

RELIGION AND LAND RIGHTS IN INDONESIAN INDIGENOUS – STATE RELATIONS (CASE STUDY OF *ORANG RIMBA* IN JAMBI)

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Abstract: This paper examines the contestation between religion and land rights in state and indigenous people's relations in Indonesia from the perspective of national and International Laws. This paper departs from the recent development of state recognition of customary law based on the Constitutional Court (MK) decision No. 35/2012 that state customary forest is not under the state forest. It explains the significance of advocating Freedom of Religion or Belief for forest conflict and reconsidering to encompassing the land rights as part of Religious Rights for Indigenous People in Indonesia. To build the argument, this paper initially discusses on the discourse on the land rights in Indonesia, which is divided into two main sub topic, namely, a brief discussion on human rights for indigenous peoples from the perspective of national and international law. Furthermore, this paper will describe case studies of *Orang Rimba* in Jambi that consist of the belief of their indigenous religion and the particular problem of conflict of land and forest. The paper argues that land and religion constitute a unity for indigenous peoples who adhere to belief. This means that if buildings and lands as spiritual and worship place disappeared then indigenous peoples will lose the rights to worship according to their beliefs. In fact, worship is a rights attached to every citizen who cannot be reduced (non-derogable rights) and should be protected and respected by

the state. In conclusion, this paper offers customary management in Indonesia through advocacy of freedom of religion or belief (FORB).

[Makalah ini mengkaji kontestasi antara agama dan hak atas tanah dalam hubungan negara dan masyarakat adat di Indonesia, dari perspektif hukum nasional dan internasional. Makalah ini berangkat dari perkembangan terkini pengakuan negara terhadap hukum adat berdasarkan putusan Mahkamah Konstitusi (MK) No. 35/2012 bahwa hutan adat negara tidak berada dalam kawasan hutan negara. Ini menjelaskan pentingnya mengadvokasi Kebebasan Beragama atau Berkeyakinan untuk konflik hutan dan mempertimbangkan kembali untuk memasukkan hak atas tanah sebagai bagian dari Hak Beragama bagi Masyarakat Adat di Indonesia. Untuk membangun argumentasi, makalah ini mula-mula akan membahas tentang wacana hak atas tanah di Indonesia yang terbagi dalam dua sub topik utama, yaitu pembahasan singkat tentang hak asasi manusia bagi masyarakat adat dari perspektif hukum nasional dan perspektif hukum internasional. Kemudian, tulisan ini akan memaparkan studi kasus terhadap Orang Rimba di Jambi yang meliputi paradigma agama leluhur dan dalam hubungannya dengan masalah konflik lahan dan hutan. Makalah ini berpendapat bahwa tanah dan agama merupakan satu kesatuan bagi masyarakat adat yang menganut agama kepercayaan. Artinya, jika bangunan dan tanah sebagai tempat sakral dan ibadah hilang maka masyarakat adat akan kehilangan hak untuk melakukan ritual seperti beribadah atau sembahyang sesuai dengan kepercayaan yang dianutnya. Padahal, beribadah merupakan hak yang melekat pada setiap warga negara yang tidak dapat dikurangi (Non-Derogable Rights) dan harus dilindungi dan dihormati oleh negara. Kesimpulannya, makalah ini menawarkan pengelolaan adat di Indonesia melalui advokasi kebebasan beragama atau berkeyakinan (KBB).]

Keywords: indigenous people, land rights, state, law.

Introduction

Indigeneity has become a key theme in local and international debates on land rights. It also often involves efforts to raise the rights of marginalized groups who have become victims of state policies and laws on land and the allocation of natural resources.¹ The struggle for land rights is one of the most complicated issues in the global world today. Land conflicts have involved competition between indigenous peoples or local farmers and state actors who have coalitions with companies. Local communities often become disadvantaged parties in this conflict, often losing guarantee for their land ownership.

In the study of indigenous people, land is not only an asset, but also a part of their social life. For them, land is an ancestral heritage that needs to be maintained. Lands are significant in their religious faith. In the term of accommodating indigenous rights, indeed religious claims of indigenous peoples must provide legal recognition, protection and accreditation. In the condition of indigenous peoples in Indonesia, many find that religious practices inherent in their lives are mostly related to their relationship to the land. For example, the customary law community in Kesepuhan Banten in the West Java-Banten region not only made the forest look for firewood, but also became the place where traditional ancestral rituals.² Another example is the Sunda Wiwitan people who believe that forests are part of their belief and religious practices. Thus, if land and buildings as a spiritual place and worship are lost, the Karuhun Sunda Wiwitan indigenous people lose their rights to worship.³ In fact, worship is an inherent rights for every citizen who cannot be reduced (non-derogable rights) and must be protected and respected by the State.

