvement in the bill drafting discussion was insufficient. The various consultations held so far, including during the Covid-19 pandemic, were considered as "tokenistic" or Pseudo-Participation. Many essential inputs from IP organizations, communities, civilians, and academics were not accommodated in the draft bill, even though it has been issued many times (Virgy et al., 2021). Therefore, several issues arise in the discussion of the bill substances.

Involvement in Decisions

First, the differences in terms and elements in the definition of IP in national sectoral laws and regional laws. Second, the recognition mechanism of IP is considered political and complicated since there is no guarantee that the government would acknowledge them if the ad hoc committee disapproves.

Although numerous protests have been done, there is still no clarity when the bill will be ratified. The ratification process is considered slow, although some Regional Governments already made the regulations based on articles from the bill.

The Bengkayang Regional Regulation implying the involvement of IP in the decision-making process focused on the development process in the areas, is in line with the ILO Convention and UN Declaration. Furthermore, the regulation emphasizes the principle of "participation" by defining that each member of the Indigenous communities is encouraged to play an active role in the development planning, natural resource management, and policy-making process related to them. The regulation has been more firm on adopting the FPIC Principle by precisely stating that the IP have the right to obtain information about the development programs, planning, and environmental management and protection. They also have the right to approve or object to the development programmes and the joint decision-making mechanism through discussion to determine other parties' utilization of the customary lands.

Meanwhile, in the Philippines, IP is supposedly protected and ensured by the legislative policy to be involved in decision-making processes. One of the latest testimonials came within the United Nations General Assembly of Third Committee, which was held on October 13th 2017, in response to the Special Rapporteur Report of The Human Council on the rights of IP. The Philippines' representative attending, Therese R. Cantada, stated the Constitution guaranteed IP's rights protection. She emphasized it with some examples of occurring programs related to relevant ICCs, including the Indigenous People Education Programme or IPEd (United Nations, 2017). The programme was initiated by the Department of Education (DepEd) to preserve the younger generation of IP Communities of The Philippines regarding indigenous aspects established in the country, as well as initiating the sustainability of the Indigenous principle.

This programme did implement the ICC's involvement in the decision-making process, including the policy and the learning curriculum of the programme. However, it differs from the implementation form of The Philippines and Indonesia since The Philippines' IP involvement revolves around decision-making processes outside legislative laws. Apart from that, The Philippines did hold strong onto the IPRA as their cornerstone for Indigenous laws (DepEd, 2021). This implies that the regulation has a strong stance in prioritizing the FPIC principle. What is left now is to see how the implementation of the domestic laws has been discussed.

Case Study

There are two separate case studies, one each dwelling into the ecosystem of Indonesia and Philippines to better understand the extent, guarantee and implementation of protective legislation for the indigenous communities.

Indonesia

In Indonesia, the business overlapping the IP rights comes from the palm oil sector. For years, there has been an ongoing dispute between the Iban Semunying Dayak Community–the IP Community inhabiting the Customary Forest of Bengkayang Regency–against PT Ledo Lestari, an Indonesian oil palm plantation company. Around 8000 hectares of land, including 1420 ha of Customary Forest, have been evicted and planted with oil palm plantations by PT Ledo Lestari (Human Rights Watch & The Alliance of Indigenous Peoples of the Archipelago, 2019). Since the operation began in 2004, around 93 households of Iban Dayak Community inhabited the area claiming that the company did not consult them beforehand. No prior information about the development of oil palm plantations on their territories was ever given by the company or the government. It led to local protests, which resulted in the protesters being detained in prison.

The community has approached both local authorities in regency level to provisional level and NGOs to voice their concerns regarding the operations held by the company for years. They demand the restoration of their customary areas and forests that have been taken, cultivated, and controlled by the company without their approval as recognized by the regulations. In 2010, the discussion between the company and Iban Dayak Community was held to negotiate compensation and rehabilitation for the impacted families. The result was the relocation of dozens of families to 'company camps', while their forests and ancestral lands were taken over by the company. The community considered the compensation was inadequate compared to their losses and had not been fulfilled completely.

Based on the files of court verdicts found in the Supreme Court of the Republic of Indonesia Verdict Directory, 24 people from and on behalf of the Iban Dayak Semunying IP Community together have filed a lawsuit against PT. Ledo Lestari for their customary lands and forests since 2014 (Putusan PN Bengkayang-16 /Pdt.G/2014/Pn.bky, 2015). They went through three levels of court trials: a Court of Action in 2014 at Bengkayang District Court, a Court of Appeal in 2016 at Pontianak High Court, and a Court of Cassation in 2017 at Supreme Court.

Case Study: Indonesia

On the first trial, the Judge dismissed the lawsuit due to several reasons: first, The Plaintiffs do not have the capacity as Plaintiff because the land on the dispute is a shared land of the residents, those who can file a lawsuit are the whole residents of Semunying Jaya Village. Second, the plaintiffs' claim is deemed as vague because the lawsuit's argument does not have a clear legal basis and is considered to have insufficient evidence. Third, the Plaintiffs' appointment for their attorney is invalid; the appointment letter was not signed by the Chief of Village. Last, there are not enough parties to be drawn as defendants therefore the lawsuit filed is incomplete. As a final verdict, the Judge rejected the lawsuit on November 5th 2015. Therefore, the Iban Dayak Community got charged around 4 million rupiahs for court fees.

