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Undoing Categorical Inequality

Customary Communities, Agrarian
Conflicts, and Struggle for Inclusive
Citizenship in Indonesia



An opening story

- On 16 May 2013 the Constitutional Court ruled that “customary forest” (*hutan adat*) is no longer part of the state owned forest.
- This means that customary communities (*masyarakat hukum adat*) are recognized as rights bearing subjects.
- The ruling came in response to a judicial review of articles in Forestry Law 41/1999 related to the status of customary forest submitted by the Alliance of Indigenous Peoples of Indonesia's Archipelago (AMAN).



A simplified version of the Constitutional Court Ruling No. 35/PUU-X/2012 on Judicial Review of articles in Forestry Law 41/1999

What was changed	Original	Revision
Article 1.6	Customary forests are state forests located in customary communities' territories.	Customary forests are state forests located in customary communities' territories.
Article 4.3	Forest status consists of two types: a. state forest, and b. forest subject to rights	State forest as referred to in paragraph (1) point a, <u>does not include customary forest</u> . (Then, community forests belong to "forest subject to rights").
Article 5.2	State forest ... can be in the form of customary forest.	(deleted)

My arguments

- By submitting a judicial review of Forestry Law No. 41/1999 to test the constitutionality of the status of Customary Forest, AMAN successfully challenged the basic form of categorical inequality in Indonesia forest governance.
- The Constitutional Court Ruling has opened up the possibility for changing the trajectory of the agrarian conflicts, which are systemic, chronic, and pervasive in Indonesian archipelago
- At the same time, it provides an opportunity to fix the citizenship status of Indonesian customary communities as right-bearing subjects, which would be a popular move.





The roles of AMAN in making customary communities visible, their rights respected, and their citizen status fixed

- For communication and political reasons, AMAN has decided to translate *masyarakat adat* (customary communities) as indigenous peoples, which focus on historic continuity, distinctiveness, marginalization, self-identity, and self-governance.
- The Indigenous Peoples' Alliance of the Archipelago (AMAN) was established in 1999 at their first national congress at Jakarta.
- In 2013 more 2,243 customary communities have registered as members of AMAN. AMAN set up 20 provincial regional branches, and 81 district offices across the Indonesian archipelago.
- AMAN leaders estimates around 45 million hectares of customary territories, out of 147 million hectares of Indonesian territory.



Geographical distribution of AMAN's registered community members: 1696 by September 2011. In December 2012, it goes to 2243 members





AMAN provides political leverage, network, and framework to struggle for recognition to customary communities' position and their claims over land, natural resources, and territory.

AMAN opens political space to engage in multiple and interconnected site of struggle, from local to national policy processes.

AMAN's first motto:

"If the State does not recognize Us, We do not recognize the State".

In 2012, AMAN adds their motto with

"If State decides not with us, We insist to keep our sovereignty over our homeland/native land"



AMAN leaders
participate in UN
Mechanisms:
UN SP, C ILO 169, CERD,
UNDRIP, UN PFII, etc.



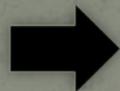
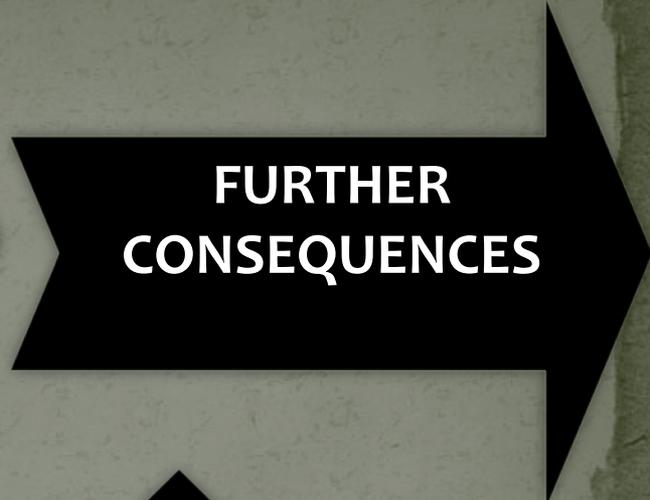
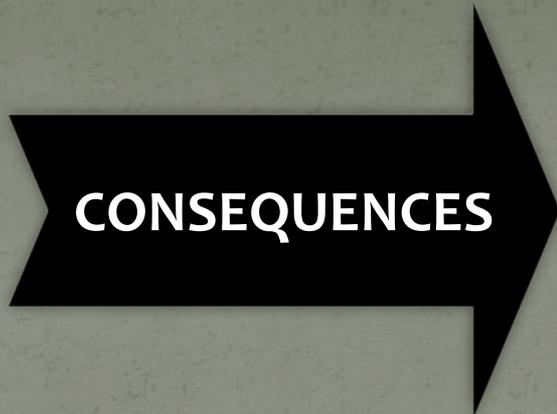
AMAN invokes the politics of indigeneity through the using of 'indigenous peoples' for customary communities, building networks/coalition at national, regional and international levels, and participating at global events, including in producing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Characterizing agrarian conflicts

The systemic agrarian conflicts are protracted conflicts arising from opposing claims related to access to particular pieces of land, or over natural resources, or territories, between rural communities with giant corporations and other agrarian concession holders in the business of infrastructure, production, resource extraction, and conservation,

And where each opposing side is taking direct or indirect actions to delegitimize the claim of the other.