¹ C. L. Holder and J. J. Corntassel, "Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights," *Human Rights Quarterly*, 24.1 (2002), 141.

² Yossa A.P. Nainggolan, "Inkuiiri Nasional Komnas HAM Tentang Hak Masyarakat Hukum Adat atas Wilayahnya di Kawasan Hutan," *Wacana*, Vol. 2 No. 12 (2014), 4.

³ Zezen Zaenal Mutaqin, "Penghayat, Orthodoxy and the Legal Politics of the State," *Indonesia and the Malay World*, 42.122 (2014), 1–23. [<https://doi.org/10.1080/13639811.2014.870771>]

However, these practices face various pressures and challenges in the long story of the history of repression of forest community groups in Indonesia. When a sacred site is owned by a religious person or group of beliefs and customs, the protection itself becomes internal within the indigenous community. Conversely, if a site is privately owned by another person or private, then protection against the interests of believers will be limited and even absent.⁴

The problem of ownership of forest land as a property that has generated a lot of systemic impacts for indigenous peoples in Indonesia. Currently, this regulation shows progress with the realization of the decision of the Constitutional Court (MK) No. 35 / PUU-X / 2012 (abbreviated MK 35 Decision) that customary forests are no longer state forests. MK 35 Decision marks a new round of state recognition of indigenous peoples in Indonesia. The Constitutional Court's decision recognizes indigenous people as "rights bearers" and legal subjects for their customary territories. The decision provides legal recognition for customary forests that were previously claimed by the state and allocated for various uses, both for industrial-scale production and conservation interests that place environmental conservation above social justice.⁵

The struggle against land is often framed in terms of ethnicity and indigenous identity. Local people may legitimize their counter-claims in various ways, both in the name of the obligation to enforce Human Rights from the State⁶, citizenship rights⁷, or also through invocation of religious norms and values⁸.

⁴ Richard B. Collins, "Sacred Sites and Religious Freedom on Government Land," *University of Pennsylvania Journal of Constitutional Law*, Vol. V, No. 2, (Januari 2003), 241.

⁵ Yance Arizona, "Dibutuhkan Pengakuan Hukum Terintegrasi: Kajian Hukum Penerapan Putusan MK Nomor 35/PUU-X/2012 Terhadap Peraturan Daerah Kabupaten Malinau Nomor 10 Tahun 2012 Tentang Pengakuan Dan Perlindungan Hak-Hak Masyarakat Adat Di Kabupaten Malinau," *Wacana*, 16.33 (2014), 145.

⁶ Edward Aspinall, "Indonesia: Civil Society and Democratic Breakthrough," in M. Alagappa, (ed.), *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Space* (Stanford: Stanford University Press, 2004), 82.

⁷ C. Johnson and T. Forsyth, "In the Eyes of the State: Negotiating a 'Rights-Based Approach' to Forest Conservation in Thailand," *World Development*, Vol. 30, No. 9 (2002), 1597.

In the following pages, I argue that the spirituality of indigenous groups has been constructed outside the boundaries of religious freedom. The issue of equality between religion and belief in Indonesia has been a long discussion. This issue becomes more relevant to religious indigenous people who often lack clear boundaries from culture rather than Christianity. On the contrary, when legal protection aligns religion with culture, heritage, awareness and other interests, religion is relatively less important. To strengthen this argument, I will begin by explaining the reality of the discourse development on Human Rights for Indigenous People. This introductory explanation will provide a basis for reading the paradox of the Indigenous People paradigm in the Indonesian context, namely in the case of the *Orang Rimba* in Jambi. At the end of the explanation, it will discuss the significance of the debate on religious freedom for Indigenous People in an effort to diminish the forest conflict and advocating their land or forest rights.

Human Rights of Indigenous Peoples in Indonesia

Recognition of the Human Rights for Indigenous People is a part of the contestation of universality and controversy in understanding universal rights. Human rights are neither representative of, nor oriented towards, one culture to the exclusion of others. Universal human rights reflect the dynamic, coordinated efforts of the international community to achieve and advance a common standard and an international system of law to protect human dignity.⁹ Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.¹⁰

⁸ M Schimink, "Land Conflict in Amazonia," *American Ethnologist*, 9 (1982), 350.

