

Protection and Fulfillment of Indigenous Peoples' Rights in Indonesia: (A Comparative Study between Indonesia, Australia and Latin America)

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ABSTRACT: The rights of indigenous peoples are deemed to be natural rights passed through generations. When a state interferes indigenous regions, the rights of indigenous peoples should be made clear through constitution. This is to allow peoples to hold their constitutional rights or through the Law to recognize and highly respect the rights of the indigenous peoples. To maintain the existence of indigenous communities along with their law as the native law, the indigenous communities and their in-charge organizations must be established. This policy is required in every country in which the people of indigenous peoples live.

Keywords: indigenous peoples, policy, constitutional rights

I. INTRODUCTION

Jamie S. Davidson and David Henley (2010) argue that the awakening of the movement of indigenous peoples in Indonesia is a contribution coming from the development of discourse and impulse from international organizations. This movement is a follow-up of anti-imperialism movement that brings something brand new of "left movement", and this act was intended to maintain cultural diversity. To awaken indigenous community movement, or also called as tribal peoples, indigenous peoples or even fourth world peoples, a measure was taken in Denmark in 1968 by a group of professional anthropologists forming the International Work Group for Indigenous Affairs (IWGIA) and World Council of Indigenous Peoples (WCIP) back in 1975. At the structural level of international law, the indigenous movement managed to back up the formation of ILO Convention 169 concerning *Indigenous and Tribal Peoples in Independent Countries* (1989), and the latest one called Nation Declaration on the Rights of Indigenous Peoples (2007). [¹]

The term 'indigenous peoples' was first internationally recognized after International Labour Organization (ILO) [²] declared Convention concerning Indigenous and Tribal Peoples in Independent countries (ILO Convention 169) on 27 June 1989. This term, as used in ILO 169, was also adopted by World Bank in the arrangement of development commission in several countries, especially in Latin America, Africa, and Asia Pacific. [³]

The indigenous peoples in Latin America have lived in dark history. Burkholder and Johnson (2004) show there were conquest and exploitation of the indigenous peoples that has been around since colonialism of Spain and Portugal back in the 15th and 16th century. This tragedy has imposed burden and disaster on human beings. Back in 1570 Peru experienced a decrease in the population from 1.3 million to 600 thousands in 1620 (after 50 years). Within 50 years, More than half of the population in Peru died. [⁴]

When most of the regions in Latin America gained their independence in the beginning of the 19th century, the overlapping and predatory economic structure of the colonials did not instantly disappear. The elite groups taking part in the colonial enclave still held control over economic structure and politics. Xavier Albo in Subono, [⁵] called it "Republic of Neo-Colonial" since Latin America was politically independent but not in

economic sector. In 1980s, the neoliberal economic system was for the first time in place in almost all of the states of Latin America. The structure of policies in liberalization in land market, workforce, and capital market and the opening of economy into the market caused surges in commodities. This, in turn, raised land-related issues, and in several cases of 'land appropriation', neoliberal policy from the government backed up by export commodity (especially mining, agriculture, forestry, and fishery) caused serious damage to the environment and threatened the life sustainability of the indigenous peoples.

Apart from Latin America, Indonesia also recognizes the existence of indigenous peoples. Initially, the term indigenous peoples was introduced by van Vollenhoven to refer to native tribes of Indonesia. This is related to the issuance of the political policy of the Dutch Government according to Article 131 IS (Indische Staatregeling) 1939, and dating back to the year, peoples in Indonesia were divided into *Inlanders*, Europeans, and *Vreemde Oosterlingen* (non-native people such as Chinese, Arabian, Indian and other non-Europeans). The recognition of this difference of the people has led to pluralistic legal systems. Customary laws did not refer to the rules established by the Government of Dutch East Indies or instruments of authorities that served as pillars erected independently by the ruling Dutch Government". [6] As an element of the unity of the people, customary laws represent an independent branch of laws inextricable from the structure of the public. [7]

The protection addressed to the indigenous peoples is not optimally provided. On one hand, Article 18B paragraph (2) of the 1945 Indonesian Constitution implies that the indigenous peoples and their traditional rights are respected and recognized for as long as they remain in existence and in agreement with modern lives, they do not contravene the unitary state of the Republic of Indonesia, and they are governed by Law. It is not plausible to formulate the norm following an amendment without any particular political interest, and this constitutional guarantee is not proven effective. Hidden harm brought by the movement of indigenous peoples is inevitable as long as they cannot manage to escape from backwardness.