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Large-scale land acquisition

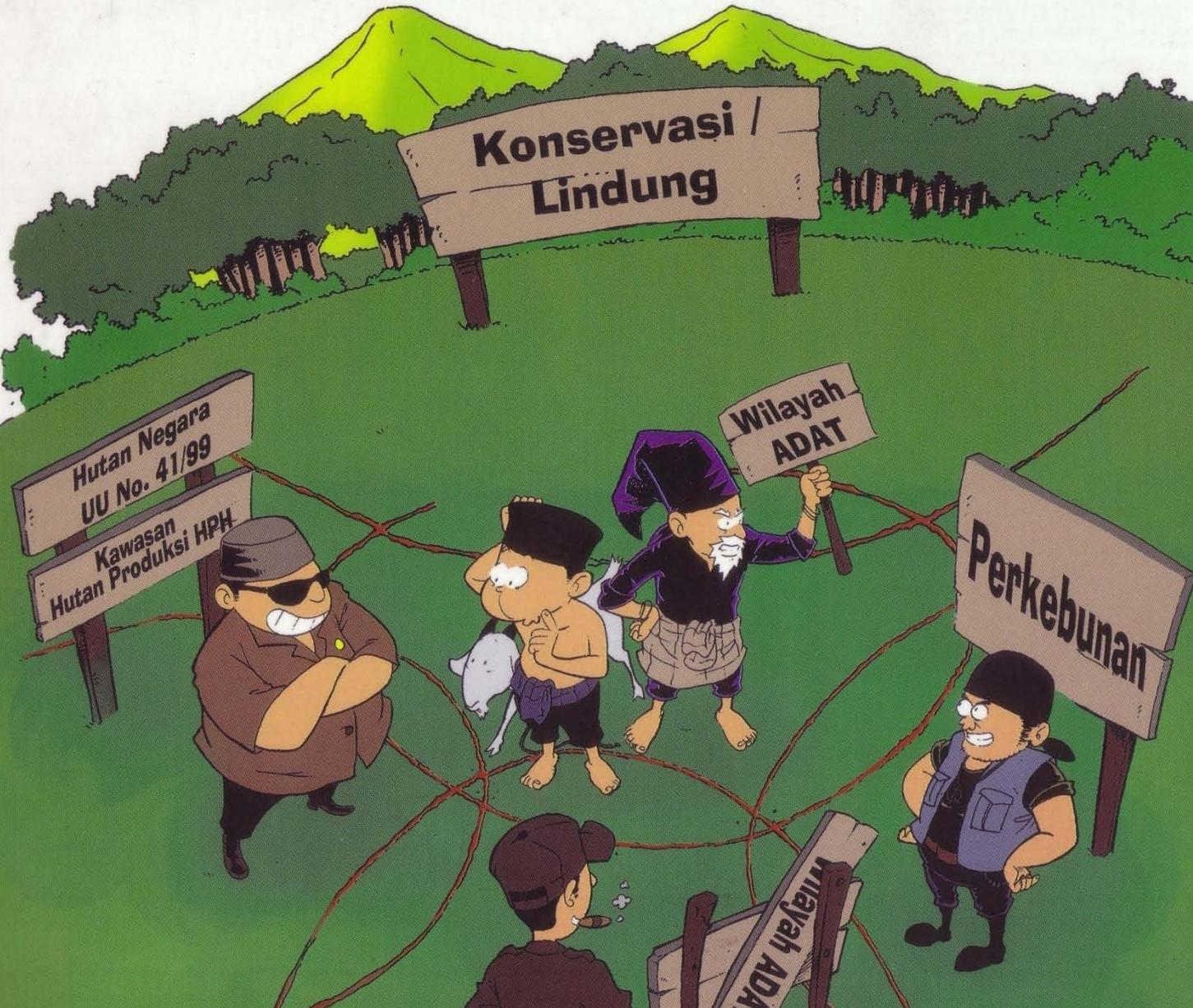
- Logging and forest plantation Concessions (HPH, HTI, IUPHHK-HA, IUPHHK-HT)
- Plantations Concessions (HGU, IUP)
- Mining Concessions (KP, KK, KKBB, PKP₂B)
- Conservation schemes (TN, Suaka Margasatwa, Hutan Raya, RE)
- Transmigration and Infrastructure Projects (DAM, Road, seaport, etc)



One of the roots of the systemic agrarian conflicts is the actually existing policy regime of “State Forest Zone”, and the authority of Ministry of Forestry to give forest concession/license to corporations and other agencies.