⁹ Diana Ayton-shenker, "The Challenge of Human Rights and Cultural Diversity," New York: United Nations Background Note, 1995 in <http://www.un.org/rights/dpi1627e.htm>/(accessed: 23 August 2018).

¹⁰ Ronald Niezen, "The Origins of Indigenism: Human Rights and the Politics of Identity," *Canadian Journal of Native Education*, 2006, XXIX, 2. [https://doi.org/10.1353/sof.2004.0054]

Before further explaining the terminology of indigenous religion in the advocacy efforts of indigenous people, it is important to highlight the focus on the "indigenous peoples. Defining "indigenous people" has its own dylematic. The United Nations has declared that no universal definition of indigenous peoples is necessary, but one is generally accepted:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on 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 system.¹¹

Meanwhile, the concept of "indigenous religion" refers to a global form of religiosity or (as some of its adepts prefer) spirituality associated with those defined in international law as "indigenous peoples".¹² The emerging identity and legal term "indigenous peoples" is embodied in those who sit together at indigenous conferences and working group meetings. The term was included in the International Labour Organization (ILO) Convention (No. 107) concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957) and the accompanying ILO Recommendation (No. 104) of the same year, at a time when scholars still commonly referred to the subjects of their investigations as "primitives". Yet members of the "indigenous populations" being referred to had little input into the end few, if any, had developed a self-referential "indigenous" identity.¹³

¹¹ United Nations, "The Concept of Indigenous Peoples," New York: Department of Economic and Social Affairs, 2004.

¹² Ronald Niezen, "Indigenous Religion and Human Rights," in John Witte Jr. and M. Christian Green, *Religion and Human Rights: An Introduction* (New York: Oxford University Press, 2012), 119.

¹³ Ronald Niezen, "The Origins of Indigenism," 4.

Since the 1970s, the transnational movement for indigenous rights has emerged, composed of various international advocacy organizations.¹⁴ Support for indigenous peoples has also gradually gained ground in international law, for example at the ILO UN Convention 1989 (No. 169), which provides protection for indigenous peoples and tribes. In the year of 2008, The United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples on September 13, 2007. This development helped strengthen the legitimacy of indigeneity as the basis for land claims. In response, many countries have adopted laws and policies that provide measures of recognition of indigenous peoples and their land rights. The Declaration provides direction and hope for better changes for the recognition and protection of indigenous peoples' rights which, according to the International Labor Organization (ILO) are estimated at around 374 million people worldwide and around 60 million in Indonesia. They are marginalized by top-down and exploitative development policies on natural resources that are the foundation of indigenous peoples' lives.

The declaration affirmed that indigenous peoples have the rights to enjoy fully, both collectively and individually, all kinds of basic rights and freedoms as recognized in the UN Charter, the Universal Declaration of Human Rights, and the International Law on Human Rights. Indigenous peoples also have rights to lands, territories and resources that they traditionally possess, control or use and rights to lands, territories and resources that they traditionally possess. They also have the rights to participate in decision making that can affect their rights.

Meanwhile, in the Indonesian context, the word "*adat*" has many meanings, this term is generally used to refer to the costum, traditions or local norms and morals. Indigenous peoples it self is a new term that emerged after the reform which was marked by the birth of an organization that covered the network of indigenous peoples organizations known as *Aliansi Masyarakat Adat Nusantara (AMAN)* This organization stated that the Advocates of Indigenous Rights hold that there are 50–70 million indigenous people in Indonesia, accounting for roughly 20 to 30

¹⁴ D. J. Yashar, "Contesting Citizenship: Indigenous Movements and Democracy in Latin America," *Comparative Politics*, Vol. 31, No. 1 (1998), 23-25.

percent of the country's population (Safitri 2017). As of 2017, AMAN has 2304 member communities, reportedly comprising 17 million people. *AMAN* defines *adat* communities as:

Communities who live on land that has been passed down from generation to generation. They have a territory and natural wealth. Their social and cultural life is governed by customary law and customary institutions that have continuously sustained them as a community.¹⁵

Recognition of indigenous peoples in Indonesia has actually been since the beginning of independence through its constitutional foundation. Article 18B paragraph (2) of the 1945 Constitution states that the State recognizes and respects the units of the customary law community as well as their traditional rights as long as they are alive and in accordance with the development of the community and the principles of the Republic of Indonesia regulated in the law. Law Number 39 of 1999 concerning Basic Provisions on Human Rights through Article 6 (1) also guarantees the rights of indigenous peoples: "In the context of upholding human rights, differences and needs in indigenous and tribal peoples must be considered and protected by law, society, and Government ". Article (2) states "The cultural identity of indigenous peoples, including the rights to communal land is protected, in line with the times."