Ineffective legal instrument regarding the recognition and appreciation given to the indigenous peoples is proven through the uncertainty of the status of the indigenous peoples as the subject of law (legal standing) or as the rights holders, in terms of the rights to take action and the possibility where they can be burdened with legal obligations. The judges of Constitutional Court admit that it is extremely challenging to determine the legal standing where the indigenous peoples are positioned as the legal subject, recalling that Indonesia has highly complex diversity of customary laws. The standard set for a particular indigenous communities does not always apply in other indigenous communities. Therefore, it is not surprising that setting the official requirements of indigenous communities needs to be carefully performed. Judicial review submitted by indigenous communities to Constitutional Court of Indonesia was never granted and this has become an issue that demands solution. Finding this solution is not without barriers related to not only historical origin of customary legal studies that are inextricable from ethical politics in the time of Dutch colonial era, but also the position of indigenous peoples in the 1945 Indonesian Constitution that is questionable in terms of social justice and politics in Indonesia before and after amendment. [8]

Among several cases at court, the uncertainty of the indigenous societies is obvious, where they share the same experience seeing that their petition is not granted. Out of five cases submitted by indigenous people, almost none was granted. One case of Papua was granted but only because of the shift from the legal standing of indigenous communities to that of individual. This situation has worsened the relationship between the central government and the indigenous people since they do not hold any legal certainty. With all the challenges faced, measures taken can transform customary laws to a positive law in Indonesia, transforming the values into the sources of legal materials in Indonesia, indicating current interaction between customary laws and national law. [9]

In land conflict, out of 1400 disputes at the court in West Sumatera, none of cases were won over by indigenous peoples. Similarly, One hundred hectares of land of *ulayat* right in Nagari were acquired by Ministry of Forestry in West Kalimantan, especially Sambas, where the rights to land of indigenous people of Tembawang could not be claimed since it was situated in a protected forest. This situation has put the people in a more marginalized position and this condition is certainly not without a cause. On one hand, customary laws are likely to cling on to the supernatural, directness, concreteness, and flexibility, all of which can effectively work when the values of honesty, camaraderie, and mutual cooperation are still institutionalized. On the other hand, the state as an authority and business entity often bases its claims on the rights controlled over by rules of law and written and formal laws. In terms of the difference of characters between the people and their law, indigenous peoples and other members of public in general have not found any appropriate policy for the resolution. [10]

As the unity that still maintains the way of life passed from their ancestors, indigenous peoples are connected to their land and their regions. For them, land is more than a source of economy, but it is inextricable from the life of the indigenous peoples. Traditional rituals are held to manifest the connection between the spiritual attributes of indigenous peoples and their Mother Nature, including forests. [11] Their adherence to such a connection has put them in conflict against private companies. This problem is getting even more difficult

when large-scale plantation, forestry, and mining companies gain support from the state government. [12] Alliance with big capital investors intended to significantly optimize profit taken from available lands eventually ignores the existence of indigenous peoples whose livelihoods heavily rely on the lands acquired by capital investors.

