



**Perkumpulan Untuk Pembaharuan Hukum  
Berbasis Masyarakat dan Ekologis**

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Jakarta, 01 May 2020

**Dear Mrs. Karima Bennoune**

The United Nations Special Rapporteur in the Field of Cultural Rights

With regards to your invitation for civil society organizations to contribute in your 2020 Report to UN General Assembly, **we, Perkumpulan HuMa Indonesia (hereafter HuMa)**, which is the association for law reform based on the society and ecology in Indonesia, welcome this opportunity and would like to kindly participate. With this letter, we would like to submit some information that would be relevant in accordance with the questionnaire provided previously. All the data provided below is based on our own advocacy experience and our existing publications/studies.

The Indonesian delegation at the COP25 Madrid brought up the strengthening of the implementation of the Paris Agreement. The Paris Agreement entered into force ratification quickly in Indonesia on November 2016. However, challenges remain in our country, therefore we must fight in unity to maintain the momentum of this agreement. The adverse effects of climate change can never be dealt with by one country alone! The global commitment to the Paris Agreement must be strengthened because it cannot be changed. It must remain irreversible and non-negotiable, because climate change is a global responsibility.

In regards to your inquiry, we firstly would like to emphasize that indigenous communities in Indonesia carries very important role in combatting the major cause to the climate change, which is deforestation. By fully protecting indigenous communities' right to land and forest, Indonesia could protect those forest areas from extensive exploitation and deforestation caused by extractive businesses. It is also worth reminding that in UNEP once found that land opening for palm oil business is the main cause of rainforest deforestation in Indonesia.<sup>1</sup>

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<sup>1</sup> See C. Nelleman *et. al.*, *Rapid Response Assessment: The Last Stand of the Orang Utan*, (UNEP, 2007), p. 28.

Therefore, in this letter we would like to start with the main idea that have important role in indigenous culture especially in the forest advocacy. We attempt to highlight the *Adat*<sup>2</sup> Customary Forest (*hutan adat*) advocacy process in the specific case in Indonesia that is relevant into the global culture, especially indigenous people has lived inside the forest area. We will also bring up some best practices when giving *hutan adat* can save forest area from deforestation caused by business activities.

The cases start from the Indonesian Constitutional Court Decision No. 35/2012. In essence, the petitioners argued that Indonesian Forestry Law (UU No. 41/1999) places the customary forests as part of the state forest. The existence of provisions on state forest resulted in constitutional losses to the applicants (indigenous people).<sup>3</sup> The constitutional court argued that, there are loss of access toward the petitioners over their forest and land.<sup>4</sup>

In our opinion, the Constitutional Court reformed the Indonesian Forestry Law (UU No 41/1999) through the three important subjects that have legal relationship with the forest. *First*, the state themselves through the ministry of forestry have the consent to indigenous people in order to build participatory mechanism of indigenous tenurial owner. *Second*, indigenous people have their rights as collective rights in communality action, same as the other legal entity, such us business sector, cooperatives, or corporation. *Third*, indigenous and tribe peoples give the important role to solve the conflict situation, not only in anthropocentrism perspective, but also in the term to protect biodiversity and ecological knowledge. In fact, indigenous' forest has successfully protected Indonesia from the logging case (Firmansyah, 2014). Legal linkages to forests are also embedded in the legal relationship into the land, so it cannot be separated between the rights to the land and the rights to the forest.

The forest has a cultural significance for most communities living in and around them. The forest can be a sacred place where rituals are held, and can be the basis of values determining patterns of production and consumption. Prohibitions from cutting down large numbers of trees constitute a value formed by respect for forest sustainability. Meanwhile, the determination of a forest's function, and the value of a forest stand laid out in local rules shows an evaluation beyond mere economic calculation. For communities in and around forests, cultural values and norms are very much determined by their relationship with the forest. Restricting or removing rights over the forests will immediately eradicate their cultures. The migration of pathogen genesis of Coronavirus from the animal to human is one of important example how dangerous it is if we lost a forest ecosystem.

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<sup>2</sup> *Adat* has meaning as a custom, or habit and is considered as synonymous with something which is commonly known or accepted. Our world today intense to talks about environmental protection. The agreements have produced from countries that are committed, but they often want to abandon anthropocentrism and try as radical as possible to become true biocentrism. In the discourse of indigenous peoples, of course we cannot abandon the history of their struggle, or just give a political reward to their protection of our earth. In order to answer what is the true commitments to protecting of our world. Indonesia now remains the 3<sup>rd</sup> largest country with its forest area.

<sup>3</sup> Indonesian Constitutional Supreme Court No. 35/PUU-X/2012, p. 2.

<sup>4</sup> *Ibid.* p. 28.

Natural forests constitute unique ecosystem with extraordinary potential, both for the communities living in and around them and the global community. For local and/or customary communities' forests function as aquifers, as ecological buffer zones, as farming land, as places where flora and fauna flourish, and as places providing their food and shelter needs. So, any plans to adopted forests in the international and national interest must consider the implications on the continued existence of customary communities.