Regarding the existence of indigenous peoples in Indonesia and recognition of their land has also been recognized in Law No. 5 of 1960 concerning Agrarian Principles. Article 5 of Law No. 5 of 1960 states that rights that include land, water and air are recognized to the extent that they are not susceptible to national interests. But Law No. 41 of 1999 concerning Forestry Article 2 states that clan forests controlled by customary law communities are included in the state forest by not nullifying the rights of the indigenous and tribal peoples concerned and their members to benefit from the forest.

¹⁵ C. Faye and H. S. Denduangrudee, *Emerging Options for the Recognition and Protection of Indigenous Community Rights in Indonesia*, In *Land and Development in Indonesia* (Singapore: ISEAS, 2016), 95.

Until the latest development in 2012, the Decision of the Consitution Court Number 35 / PUU-X / 2012 concerning the lawsuit of AMAN together with its two members, against Article 1 point 6 and several other articles in Law No. 41 of 1999 is relatively regarded as a good momentum for indigenous people. The Constitutional Court has affirmed that the Law Number 41 of 1999 has been constitutionally wrong by entering "customary forests" into "state forests" (forests owned by the state).

The issuance of MK 35 Decision is a moment that brings the National Commission on Human Rights to conduct a thorough national investigation related to the rights of indigenous peoples over their territories in forest areas. In addition, this national inquiry is part of the National Commission of Human Rights (Komnas HAM) agreement or Memorandum of Understanding (MoU) with AMAN in 2009 related to cooperation in handling customary community issues. Finally, Komnas HAM's national inquiry is part of the Memorandum of Understanding joint (NKB) signed March 11, 2013 by State Ministries and / or Institutions, including the National Commission on Human Rights, the Ministry of Forestry, the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources, which are very relevant for the implementation of National Inquiry.¹⁶

Some of the above legal rules emphasize the recognition of indigenous peoples and the existence of land and forests as an important part of their communal rights. Human Rights for Indigenous People has become an important discussion today. Because it is related to various problems and ownership and rights to indigenous territories. Forests, religion, and land for indigenous peoples are the most urgent things in their lives. However, in various discussions and research, the issue of belief and religion in relation to land in the relations of the state and indigenous peoples is important to consider.

Problem of Religion and Land: Case of *Orang Rimba*

Orang Rimba can be considered as indigenous people or local communities who have occupied the forest as their own land. *Orang Rimba* is a term for a group of tribes who live in the

¹⁶ Tim Inkuiri Nasional Komnas HAM, *Buku I: Hak Masyarakat Hukum Adat Atas Wilayahnya di Kawasan Hutan* (Jakarta: Komnas HAM RI, 2016).

forest. *Orang Rimba* is a tribe whose life depends on the forest. *Orang Rimba* often referred to as terms *Suku Anak Dalam* (SAD), *Kubu*, *Komunitas Adat Terpencil* (KAT) and *Orang Rimba*. In their daily life, they are often referred as “*Orang Rimbo*”.¹⁷ The total number of *Orang Rimba* is currently estimated at 2,650 people. They were spread to various areas of the Bukit Dua Belas National Park or *Taman Nasional Bukit Duabelas* (TNBD) which is located in four districts, namely Batangari, Tebo, Merangin and Sarolangun.

Orang Rimba life is based around a forest which are small, fluid and constantly changing from season to season. While an *Orang Rimba* camp has the potential to be as small as a nuclear family, the most stable social unit is the extended family, which in Jambi is strongly influenced by uxorilocal residence patterns.¹⁸ Their lives are very close and depend on nature. The life habits of *Orang Rimba* is seminomadic. They used to move from one place to another looking for a living. For *Orang Rimba*, forests are homes and sources of life. Most of the *Orang Rimba* live in the forest and apply local wisdom and customary law as their ancestors.