Apart from the sectors like forests, lands, and human resource, indigenous peoples also face injustice in almost all sectors. In public services, for example, the peoples are often discriminated. Those as the believers of the faith often find problems registering themselves for ID card or Family Card. The law regulating population administration implies that those whose religions are not recognized by law will not be stated on the ID card, but they still have the right to be served and their data to be registered in population database. [13]

Beliefs followed by indigenous peoples eventually have a consequence on fulfilling the constitutional rights of the peoples in education, economy, social sector, culture, and so forth. Banks usually refuse to proceed their data input, resulting in another difficulty for indigenous peoples to have their own bank accounts. Thus, it is clear that the policy set by the government will affect the private law of the members of public, including indigenous peoples. [14] The truth is that indigenous peoples came to existence far before the state was formed. Thus, it is essential that we take measures to protect indigenous peoples. The comparative study on the policies of indigenous peoples is expected to provide references for policy makers to make better regulations aimed to protect indigenous peoples.

II. RESEARCH METHODOLOGY

This legal research employed normative juridical method, followed by descriptive analysis aimed to resolve the research problems. This approach involved observing and studying laws and regulations and policies in several countries regarding indigenous peoples.

The materials studied comprised Regulation of Ministry of Home Affairs Number 18 of 2018 concerning Village Community Organization and Village Indigenous Organization (locally called as Lembaga Masyarakat Desa and Lembaga Adat Desa respectively), local regulations, and the local regulation concerning village indigenous organization, and related policies concerning indigenous peoples in several countries. The data was obtained from literature review consisting of inventorying and grouping regulations according to their hierarchy. It is essential to study the legal issues regarding indigenous peoples to maintain their existence.

III. RESULTS AND DISCUSSION

The struggle of indigenous peoples has soared to its peak. General Assembly of the United Nations, with the major votes (144 countries stood for, 4 countries stood against, 11 countries were abstain, and 30 were absent), adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 2007. The condition of indigenous peoples has become the center of attention in the eye of people worldwide, especially after the General Assembly of the United Nations adopted UNDRIP. [15] International attention escalated over oppression, conquest, and attempt to marginalize indigenous people, and this has triggered aggressive steps taken to stimulate international recognition of the rights of the peoples. The roots of customary laws are deemed to be the milestones after a very long journey to international recognition of the rights of indigenous peoples that began more than 23 years ago in the United Nations. Despite the adoption of UNDRIP by the General Assembly of the United Nations, debate over the scope of right to self-determination among indigenous peoples is still going on to date. Article 3 of UNDRIP states:

“Indigenous peoples have the rights to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.” This article clearly governs the recognition of the rights to self-determination, including the rights to politics, economics, and to development in social and cultural sectors.

Rights to self-determination are recognized in international law.[16] In 1996, International Court of Justice (ICJ), handling the case between Portugal v. Australia (East Timor Case), defined the rights to self-determination as *“erga omnes”*. Anaya states that the rights to self-determination are stipulated as a part of *jus cogens* and they are generally accepted in international law. The rights to self-determination represent the freedom to make a decision regarding matters that affect indigenous people; to live their traditional way of life, values and beliefs; to be treated equally in a state. The rights to self-determination are also closely related to the utilisation of natural resources. UNDRIP clearly regulated the provisions concerning the rights held by indigenous people to natural resources. Article 26 paragraph (2) of UNDRIP specifically states: *“Indigenous peoples have the right to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”*. In the case of Delgamuukw against British Columbia, the Head of Supreme Court decided that indigenous label was *sui generis* since it is based on their life and livelihoods that have been in existence for so long. Moreover, in the case between The Mayagna (Sumo) Awas Tingi Community v. Nicaragua, the Inter-American court of Human Right, the right to assets of indigenous peoples was recognized where international

instruments were taken into account, as in Article 14 paragraph (2) of ILO Convention 169 and International Treaties on Human Rights in United States of America. [17]

In line with ILO Convention 169, UNDRIP confirms that states must implement the principles of free, prior, and informed consent of indigenous peoples before approving and executing projects that could affect their lands. Article 32 paragraph (2) of the declaration states: “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources.*”