Customary communities' territories are categorized as part of “state owned forest”, and based on this “State-izing” mechanism, the Ministry of Forestry and other government officials, have legal authorities to allocate part of state owned forest based on its functions, and they, in turn, produce various forest licenses that include customary communities' territory.

”We are here!” A struggle for visibility



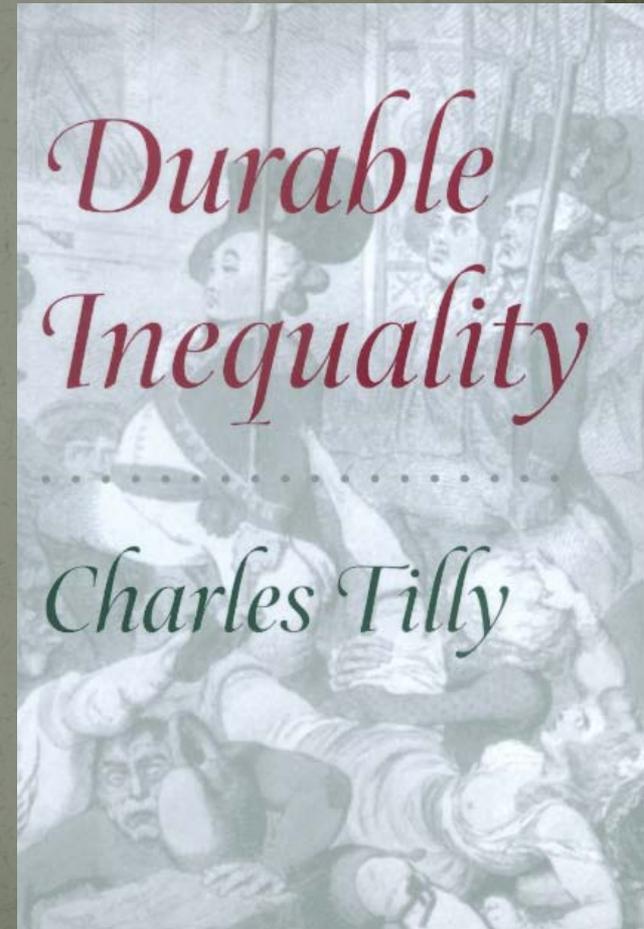
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What the case is this?

I follow also Charles Tilly's *Durable Inequality* (1998), on the concept of categorical inequality.

“Durable inequality among categories arises because people who control access to value producing resources solve organizational problems by means of categorical distinctions. Inadvertently or otherwise, those people set up systems of social closure, exclusion and control. Multiple parties — not all of them powerful, some of them even victims of exploitation — then acquire stakes in these solutions” (Tilly 1998:8)



This is the case of undoing categorical inequality as a part of struggle for inclusive citizenship

Policies toward recognition requires a kind of visibility of customary communities and their right to have rights, including right over their customary territory

It also need a kind of representation hat make their participation are respected in formal policy processes at statutory and non-statutory institutions.

So, adequate visibility, representation, and participation are three key determinants in actual struggle for recognition to fix the citizenship status of Indonesian customary communities as right-bearing subject.



Conclusions

- By submitting a judicial review of Forestry Law No. 41/1999 to test the constitutionality of the status of Customary Forest, AMAN challenged a basic form of categorical inequality in Indonesia forest governance.
- The Constitutional Court Ruling has opened up the possibility for changing the trajectory of the existing agrarian conflicts, which are systemic, chronic, and pervasive in Indonesian Archipelago.
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Implications to popularize and implement the FAO Tenure Guidelines

In popularizing and implementing the FAO Tenure Guidelines, it is important to start to understand the characteristics of the actually existing land governance, especially on their discriminatory policies and practices. In Indonesia context, the Ministry of Forestry, which has controlled ca 130 million hectares out of ca 187 million hectares, assume that customary territories are included within state owned forest category. Outside of this forest jurisdiction, i.e. ca 57 million hectares are non-forest land which are managed by the National Land Agency. In this presentation, I show that by including customary forest as part of state owned forest, the Ministry of Forestry does not recognize the customary communities as right-bearing subject. By giving forest and other licenses to corporations or government institutions, which include the total area or part of customary territories, customary communities suffered because of dispossession and displacement. In turn, they have become rural and urban poor, and trapped in structural poverty.

- Bringing the FAO Tenure Guidelines into national policy processes could help democratic societal and state actors to have a good global reference to reform the discriminatory nature of the actually existing land governance. Realizing these gaps, I believe, the roles of CSOs are to make the oppressed/marginalized/disadvantaged citizen groups visible, their rights are respected, and last but not least, their representation and participation adequate in various policy making arenas. This must be a struggle for social justice, and at the same time struggle for inclusive citizenship.



Terimakasih