Forests for *Orang Rimba* are not only a place to live, breed, food sources but also become a place for traditional and religious ceremonies. *Orang Rimba* are familiar with the designation area such as the role of *tanok roleokon*, *rimbo*, *fields*, *sesaap*, *beluko* and *benuaron*. The designation of the area is a sequential land use rotation and can be said to be a sustainable system of sustainable forest resources that can be processed as a way to supply their lives.¹⁹ *Orang Rimba* consider their forest as a place where a spirit live. For them, the spirit is like a person who live and can act as them. The forest as a sacred land for *Orang Rimba* make them has the way to relate with the forest. The substantial act is the way they attach with their forest. According to Sager (2008), that

¹⁷ Tumenggung Tarib, "Hutan Adalah Rumah dan Sumber Penghidupan Kami: Kesaksian Tumenggung Tarib 'Orang Rimbo,'" paper presented at the *Sidang Perkara Nomor 35/PUU-X/2012 Perihal Pengujian Undang-Undang Nomor 41 Tahun 1999 Tentang Kebutuhan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 2012.

¹⁸ Steven Sager, "The Stalk That Supports the Flower: Orang Rimba Kinship, Marriage and Gender in Jambi Sumatra," *Oceania*, 87.1 (2017), 79. [<https://doi.org/10.1002/occe.5149>]

¹⁹ Tarib, "Hutan Adalah Rumah dan Sumber Penghidupan Kami."

interconnection is represented when they consider the rivers as a primary avenue for the interconnection of forests and villages on earth and the heavens, for the flow of ideas, contact and relations with the outside world, as well as means through which the gods of sickness travel from heaven to earth. *Orang Rimba* treat the rivers as part of their cosmology which not only important to be kept but it also seen from a particular understanding. For them, the flow of the rivers located social and moral orders, and wind their way through their poems, proverbs, and life stage rituals. Beliefs surrounding the flow of the rivers and the gods of sickness are a primary means through which *Orang Rimba* restrict interactions with the outside world.²⁰ At least there are only about eight deities who are most often used as a place of help for *Orang Rimba*. Among them are Tiger, Pangolin, Elephant, Cats, Huluaye, Honey, Disease, and Rice.²¹

Life that is very dependent on nature and forests is inversely proportional to the reality experienced by *Orang Rimba* all this recent time. Those who live on ancestral land but their land has been consecrated to the company. Forest exploitation of *Orang Rimba* is one of the old problems that until now still cannot be resolved properly. In the 1990s, massive land clearing occurred. Transmigration, oil palm plantations and illegal logging are present as well as seizing indigenousterritories within. Forest and village boundaries are already so open. Territorial actions against the tribe of children in making their living area run out are divided by 16 oil palm plantation companies and Industrial Plantation Forests.²²

Territorialization of the indigenous life area of children in continuing with determination of TNBD by President Abdurrahman Wahid. An area of 60,500 hectares of *Orang Rimba* is in belonging to TNBD. The zoning stipulated by the Ministry of

²⁰ S. Sager, "The Sky is Our Roof, the Earth our Floor: Orang Rimba Customs and Religion in the Bukit Duabelas Region of Jambi, Sumatra," (Canberra: Ph.D Dissertation at the Australian National University, 2008), 97.

²¹ M. Nurdin Zuhdi, *Tuban, Di Mana Kau Berada: Kajian Etnografi tentang Sistem Kepercayaan Orang Rimba di Taman Nasional Bukit Dua Belas, Jambi* (Jakarta: 2013), 8.

²² Yayan Hidayat, "Harapan Palsu Negara dan Problem Pindah Keyakinan Suku Anak Dalam (SAD)," *Kumparan.Com*, 2017. <https://kumparan.com/yayan-hidayat/harapan-palsu-negara-dan-problem-pindah-keyakinan-suku-anak-dalam-sad>. (accessed 3 August 2018)

Forestry at that time encouraged the exodus of *Orang Rimba*. *Orang Rimba* was divided into six zones; core, jungle, utilization, traditional, religious and rehabilitation. The zoning system does not entirely accommodate the interests of *Orang Rimba*, because zoning is considered to come unilaterally from the government not purely from the aspirations of them. Their living space that should be guaranteed for the presence of TNBD actually experiences contradictions.