Indigenous peoples also have the right to the restitution of their lands and compensation in case of failure of restitution. This indicates that international law recognizes the rights of the peoples to determine. In terms of lands and natural resources, this right is clearly governed in UNDRIP in soft law instrument, meaning it is not legally binding. This, more or less, can be interpreted as an appropriate standard and as recognition of all rights held by indigenous peoples worldwide to be equally accepted as those of other members of public. [18]

Participation is one of the forms of recognition that is regulated in ILO Convention since participation is another fundamental principle in the convention, and all indigenous peoples should be involved in all necessary processes. Early participation in the whole processes of policy making or project or program execution can give them responsibility to get actively involved in social and economic development of their own. This convention is more focused on the need of “ownership” in every agreement that includes the parties concerned. This is intended to guarantee that the benefit of the agreement is appropriately addressed to the peoples concerned.

In 1989, World Wide Fund for Nature initiated a project in ethnobotany in Manongarivo, the Northwest of Madagascar. This is a one-stop health care system whose development required consultation and participation of the local community. This program combined traditional medicine derived from traditional herbal plants and modern medicine. Traditional therapists and shamans worked together to support the health care of the locals. Ten conservation programs of bio-cultural diversity blended with a development program performed with creative approach. [19]

In Cambodia, a local planning program, owned and initiated with the assistance of Cambodia Area Rehabilitation and Regeneration Project (CARERE, UNDP) and Ratanakiri Provincial Rural Committee, was held in 51 villages by the local people of the village. The development committee of the village was responsible for the preparation of the development plan. With the participation of the locals, the people gained experience and built their confidence, both of which guarantee the sustainability of the people and the activities of the development.

This shows that the participation of locals is essential in the arrangement of the government’s policy. The project that was aimed to stimulate the policy of ILO concerning indigenous peoples and the Department of Constitutional Development of Government of South Africa held a conference concerning Constitutional Accommodation of Vulnerable Indigenous communities in South Africa in May 1998. This conference brings resolution and action plan regarding indigenous peoples and their rights as citizens to equal position according to the Constitution of South Africa. Khoi San Forum was established in May 1999, consisting of 20 members: three San, Five Griqua, Four Koi, four Coranae, and four members of Cape Cultural Heritage Development council. This forum was to review the content of Status Quo Report of the Government regarding the participation of indigenous leaders in local governments and in giving advice regarding issues arising in the native communities. [20]

Indigenous peoples in independent countries are considered as native peoples since they are the descendants of the locals living in the countries concerned or living in geographical areas where the countries are during the time of the conquest or colonialism or during the time when state boundaries were determined. These peoples have maintained a part or the whole social, economic, cultural, and political institution of their own despite their legal status. [21]

Article 2 paragraph (1) of this convention implies that government holds responsibility to arrange, with the participation of the indigenous peoples, organized and systematic actions aimed to protect their rights and to guarantee respect to their needs, where the actions involve the following: [22]

- 1) Assuring that all members of indigenous communities have their rights treated equally and have access to opportunities stipulated in laws and regulations in the regions where they live.
- 2) Optimally opening possibility to fulfil social, economic and cultural rights of indigenous peoples by giving recognition to their social and cultural identity, customs, traditions, and their institutions.
- 3) Helping members of indigenous communities to reduce any social and economic gaps that may take place between native peoples and other members of society through the way and aspiration that fit their life best. Apart from the right to participation, indigenous peoples are also given the right to FPIC, the right to agree or disagree with the development projects planned on indigenous lands. Several requirements have to be met in

consent. First, information must be facilitating and clearly disseminated with the language easily understood by the peoples; secondly, there should be enough time given to the peoples to analyze information; thirdly, decision-making process must accommodate and involve the needs of certain groups of indigenous peoples; fourthly, all the process necessarily taking place must be performed willingly without any suppression from any parties. The right of the indigenous people to FPIC is logical consequence resulting from the recognition of indigenous people that historically existed before the state was formed.^[23]