Therefore it is crucial for Indonesian Ministry of Forestry to recognize *adat* customary forest and give indigenous communities their rights to control and utilize their forest area based on their traditional knowledge. One of the best practices of how recognizing *adat* customary forest can prevent deforestation is in Rimak Adat Tawang Panyai Forest, Tapang Semadak Village, West Borneo. The recognized area is the last area in the forest that is still preserved despite surrounded by palm oil companies' area. They fight to obtain the Presidential Decision/Decree to formally recognize their *adat* customary forest. Therefore, palm oil company cannot exploit that area.

Unfortunately, the Ministry of Forestry hasn't showed strong political will in protecting indigenous peoples' right to their own forest. Until the end of 2019, there are only 65 units of *adat* customary forest that have been recognized, with the total area of 35.150 hectare. This is relatively small comparing to thousands of indigenous communities in Indonesia that are still unrecognized, and comparing to the initial target of the program which is 12,6million hectare. This lack of political will is very evident in the intransparency of the process, and also the uncertainty regarding the timeline of the process. There are no clarity how and until when the Ministry of Forestry officials should follow up the application from indigenous communities regarding their *adat* customary forest.

Those delays are not only preventing indigenous communities from exercising their rights fully, it also leads us to more deforestation, since the unrecognized *adat* forest can still be subject to landgrabbing done by the state and some extractive companies. This leads indigenous communities to experience revictimization, because they are prone to experience the impact on climate change itself on their cultural life. *The first impact* is the difficulty experienced by indigenous communities in practicing their traditional knowledge. Indigenous communities often use natural phenomenon as an integral part of their traditional knowledge, especially in activities related to utilization of their communal land and natural resources. In crop cultivation, this natural phenomenon determines when to prepare the land, when to establish the crop, and when to harvest; and therefore it also determines rituals and norms that follow all these stages. Presently, as wheater and other natural phenomenon are becoming more unpredictable due to the climate change, it becomes more difficult for them to exercise their traditional knowledge. This is for example happens in Dayak Kantuk community, Jelemuk Village, West Borneo. One of the elders said that

the changing of natural conditions makes it difficult, even no longer possible, to pass some knowledge to the younger generation.<sup>5</sup>

*The second impact* is the change of livelihood in some indigenous communities. Indigenous peoples depend on the utilization of land and natural resources for subsistence. The cost of climate change on their land cause insecurities in supplying their own basic needs. Climate change leads to disaster such as flood and change of natural phenomenon. It causes some communities to not be able to be self-sufficient by harvesting for their subsistence. It leads to food scarcity. As a result, in some communities some of the members leave his/her old way of living and become less dependent on traditional use of natural resources. In Tompu community, Central Sulawesi, for example, the crop failure forced some members to become formal/informal workers, such as taxibike driver, plantation worker, etc.<sup>6</sup>

In another specific mechanism, we need to push our government to strengthening their commitment. Indonesia reaffirmed its strong commitment to the Paris Agreement and other environmental agreements by doing the following:

- 1) Establish a National Transparency Framework in accordance with the Paris Agreement;
- 2) State recognition of *Adat* customary forests;
- 3) Returning 12,700,000 hectares of social forestry area from the target until 2024;
- 4) Ratify the Minamata Convention;
- 5) Commit to reducing palm oil and mining business sectors and reducing 70% of plastic debris by 2025;
- 6) Continue to assist the efforts of other developing countries in climate action through South-South and Triangle Cooperation in agriculture, forestry and coastal area management; and
- 7) Strengthening the Local Communities and Indigenous People Platform within three work plan implementations, knowledge, institution and climate action policy.

We urge the parties to make their best efforts to demonstrate significant progress towards achieving the initial operationalization of the Paris Agreement by adopting guidelines for the implementation of the Paris Agreement in the future. Furthermore, the guidelines must consider the balance between mitigation, adaptation, finance and capacity building as well as development and transfer technology. We would conclude that the process of developing guidelines for implementing the Paris Agreement will also be very important to obtain the input and information needed for Facilitative Dialogue in the coming year for remedies and redress are being made available to respond effectively to

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<sup>5</sup> See S. A. Purwanto, I. Sartika, and R. Rahman, *Kesiapan dan Kerentanan Sosial dalam Skema Kebijakan Perubahan Iklim/REDD di Indonesia*, (Jakarta: Epistema, 2020), p. 29.

<sup>6</sup> Kamar Masyarakat DKN, *Sendirian Menghadapi Iklim yang Berubah*, (s.n., s.a.), p. 11.

the harm to culture and cultural rights caused by the climate crisis. We are available for any discussion for the reinforcement at your convenience.

Sincerely yours,

A handwritten signature in blue ink, appearing to be 'Dahniar', with a horizontal line underneath.

**Dahniar Andriani**

Perkumpulan Huma Indonesia