Tumenggung Marituha (2015), leader of the *Orang Rimba* River Terab Group added, before the 1980s, the entire area was around TNBD currently still in the form of forests. There are still many trees, as well as wild animals. However, now the conditions are far different. The remaining forest lives in the TNBD area with an area of about 60 thousand hectares. Meanwhile, at least 100 thousand hectares of the surrounding forest, which was once also a place to live for *Orang Rimba*, has been distributed by 16 oil palm plantation companies and industrial timber estates. Until now, There are six companies directly adjacent to the park.²³

Orang Rimba are concerned to the destruction of the forest. For most of *Orang Rimba*, living outside the forest is breaking the relationship between them and their nature. This was happen when the Government of Jambi provided housing for *Orang Rimba* on the border between the village and the Kedundung Muda group in TNBD. In 2013, local government provided around thirty homes for *Orang Rimba*. But until now, *Orang Rimba* are still difficult to occupy. They prefer to make small huts next to the house with roofs of palm oil leaves. They are more comfortable living side by side with nature despite full simplicity.²⁴

This form of exploitation of *Orang Rimba* is also become most problematic phenomena in their customary life. Several reports indicate that there are a number of customary violations committed by forestry and plantation companies, for example, by

²³ Muhamad Usman, "Tentang Suku Anak Dalam: Hutan dan Kehidupannya di Tengah Perubahan," <https://news.detik.com/berita/d-3060577/tentang-suku-anak-dalam-hutan-dan-kehidupannya-di-tengah-perubahan>. (accessed 2 August 2018).

²⁴ Syamsudhuha Saleh, "Agama, Kepercayaan, dan Kelestarian Lingkungan: Studi Terhadap Gaya Hidup Orang Rimba Menjaga Lingkungan di Taman Nasional Bukit Dua Belas (TNBD)-Jambi," *Kawistara*, 4 (2014), 317.

destroying traditional buildings as places of worship, customary forest clearing, timber exploitation, where the timber is sacred or abstained from indigenous peoples.

Based on the above explanation, on the side of the belief, I argue that understanding the belief of *Orang Rimba* from the perspective of indigenous religion. Their belief is also related to their specific way of knowing their nature around them including land, place, ancestor, memory, and soon. Therefore, I argue that the religion of *Orang Rimba* is entirely part of their culture and everyday life. The concept of Indigenous religion could provide an answer to this problem of defining religion of indigenous people. Based on this argument, I would argue that Human Rights ensures that equal importance should be discriminated against on the grounds of professing or not professing a certain religion or adhering to a certain belief.

Considering FORB in Managing Land Rights of *Orang Rimba*

The problem of indigenous people in Indonesia including state recognition of indigenous belief. In the one hand, land conflicts that have occurred so far in Indonesia are not only influenced by existing of inadequate legal but also the complexity associated with relations at the grassroots level. On the other hand, many rules regarding land became state property either in the name of national property or regional. Therefore, many studies mention various agrarian conflicts caused by unilateral recognition by the state of customary land. The opportunity provided by Constitutional Law Number 41 of 1999 concerning Forestry which stipulates ownership of customary land rights as State property gives room for local authorities to play their bargaining power between the community and mediators.²⁵ Recently, tens of millions of indigenous peoples live in dependence on forest resources, and for them forests are the arteries and sources of their livelihood. This means that forests are not only used as an economic source, but also a source of social and cultural existence that can maintain their survival.

²⁵ Willem van der Muur, "Forest Conflicts and the Informal Nature of Realizing Indigenous Land Rights in Indonesia," *Citizenship Studies*, 22.2 (2018), 160–74. [<https://doi.org/10.1080/13621025.2018.1445495>]

The history of the marginalization of indigenous peoples has been going on since the colonial era through legal political policies, most of which were inherited. Agrarian laws and various other laws and regulations in the period 1870-1875 which embraced the European-style liberalization paradigm, especially in the aspect of land tenure, was applied in Indonesia. Since the fall of the authoritarian regime from President Soeharto, the indigenous movement in Indonesia has grown as a new political force.²⁶ Post-reformation era marked the entry into force of the decentralization system in Indonesia which provided broader scope for local governments to implement their regional autonomy. Even though, long before that, Indonesian people already had customary laws in their territory. Customary law communities in forest areas are victims of human rights violations given their land which has been stolen massively and systematically by the State. Issuance of concession to small and large scale companies has accommodated the acquisition of customary land. This situation is patterned to occur throughout the archipelago and legitimized by policies issued by the government.²⁷

Freedom of religion is constitutionally a rights protected under Indonesian law. But the ideals for religious freedom seem easier to achieve for some groups, not for some other groups. Cases of religious freedom in Indonesia are often problematic when talking about the prevalence of religious minorities. In this case, the protection of religion against the community of believers gets a more fundamental problem that is related to the history of religious politics in Indonesia which limits and reduces the meaning of religion in indigenous peoples.

