



Submission Written for
4th Cycle of Universal Periodic Review Indonesia
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Submitting Organization

The Indigenous Peoples' Alliance of the Archipelago (AMAN) is an Indigenous organization consisting of 2.422 Indigenous communities as its members, with 3 wing organizations namely *Perempuan AMAN* (Indigenous Women), *Barisan Pemuda Adat Nusantara* (Indigenous Youth), *Perhimpunan Pembela Masyarakat Adat Nusantara* (Indigenous Peoples Rights Defenders) and 2 Autonomous Bodies, working at the local, national, and international levels to fight for the respect, recognition, protection, and fulfilment of Indigenous Peoples' rights in Indonesia.

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Indigenous Peoples Rights International (IPRI) is a global indigenous non-for-profit organization established in 2019 and legally registered in the Philippines. IPRI works in the protection of Indigenous Peoples rights coordinating and implementing the Global Initiative to Address and Prevent Criminalization, Violence, and Impunity Against Indigenous Peoples and the Legal and Sanctuary Fund among other activities.

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A. Indigenous Peoples in Indonesia

1. Indonesia has a population of approximately 273 million people consisting of 1.340 ethnic groups¹, the Ministry of Social Affairs has also identified several small groups of Indigenous community living in remote areas. They regularly move to and from the same areas or settle in remote island, mountain, or border areas and barely have access to transportation, health and education access.
2. In the policy level, the government embeds the terms Customary Law Communities², Indigenous Peoples, and Traditional Communities³ to indicate the existence of a group of people who live for generations in a certain area, holding fast to noble values passed down from generation to generation, and a set of norms collectively obeyed in the group. AMAN estimates the number of Indigenous Peoples in Indonesia ranges between 50 and 70 million of individual.
3. The Indonesian Constitution clearly recognizes Indigenous Peoples by stating that the State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia and shall be regulated by law. The sectoral laws also mention Indigenous Peoples, Indigenous Law Communities or Traditional Communities e.g., Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 39 of 1999 on Human Rights, Resolution of the Indonesian People's Consultative Assembly (MPR) No. X/2001 on Agrarian Reform, and many more.
4. While Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Government is of the opinion that the concept of Indigenous Peoples cannot be applied to all Indonesians, there are exceptions to certain ethnicities, and they do not have the same rights. On that basis, the Government declined the request from the Indigenous Peoples and refused to call them Indigenous Peoples while in several official documents and international agreements, the Government of Indonesia has clearly and consistently used the term "Indigenous Peoples"⁴.

¹ [Mengenal Keragaman Suku Bangsa di Indonesia, January 2022, https://katadata.co.id/safrezi/berita/61dd3126d73ef/mengenalik-keragaman-suku-bangsa-di-indonesia](https://katadata.co.id/safrezi/berita/61dd3126d73ef/mengenalik-keragaman-suku-bangsa-di-indonesia)

² Article 18B of the 1945 Constitution, also found in sectoral laws e.g. Forestry Law, Environmental Management Law, etc.

³ [Peran Masyarakat Adat dalam Penanggulangan Dampak Perubahan Iklim, http://ditjenppi.menlhk.go.id/dari-media/339-peran-masyarakat-adat-dalam-penanggulangan-dampak-perubahan-iklim.html#:~:text=Saat%20ini%20jumlah%20masyarakat%20adat,dalam%20lebih%20dari%201.100%20suku.](http://ditjenppi.menlhk.go.id/dari-media/339-peran-masyarakat-adat-dalam-penanggulangan-dampak-perubahan-iklim.html#:~:text=Saat%20ini%20jumlah%20masyarakat%20adat,dalam%20lebih%20dari%201.100%20suku.)

⁴ Half-Hearted Recognition of the Best Guardian of the Forest, September 2015, https://www.aman.or.id/wp-content/uploads/2015/09/Kertas-Posisi-AMAN-INDC_Full.pdf.