1. Policy regulating indigenous peoples in Indonesia

Constitutional rights of indigenous peoples are the top priority over the rights of other civilians since indigenous peoples hold special rights traditionally. Theoretically, indigenous peoples have to be protected, guaranteed, and be given legal certainty. This is contrary to what really happens in real life where their social and economic status remains marginalized. To optimize the protection, affirmative action is required. Constitutional rights are mainly addressed for the legality of the basic rights of indigenous peoples in the 1945 Indonesian Constitution despite the fact that sectoral law negates it. In general, the constitutional rights of indigenous peoples are equal to those of other members of society. Article 27 paragraph 1, 2, and 3 of 1945 Indonesian Constitution states that citizens shall have equal status before law and government and hold without exemption the law and the government in esteem, each citizen shall be entitled to an occupation and an existence proper for a human being, and each citizen shall have the right and the duty to participate in the defense of the nation. Article 28 mentions the right to freely associate and assemble, express opinion in both written and oral form as governed in law. Article 29, paragraph (2) mentions the right to have the freedom of religion and of worship in accordance with one's religion and belief.^[24]

Specifically, indigenous peoples have constitutional rights that are traditional, and they are known as traditional rights of indigenous peoples. According to Article 18B paragraph (2) of the 1945 Indonesian Constitution, recognition and esteem paid to the unity of indigenous peoples along with their traditional rights must be based on the following requirements: 1) as long as they remain in existence, 2. In agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia, 3. Governed in the law. Similarly, Law no 24/2003 concerning Constitutional Court also stipulates the same requirements for the unity of indigenous peoples to put them in a position as petitioners in Constitutional Court. The 1946 Indonesian Constitution and Law No. 24/2003 concerning Constitutional Court in conjunction with Law No. 8/2011 concerning Amendment to Law No. 24/2003 govern particular requirements to allow indigenous peoples to hold their legal standing. With it, it is expected that they can settle their case at Constitutional Court. The state guarantees the recognition and legal protection of the unity of indigenous peoples despite some constitutional requirements that have to be met. *Ulayat* lands owned by indigenous peoples are exploited by foreign investors for their crude oil to be further exported to other countries. This has managed to bring a great amount of cash to this country. Despite all this welfare, the existence of indigenous peoples has always been out of attention from both central and local governments even at present time. On 5 July 1959, president, through a decree, dismissed constituents, which revoked the temporary law of 1950 and brought back the 1945 Indonesian Constitution to all the citizens of the country.^[25]

Furthermore, recognition of the existence of indigenous peoples should be in the form of regional legal product. There are three operational provisions regarding recognition of the existence and the rights of indigenous peoples especially to lands and forests:

- 1) Regulation of Minister of Home Affairs Number 52 of 2014 concerning Guidelines of Recognition and Protection of Indigenous Peoples
- 2) Regulation of Minister of Environment and Forestry Number 32/2015 concerning Private Forest.
- 3) Regulation of Agrarian and Spatial Planning/National Land Agency Minister Number 10 of 2016 concerning Guidelines of Arrangement of Communal Right to Lands of Indigenous Peoples and People of certain Regions.

All those three operational provisions require that the establishment and approval of the existence of indigenous peoples be performed in the form of regional legal product, such as local regulations or the decrees made by local governments. The recognition done this way seems to give burden for indigenous peoples since they have to go through official and lengthy administrative and political process. This situation has certainly shifted the position of indigenous peoples from natural legal subject existing before this country was formed to procedural legal subject where official documents are a must. A Study carried out by Epistema Institute back in 2015 indicates that there were 124 regional legal products on indigenous peoples comprising establishment of indigenous communities, indigenous institutions, indigenous courts, customary laws, and indigenous forests. Of those legal products, only 15,577 hectares of customary areas and forests have been officially recognized. The following are state institutions authorized to implement the provisions concerning indigenous peoples:^[26]