In many explanations about the construction of religion in the modern context, it generally bases the categories of religion which are dominated by mainstream religion which results in a narrow interpretation of religion and religious freedom. In the Indonesian context, mainstreaming Islam as a dominant religion

²⁶ Ibid.

²⁷ David Henley and Jamie S. Davidson, "In the Name of Adat: Regional Perspectives on Reform, Tradition, and Democracy in Indonesia," *Modern Asian Studies*, Vol. 42 No. 4 (2008), 815–52. [<https://doi.org/10.1017/S0026749X07003083>]

also defines recognized religions in Indonesia.²⁸ In its development, legal claims were framed in individual rights rhetoric which ignored the systematic disadvantages suffered by indigenous groups.²⁹ Consequently, the legal construction of the spirituality of the believers who treat indigenous people as a group that must be adjusted to the majority. Here, defining religion can be a challenge in some debates about religious freedom. Elizabeth Sukhman Hurd has categorized the reality of religious freedom in the country context, namely religion defined by government authorities. This category can help efforts to analyze the problem of restrictions on public trust, especially indigenous peoples and beliefs.³⁰

Previous explanations have stated that there have been restrictions on property rights for citizens because they are caused by secularization and revocation of property rights for the protection of sacred sites. Many explanations have stated that the separation of religion from the State and the privatization of religion relate to one another.³¹ Shrobsole stated that one of the problems of the Department of Religious Affairs required certain types of religion to be vulnerable to negotiation and compromise. This causes two problems for the protection of the sacral site. That is, the state controls more traditional lands and conducts large social and economic expansions into the public arena to seek protection against their sacred sites.³²

When indigenous communities are forced into state space, they must immediately be in the public domain requiring them to negotiate and compromise by considering personal and public

²⁸ Samsul Maarif, *Pasang Surut Rekognisi Agama Lelebur dalam Politik Agama di Indonesia* (Yogyakarta: CRCs UGM, 2017); Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Palgrave Macmillan, 2017) [<https://doi.org/10.1007/978-981-10-2827-4>].

²⁹ Lori G. Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion," *Journal of Church and State*, 44.1 (2002), 135–49. [<https://doi.org/10.1093/jcs/44.1.135>]

³⁰ Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Oxfordshire: Princeton University Press, 2015).

³¹ Nicholas D. Shrobsole, "Secularization, Dispossession, Forced Deprivatization: The Conditions of Public Religion and the Protection of First Nations' Sacred Space," *Studies in Religion/Sciences Religieuses*, Vol. 45, No. 3 (2016), 336. [<https://doi.org/10.1177/0008429816657256>]

³² Ibid.

interests. Neglect or desecration of sacred space will compromise or even destroy religious beliefs from certain communities. In the Indonesian context, the relationship between indigenous peoples and their sacred spaces are something that cannot be negotiated. From the beginning, the conditions under which religion had to enter the public sphere, had the potential to successfully destroy indigenous religion. Herein lies the importance of guarantees of freedom of religion and belief as regulated in the laws against indigenous peoples.

Indeed, the main challenge that continues to be a dilemma in the application of this concept is to what extent is the concern for some people about Human Rights is the dynamic nature of indigenous people. Currently, the problem of Indigenous People seems to be a very dominant discourse battlefield coloring various study disciplines is no exception when discussing about Human Rights for Indigenous Religion. Philosophically speaking, the discourse on Indigenous People has become an issue that transcends the locality of Indigenous People itself. In fact, this locality is fighting as a global issue whose scale can not be uniformed.

The polemic whether the view adopted by the human rights corpus on the freedom of religion, belief, and conscience in article 18 of both the UDHR and ICCPR took into account indigenous religions and their historical relationship with universalist faiths. Mutua stated that The UDHR and the ICCPR do not specially recognize indigenous religions in relation to dominant faiths or cultures; they do not even refer to them. Article 18 simply provides the rights of everyone to freedom of thought, conscience, and religion and prohibits the use of coercion to impair the freedom of others to have or to adopt a religion or a belief of their choice.³³

For many indigenous minorities, land or specific sites are not only important as physical space for manifesting a religion, but they have sacred significance. Giving attention to indigenous conceptions of religion or belief broadens our understanding of how wide an area is actually covered by the notion of freedom of