5. The government's stance clearly contradicts the Constitutional Court Decision No. 35/PUU-X/2012 May 2013 (MK35) which affirms the constitutional rights of Indigenous Peoples to their customary territories along with collective rights to customary forests and the utilization of which. In fact, UNDRIP and various human rights instruments including ILO Convention 169 on Indigenous and Tribal Peoples were used as references and evidence for the Constitutional Court Decision MK35.
6. In 2014, President Joko Widodo included six commitments related to the recognition, fulfillment, and protection of Indigenous Peoples' rights in his NAWACITA priority agenda. The President emphasized his commitment in a meeting with AMAN on June 25, 2015, and in his first State of the Union address that he would protect Indigenous Peoples through the Law on the Recognition and Protection of Indigenous Peoples and would form an Indigenous Peoples Task Force. However, this commitment has never been realized to date.
7. AMAN and other CSOs have conducted participatory mapping of ancestral domain covering 17.6 million hectares⁵ spread over 29 provinces and 141 districts/cities. This mapping is participatory manner, meaning that it was carried out by Indigenous Peoples together with AMAN and other CSOs. The map covering an area of 10.5 million hectares⁶ produced from this participatory mapping has been submitted to the government through relevant ministries/agencies.
8. The 2017-2022 is a period of pressure for Indigenous Peoples in Indonesia. In recent years, several policies issued by the Government have put Indigenous Peoples in an increasingly threatened position of losing their indigenous territories/ancestral domain. These policies include the Job Creation Law, the Revised Mineral and Coal Law, the Regulation of the Minister of Agrarian and Spatial Planning, the Regulation of the Minister of Environment and Forestry, the Presidential Regulation on Carbon Economic Values, and the Law on the State Capital⁷. During this period, the government has appropriated several ancestral domains to operate a food estate program under the guise of food security.

B. Follow-Up and Progress upon the 3rd UPR Evaluation

9. In the third UPR cycle back in 2017, Indonesia received three (3) recommendations for the issue of Indigenous Peoples. Guatemala recommended that Indonesia ratify the ILO convention 169, Mexico recommended that Indonesia invites the UN special rapporteur on the Rights of Indigenous Peoples to Indonesia especially Papua, and Peru recommended that Indonesia establish a mechanism for recognizing indigenous territories/ancestral domain. The UPR Working Group for Indonesia endorsed the recommendations given by the three countries, **but unfortunately, they were rejected by the Indonesian government and no follow-up has been taken by the government to date.**

⁵ [Status Pengakuan Wilayah Adat di Indonesia Pada Hari Kebangkitan Masyarakat Adat Nusantara ke-23, Maret 2022.](https://www.brwa.or.id/news/read/501)
<https://www.brwa.or.id/news/read/501>

⁶ Status of ancestral domain after 74 Years of Independence, August 2019, <https://brwa.or.id/news/read/394>

⁷ AMAN 2020 and 2021 Annual Report

I. Indigenous Peoples Bill: The Absence of Implementation of the Constitutional Mandate

10. The Indigenous Peoples Law is a constitutional mandate of Indonesia and intended as a legal standard for the UNDRIP implementation in terms of the recognition and protection of Indigenous Peoples. AMAN proposed Bill on the Recognition and Protection of Indigenous Peoples' Rights (the Indigenous Peoples Bill) to the National Parliament in 2012. In its 2017 UPR report, the Indonesian Government claims that the inclusion of the Indigenous Peoples Bill into the National Legislation Program,⁸ is a positive progress. However, since 2012 until this report was prepared, the Indigenous Peoples Bill has repeatedly been included in the National Legislation Program but has yet to be enacted. Without this law, the existing legal system will only hinder the protection of the basic human rights of Indigenous Peoples.
11. The absence of the Indigenous Peoples Law makes the agenda for the recognition and protection of Indigenous Peoples dependent on sectoral, complicated, and bureaucratic laws and policies. For example, there is a prerequisite for Indigenous Peoples asking for recognition of their rights to their ancestral domain i.e. the district and/or provincial governments where the Indigenous Peoples are located must validate the "existence" of Indigenous Peoples through a local government decree or regulation, depending on the status of the claimed area. This prerequisite gives local governments broad discretion, denies Indigenous Peoples legal personality (an inalienable right), and ignores the basic criteria of self-identification.
12. In addition, the content of the Indigenous Peoples Bill currently in the National Legislation Program is still far from expected and at the same time poses a danger to the existence of Indigenous Peoples in the future. It is indicated by the arrangement that gives the government an authority to validate the existence of Indigenous Peoples, the increasingly complex Indigenous Peoples recognition procedures, the absence of arrangement for restitution and rehabilitation, the absence of a special institution for Indigenous Peoples, and the lack of special protection for Indigenous Women.