The second trial was attempted in a Court of Appealed level in 2016 (Putusan PT Pontianak 31/PDT/2016/PT PTK, 2016). The High Court accepted the appeal; therefore, the previous verdict is now invalid. In this trial, the whole lawsuit of the representative of Iban Dayak Community still got dismissed by the Judge. On the other hand, the defendants charged the court fees for Rp150.000,00 as a final verdict on May 31st 2016. However, this dismissal was based on the incapability of Iban Dayak Community to prove their legal acknowledgement as IP Community by the regional government and the State; the one-sided acknowledgement considered as invalid. They have to go through constitutional procedures, which are identification, verification, and validation steps for their existence to be legally acknowledged, protected and respected by the law.

Due to the absence of Regional Regulations acknowledging the existence of the Iban Dayak Community, the claimed Customary Forest will be owned by the State. Their incapability to prove their claim also affected the dismissal of the lawsuit. The forest area in dispute was stipulated as Forest Area Protected for Seed Source by Bengkayang Regent through the Regent's Decision No. 30A of 2010. Even if the Iban Dayak Community has already been acknowledged, the process to claim their area as Custom Forest will take a longer time as it has to be stipulated by the Ministry of Forestry.

The Iban Dayak Community attempted a third trial through a Court of Cassation in 2016 (Putusan Mahkamah Agung 2305 K/PDT/2017, 2018). Even then, the final judgment held on November 27th 2017, still dismissed their claim and charged the court fees as much as Rp500.000,00 to Iban Dayak Semunying IP Community as the cassation petitioner. From 2014 to 2017, the Regency Government has not issued any regulations acknowledging the Iban Dayak Semunying Community as Customary Law Community or Indigenous People; therefore, the Indigenous People are losing their constitutional rights.

Even after Local Regulation of Bengkayang Regency No.4 ratification in 2019 concerning Recognition and Protection of Bengkayang Regency Customary Law Communities, the Iban Dayak Community are still asking for the recovery and fulfillment of their rights. Through the press release of Joint Resolution of IP and Local Communities Rights in the Kalimantan Border Area on October 24th 2020–held by Indonesia Forum for Environment, more known as WALHI–they requested.

Case Study: Indonesia

The National Human Rights Commission to help solve this and other cases in the border areas. They also demand a National Inquiry to investigate and evaluate the actual condition regarding human rights of the IP Communities in Kalimantan border areas.

Case Study: Philippines

The development of IP involvement in the decision-making process is seen throughout the government programs. One of the programs, stated in the previous section, is the Indigenous People Education Programme (IPEd). IPEd was established by the Department of Education through DepEd Order No. 62 S. 2011, "Adopting The National Indigenous People Education Policy Framework". The policy was made in consultation with the ICCs representative. As a programme made for the Indigenous youth, it is only fitting that IP representatives are also involved in the decision-making process as stated in the following:
"IP education interventions are to be developed and implemented in consultations and cooperation with IP concerned to address and incorporate their special needs, histories, identities, languages, knowledge and other aspects of their culture as well as their social, economic and cultural priorities and aspirations." (Department of Education, 2011).

The addressed policy and implemented curriculum for IP needs had proven the government's efforts to conjoint Indigenous communities into the learning process since the earliest stage. The framework underlined IP conception for their respective ICCs with cultural and ancestral knowledge. This curriculum erases the discrimination and intervention that mainly happened in public school towards Indigenous youth, since the curriculum had ensured the eligibility of teachers in this programme (Ganal, 2017). Though it has been suggested that this curriculum might be the best solution to the youth of ICCs in educational terms.

Case Study: Philippines

Despite the success of IPEd, backed by support and consent of ICCs representatives, the curriculum content and planning failed to involve IP Communities actively (Villaplaza, 2017). It is likely due to the failure of language as a tool for the learning process. The used language was unrecognized by the curriculum. This problem is proven by the report made on Agusan del Sur Province (2016), which stated the involvement of IP in the schools during the learning days became very minimal and inactive. It was also caused by the lack of appropriate training for teachers and adequate materials of indigenous knowledge.

Looking back, IP involvement in the designing process of the IPEd curriculum was non-transparent. It is unclear whether the input of IPs is taken into consideration as a whole or only several parts matching the initial design of the framework. In conclusion, several efforts were made by DepEd to enhance Indigenous education in ICCs throughout the country. However, these efforts were not followed by the accessibility for IP to participate actively in the learning process due to the lack of clarity regarding the actual involvement of IP in curriculum development. Eventually, Agusan del Sur's IPEd was successfully implemented, although without IP involvement in the learning process.