³³ Makau Mutua, "Proselytism and Cultural Integrity," in Tore Lindholm, Jr W. Cole Durham, and Bahia G. Tahzib-Lie (eds.) *Facilitating Freedom of Religion or Belief: A Deskbook* (Norway: Springer-Science+Business Media, B.V., 2004), 661.

religion or belief.³⁴ Freedom of religion or belief belongs is not only belong to the realm of the mind (*forum internum*) which is ensuring the spiritual integrity and conscience of the human being, but it also entails freedom to manifest religion or belief in worship, teaching, practice, and observance, as spelled out in the relevant basic international standards.³⁵

If forests, land and buildings as spiritual places and worship are lost, *Orang Rimba* will lose the rights to worship according to the beliefs they believe in. In fact, worship is an inherent rights for every citizen who cannot be reduced (non derogable rights) and must be protected and respected by the State. Protection of the rights to worship and have a place of worship is confirmed in the Constitution of the Republic of Indonesia. This rights is expressly guaranteed in both national and international provisions, such as the 1948 Declaration of Human Rights (Article 18), the 1945 Constitution (UUD 1945), Law No. 39 Year 1999 on Human Rights (Article 4, Article 22 Paragraph (2) of Law No. 29 Year 1999 concerning Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, Law Number 11 Year 2005 on Ratification of International Covenant on Economic, Social and Cultural Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR) All of these provisions guarantee strictly the rights to freedom of religion and belief that should be protected and recognized by the state.

Concluding Remarks

Since the beginning of the human rights era, the rights to freedom of religion and belief is the most important fundamental rights. Many claims of religious freedom are communicated through political processes and general legal rules. This is a

³⁴ Martin Scheinin, "The Human Rights Committee and Freedom of Religion or Belief", in Tore Lindholm, Jr W. Cole Durham, and Bahia G. Tahzib-Lie (eds.) *Facilitating Freedom of Religion or Belief: A Deskbook* (Norway: Springer-Science+Business Media, B.V., 2004), 200.

³⁵ Theo van Boven, "The United Nations Commission on Human Rights and Freedom of Religion or Belief", in Tore Lindholm, Jr W. Cole Durham, and Bahia G. Tahzib-Lie (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook* (Norway: Springer-Science+Business Media, B.V., 2004), 176.

relatively easy step when the dominant religious community controls the policy of the country. Indeed, this cannot be possible for indigenous communities in the beginning which was dominated by mainstream religion which forced policies to promote conversion for indigenous peoples. Recently, there has been a paradigm shift towards political recognition of indigenous religious groups that has increased significantly.³⁶ In Indonesia, there is a significant progress as the recognition of belief (*kepercayaan*) through the decision of the Constitutional Court on November 7, 2017 stating the unconstitutional rules for emptying religious columns on population identity cards (KTP and KK) for religious believers to record positive developments in religious politics in Indonesia. The decision also makes "*kepercayaan*" as a legal category so that it gets valid identity status in public administration services such as education, job applications, marriage, or even recognition of their land rights and etc.³⁷

This recent development will be the importance of constitutional protection of religious freedom that parallels religious rights and practices for each community. Here, the protection of religious groups often discriminates the religious minority group which is outside the majority of mainstream religion. In the case of *Orang Rimba* in Jambi and also cases of many indigenous people in Indonesia, their belief in religion also includes their interaction and relationship with nature including forests and land. However, protection of them is limited only to the fulfillment of individual rights. So far, the protection of indigenous groups only revolves around the fulfillment of the state for some primary needs such as housing, education and employment. However, the role of the religious dimension of *adat* community or indigenous people is closely related to cultural preservation that protects the ecological space that is beneficial to the continuation of their way of life. Even though, religious nondiscrimination implies and means that nobody should be

³⁶ Collins, Richard B, "Sacred Sites and Religious Freedom on Government Land," *University of Pennsylvania Journal of Constitutional Law*, Vol. V, No. 2, (Januari 2003): 243.

³⁷ Mufdil Tuhri, "Status Penghayat Kepercayaan Setelah Keputusan MK," in <https://crs.ugm.ac.id/news/12462/status-penghayat-kepercayaan-setelah-keputusan-mk.html>. [accessed 12 August 2018]

infringed in the exercise of civil and political rights or in the enjoyment of economic, social, and cultural on the ground that he or she belongs or does not belong to a certain religion or belief. []

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