Table 1. Institutional Scope and Dimension responsible for Indigenous Peoples

Law	Institution	Dimension
Article 18B paragraph (3) of 1945 Indonesian Constitution, Village Law	Ministry of Home Affairs, Village Ministry	Governance and Community Development
Article 281 paragraph (3) of 1945 Indonesian Constitution, Law concerning Human Rights	Ministry of Law and Human Rights, Human Rights National Commission	Human Rights
Article 32 paragraph (1) of 1945 Indonesian Constitution	Ministry of Tourism and Creative Economy	Culture
Law concerning Forestry	Ministry of Environment	Forest Management and
Conservation and Protection of Natural Environment	Life and Forestry	Existence of indigenous peoples
Law concerning Water Resources (revoked by Constitutional Court)	Directorate General of Water Resources, Ministry of Public Works	Water Resources Management and Existence of Indigenous Peoples
Law concerning Plantation	Directorate General of Plantation, Ministry of Agriculture	Compensation of Lands for indigenous peoples
Law concerning Coastal Areas and Isles Management	Ministry of Maritime Affairs and Fisheries	Coastal areas and isles management
Law concerning Social Welfare, Presidential Regulation Number 186/2014	Social Ministry	Access to primary services
Basic Agrarian Law, Law concerning Land Procurement	National Land Agency	Connection between indigenous people and lands

There are at least five cases relevant to the subjectivity and the rights of indigenous peoples in Constitutional Court as shown in the following Table: ^[27]

Table 3. Cases in Constitutional Court regarding indigenous peoples

Case Number	Petitioner	Constitutional Issue	Decision
1. Case No. 058-059- 060-063/PUU-II/2004 and 008/PUU-III/2005 Review of Law concerning Water Resources (No 7/2004)	3,001 petitioners consisting of individuals, Farmers organizations, Non-government Organizations of Human Rights and Environment	Water Privatization and commercialization. Indigenous peoples and access to water	Rejected
2. Case No. 31/PUU- V/2007 concerning Review of Establishment of Tual City in Maluku Province (Law Number 31/2007)	1 community representing Tual city	Establishing a new autonomy region affecting indigenous peoples	Rejected with explanation from Constitutional Court concerning conditional recognition
3. Case No. 55/PUU- VIII/2010 Review of Law concerning Plantation (No. 18/2004)	2 farmers	Criminalization in Law concerning Plantation	Granted

4. Case No. 35/PUU- X/2012 Review of Law concerning Forestry (No.41/1999).	AMAN and two indigenous communities from Kampar and Lebak	Customary forests	Granted concerning indigenous forests, rejected concerning conditional recognition
5. Case No. 95/PUU-XII/2014 Review of Law concerning Forestry and Law concerning Prevention and Eradication of Forest Destruction (No. 41/1999 and No. 18/2013)	AMAN, 2 indigenous communities representing Tanah Datar and several non-government organizations	Criminalization of indigenous peoples, and protection of local wisdom	Partially granted

Constitutional Court is where indigenous peoples express their grievances when legislation made by the members of the House of Representatives and the Government are unjust to the development of the peoples. Of some laws reviewed, Constitutional Court has played an essential role in providing protection to indigenous peoples. In the Decision of Constitutional Court 35, the existence of indigenous forests, previously recognized as under the ownership of the state in Law concerning Forestry, was drawn from the state's ownership after the Constitutional Court annulled this provision. This indicates the existence of pluralism approach addressed for the harmony between the state and indigenous communities.

Issues regarding indigenous peoples and forests not only arise in Indonesia, but a lot of other countries were found to grab the indigenous peoples' lands in 2016, and from this tragedy, the locals, including 40% of environmental activists worldwide became the victims since they violated the agreement over land borders. The isolated indigenous peoples were vulnerable to diseases such as flu, measles, or even cold that could even lead to serious condition or death. They were also vulnerable to oppression by parties aiming to illegally exploit the lands and the indigenous peoples were left with no assistance to fight against this injustice but to watch their lands destructed. Amidst the threats to their lands and rights, indigenous peoples and other locals are some steps better protecting the ownership of their lands to have their rights recognized. [28]