Comparing the two cases, the obstacles are rooted in the unclarity of IP involvement during the decision-making processes. In the study case of Indonesia, even after the local regulations recognized their existence and rights, filing complaints to the government, and approaching NGOs to voice their complaints and opinions regarding the land use by palm oil companies and its impact on their livelihood, environment, and cultures. IP involvement in the decision-making process and their rights to FPIC regarding their changing land use and effects stood ignored and violated.

Meanwhile, in the study case of The Philippines, the government implemented the Philippines' education programme for ICCs. However, the lack of transparency regarding the actual involvement of Indigenous People behind the curriculum development leads to significant problems occurring on-site. Though this problem is considered mild compared to the previous case, it is still rooted from the same problem. Therefore, the difference in the consent of IP Communities between the two cases lies with whom the programs benefit. The second study case centered around the programs made for the benefit of both parties (DepEd and ICCs of The Philippines), while the first study case heavily exploited one party (the Iban Dayak Semunying Indigenous Community).

Conclusion & Recommendations

Indigenous People rights and involvement in decision making processes, both in Indonesia and The Philippines, are still a recurring issue to this date. Despite its ever-present fundamentality of Indigenous People rights and existence in international law perspective, both countries have not ratified ILO Convention No. 169. Moreover, the implementation of the FPIC principle in both countries is still inadequate. This leads to unfair treatment in domestic law-making processes in both countries, resulting in misconducts made by irresponsible stakeholders by taking up Indigenous lands, forests, and resources.

In Indonesia, the absence of national law concerning the IP rights resulted in regional governments to issue local laws regarding IP. Otherwise, in The Philippines, the involvement of IP is stated explicitly at the national level through The State Constitution of 1987. However, the actual implementation and IP involvement is not evenly distributed.

Therefore, there needs to be a sustainable solution for the aforementioned problem. To achieve this, each country should produce a joint collaboration between the national government, the NGOs, the Indigenous People representatives, and other stakeholders such as academics and youth.

Conclusion & Recommendations

The authors put forward these general Recommendations for both Indonesia and The Philippines

Both national governments should ratify ILO Convention No. 169 as soon as possible:

- As the only comprehensive international binding instrument specifically concerning the recognition and rights of indigenous and tribal people that is open for ratification, there are only 24 countries that have ratified it by 2021 so far. Concerning Indonesia and The Philippines have yet to approve ILO Convention No. 169, it is highly recommended that both countries ratify the convention as soon as possible and then implement it. By this move, both countries show their solidarity and commitment towards protecting IP and tribal communities. It is worth noting that these groups have a crucial role in achieving Sustainable Development Goals (SDGs)–specifically SDGs No. 10 (reduction of inequalities) and No. 16 (peace, justice, and strong institutions); therefore, it could solidify the country's commitment to achieving SDGs (International Labour Organization, 2021).

The governments should recognize Indigenous People' rights at the national level through collaboration with IP communities and advocacies:

- In collaboration with IP advocacy organizations, the government should thoroughly educate the stakeholders regarding the rights of IP through UNDRIP, ILO Convention No. 169, and FPIC principles bound by the law. Must there still be misconduct made by the stakeholders, punishments shall be issued to responsible stakeholders through judicial actions, under the laws in each country and international IP laws (UNDRIP & ILO Convention No. 169).
- The government should ensure the implementation of UNDRIP, ILO Convention No. 169, and FPIC by the government to the IP through communication, discussion on law or decision-making processes. This will result in IP's fair participation and inclusivity in officials and successful planning to implementation of the development programs.
- All of the stakeholders should promote and raise awareness of IP rights and recognition in line with the UNDRIP, ILO Convention No. 169, and FPIC to the general public.

Both the government and IP communities should work hard to strengthen their relationship in any context that matters to the continuity of respective IP communities.

Conclusion & Recommendations

The authors have also put forward some specific recommendations for both countries respectively.

Indonesia

Revising the recognition process mechanism in Indigenous People Bill and ratifying the Indigenous People Bill. The verification and identification process should have been more simple and referenced the UN identifier of IP. As been recommended by Aliansi Masyarakat Adat Nusantara (The Alliance of Indigenous People of the Archipelago, AMAN), to avoid the misconduct in the recognition process, an Indigenous People Commission (Komisi Masyarakat Adat) should be formed instead of having an ad hoc committee. The experts, such as anthropologists, could be included in the Commission as advisors or examiners to avoid biases. The IP who will get affected the most by the law once it is ratified should have been more involved in drafting the Bill.

As soon as the drafting process is completed and agreed by all parties, the government should ratify the Bill. It is recommended to ensure the Bill is in line with the International Laws such as UNDRIP, ILO Convention No. 169, and the FPIC principle to solidify the country's commitment. Passing the Bill would constitute the national law regarding IP rights and recognitions as a primary source for the local regulations regarding the lives and the rights of IP.

The Philippines

Implementing a collaborative project of IPEd (Indigenous People Education) curriculum with independent IP advocacy organizations. It will be better to implement this collaboration thoroughly on the IPEd project. Not only for supervision functions, but also to bridge local IP communities and educational institutions participating in the programme. With the support of IP advocacy organizations, the involvement of IP communities during the actual project implementation will be ensured and smoothly done.

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