All the threats and measures they took have attracted attention worldwide. In 2016, the International Criminal Court stipulated that environmental damage and land appropriation are considered as offenses harming human beings although some cases remain unheard. The International Land and Forest Tenure Facility appreciates Alliance of indigenous peoples in the Indonesian archipelago for managing to take back their right to 1.5 hectares of land in Indonesia. In Peru, all stakeholders concerned guarantee right to ownership of 560,000 hectares of land and to optimize the protection of isolated regions where indigenous people live in. Due to this outstanding attempt, the people of Ganoche Afro-Colombia received their right to ownership of lands in Colombia, and the rights to lands of the indigenous people of Afro-Colombia is assertively recognized in Peace Treaty of the state. In 2016, the people of Munduruku in Brazil warded off the development of one of seven dams in Amazon Basin since they were concerned that the development would inundate their lands. This movement indicates that the indigenous people are serious about gaining recognition of their dignity that has been long attached to them and of their contribution to the natural welfare. [29]

2. Policy regulating indigenous peoples in Australia

Indigenous peoples in Australia are known as Aborigin and Torres Strait islanders. The approach of policy of the Australian Government has two wide different perspectives: assimilation (cultural blending) and self-determination (maintaining culture and customary traditions). Assimilation approach involves native people who are willing to blend their culture with that of non-indigenous people, and self-determination is for native peoples who still maintain their culture and customary traditions. The principles they still hold on to involve justice, uniqueness, sovereignty, respect to values and cultures, protection of cultures and partnership development, and responses to contextual local issues. There are several programs aimed to support the policy of indigenous peoples in Australia: Health, early childhood education, economic participation, appropriate housing, leaders and governments reinforcement, protection, indigenous peoples reinforcement in Northern

territory, art and cultures, and reconciliation. All those sectors are backed up by the following policies and programs: [³⁰]

1) Health: improvement of health quality of Aborigin community and Torres Strait Islanders aimed to minimize gap in health quality between indigenous peoples and non-indigenous people. This is addressed to: 1) improving the health quality of children; 2) Fulfilling primary health need by building partnership with health organizations/ institutions; 3) Training provided for local health workers and employing doctors and health professionals for indigenous peoples; 4) solving problems related to serious illnesses or smoking-related diseases; 5) solving drinking problem like alcohol addiction and drug abuse; 6) providing mental health services; 7) assuring health quality and the hygiene of foods sold in the markets of indigenous communities.

2) Education: this program is aimed at optimizing the opportunity for indigenous peoples to participate in education. The Aboriginal and Torres Strait Islander Action Plan 2010 – 2014 has been approved by the Australian Education Ministry to minimize the gap in education participation between indigenous peoples and non-indigenous peoples. The programs run are as follows:

a. Focus school next step: Australian Government was committed to allocating 30 million dollars to 102 schools for two years (2012 – 2014).

b. Improving School Enrolment and Attendance through Welfare Reform Measure (SEAM): this program is aimed to Encourage parents to prioritize children's education, keep the children engaged, and assure their attendance at school.

c. Indigenous business Australia scholarship fund: funding (scholarship) support for indigenous adults to allow them to learn skills, gain more knowledge, and improve the economic condition in their families.

d. Indigenous Ranger Cadetship Pilot: There are 12 remote regions and schools receiving 500,000 dollars to be involved as Indigenous Ranger Cadetship Pilot as part of the Australian Government's commitment to empowering indigenous peoples and assuring them to finish their education, training, and career on land, in the sea, and natural resources management.

e. Indigenous Youth Leadership program is aimed at supporting and improving the quality of the people by encouraging them to finish their education for 12 years to university.

f. Investing in Focus School gives 40 million dollar fund for two years, and this fund is addressed to 284 government and non-government organizations to conduct events in education that is aimed to solve illiteracy according to Education Action Plan 2010-2014.

g. Parental and Community Engagement Program (PaCe): mentorship for parents to allow their children to keep taking part in education

h. Personalised Learning Plans is designed to plan learning objectives for students by teachers

i. School Nutrition Program is aimed to provide breakfasts and lunches for indigenous peoples living in remote areas to support their presence in education and learning process.

j. Sporting Change is aimed to help achieve the outcome of students in sports and recreations.

k. Governance and leadership are given to reinforce organizations and leadership for indigenous peoples in line with their capacity and needs. 1) supporting and stimulating indigenous peoples to take part in general elections; 2) guaranteeing that the organizations in indigenous communities run accordingly; 3) coaching indigenous leaders for a better leadership in their communities; 4) encouraging good camaraderie among the members of communities; 5 supporting the unity and thoughts of indigenous peoples. [³¹]

3. Policy regulating indigenous people in Latin America

Indian tribes live in approximately 50 states of the United States and 230 tribes hold legal entity and written constitution. Chile, one of the states in Latin America, expressed the same problem when Indonesian government visited the state to form the bill concerning indigenous peoples. Prominent figures of the indigenous community of Chile (Indian tribe) complained that they lost their rights to cultivate their lands after land appropriation by companies with official documents approved by government.

Chile is the only state in Latin America not governing indigenous peoples in the constitution, but it has the law regulating indigenous peoples. With this law, the government has vigor to recover the rights of the people to their lands taken over by investors. However, shortage of fund becomes an issue for Chile to buy back the lands, but the attempt to recover the rights of indigenous people still deserves appreciation. [³²]

Navajo people hold the authority to govern their own matter in their own territory, especially regarding the rights to natural resources. The first parameter of utilization of natural resources is related to their authority to issue a regulation aimed to control their natural resources, and the second parameter is how they own their rights to justly gain profit from the natural resources and how they hold accountability for every violation committed in their areas. [³³]

Rules of Navajo Communities

Navajo people issued some regulations such as the Air Pollution Prevention and Control Act, the Clean Water Act, and the Solid Waste Act:

a. Navajo Nation Air Pollution Prevention and control Act

Due to air pollution resulting from the utilization of natural resources, the people of Navajo issued the Navajo Nation's Air Pollution Prevention and Control Act ("NN APPCA"), which is aimed at controlling air pollution level in the tribal areas of Navajo. This is also intended to guarantee the health, safety, and public welfare of the people of Navajo, and all accompanying assets such as plants and animals living in the areas. In addition, NN APPCA requires Navajo government to make regular reports concerning the air quality to find out which area has the highest pollution level. All projects that are conducted by either government or private sectors and that have likelihood to have significant impacts on air quality must not cause air pollution exceeding the level allowed by the NN APPCA.

The mechanism to enforce the law is also governed in NN APPCA since the Executive Director of Navajo Nation of the Environmental Protection Agency concluded that NN APPCA was violated, and the director could take some measures: 1) ordering violators to abide by NN APPCA; 2) imposing administrative sanction, 3) taking civil action, 4) processing criminal offenses. [³⁴]

b. Navajo Nation Clean Water Act

Departing from close relationship between development of natural resources for energy consumption and water use, Navajo people issued Clean Water Act ("NN CWA"). This regulation implies that releasing pollutants into Navajo water by industries and inappropriate waste management are likely to threaten health, welfare, and the environment of Navajo communities. Article 1311 states that in water management, water quality standard must be designed to protect cultural values embedded to the people of Navajo; this is because water has special values comprising cultural and spiritual dimension to the people of Navajo. [³⁵]

IV. CONCLUSION

Indigenous peoples have their constitutional rights that are traditional or they are called traditional rights of indigenous peoples. According to Article 18B paragraph (2) of the 1945 Indonesian Constitution, recognition and appreciation of the unity of indigenous peoples along with their traditional rights must be based on the following requirements: 1. As long as they remain in existence; 2. In agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia; 3. Regulated by law. To give respect to the existence of indigenous peoples, countries like Australia and US establish a new regulation for indigenous peoples, while Indonesia facilitate indigenous peoples in each region along with their customary organizations.

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