Recommendations:

- a. The Indonesian National Parliament and the Government of Indonesia to immediately holds a dialogue with Indigenous Peoples and supporting CSOs to discuss and revise the current draft of the Indigenous Peoples Bill. This process is intended to allow full and effective participation of Indigenous Peoples and the public in the formulation of the Indigenous Peoples Law.
- b. Immediately pass the Indigenous Peoples Bill into Law.

II. Discriminative Laws and Regulations

13. In the absence of progress on the discussion of the Indigenous Peoples Bill, the government has exaggerated the situation by enacting various laws and regulations that are

⁸ WGR 2017 in group report

discriminatory against Indigenous Peoples. In 2020, the Indonesian National Parliament and the Government enacted the Job Creation Law and the Amendment to Coal and Mineral Law without the participation of Indigenous Peoples and other civil society groups. The Job Creation Law, for instance, facilitates investment and licensing while at the same time weakening social and environmental protections, posing harm to the rights of Indigenous Peoples. The law has opened up more space for criminalization; expanded options for appropriation of customary territories by the government; reduced sanctions for corporate actors to merely reimbursing sanctions for environmental and forestry violations; removed already weak requirements including the environmental impact analysis for companies to obtain the necessary permits for business activities in customary areas; and significantly reduced or eliminated essential safeguards for the rights of Indigenous Peoples i.e., full and effective participation in decision-making regarding the issuance of business permits and the conduct of environmental and social impact assessments.

14. The process by which the Laws was enacted has denied Indigenous Peoples the right to full and effective participation while giving privilege to business interest and ignoring the requirement in international human rights law stating that where legislation affects Indigenous Peoples, States should ensure “full and effective participation to obtain Free, Prior and Informed Consent [FPIC]”. The CESCR, the UN treaty body, explicitly recommends that Indonesia “establishes a robust mechanism to ensure respect for [Indigenous Peoples] FPIC for decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violations.”⁹. Instead of defining the mechanism in the new law, the State directly violated this recommendation in the process of enacting the Job Creation Law, even though the initiation process, discussion and determination by the Constitutional Court were considered unconstitutional. The law would be considered null and void if the State did not correct the immutable defects in the Law within two years.
15. Other policies that placed Indigenous Peoples in the threatened position of losing their ancestral domain, which followed by various forms of rights violations, are the Regulation of the Minister of Agrarian and Spatial Planning No. 18 of 2019 on Procedures for Administration of Indigenous Peoples' Customary Land, the Regulation of the Minister of Environment and Forestry No. P.17/MENLHK/SETJEN/KUM.1/8/2020 on Private Forests and Customary Forests, the Presidential Regulation on Carbon Economic Values, the State Capital Law, the Job Creation Law, the Mineral and Coal Law, among others.

Recommendations:

- a. The Indonesian government needs to review the discriminatory laws and regulations against Indigenous Peoples by placing the principles of recognition, respect, protection, promotion of the rights of Indigenous Peoples, to use the environmental sustainability as the basis for the judicial review, and to end it by the revocation of laws and regulations that have been be the cause of the ancestral domain appropriation, violence, and criminalization against Indigenous Peoples, as well as environmental degradation.

⁹ E/C.12/IDN/CO/1 (2014), para 38

- b. In making policies that have implications for Indigenous Peoples, the government must pay attention to the universally applicable principles, including the principles of full and effective participation of Indigenous Peoples in the planning, implementation, and oversight of the implementation of development policies and programs.

III. Appropriation of Indigenous Territory and Criminalization

16. The absence of legal certainty on the recognition and protection of Indigenous Peoples has opened more spaces for violations of rights. In the 2017 UPR Report, the Government of Indonesia is committed to resolving conflicts between Indigenous Peoples and the government and companies, as well as ending all forms of stigmatization and discrimination against Indigenous Peoples. Based on AMAN 2019 data and up to the day this report was made, many cases of indigenous land and territories appropriation followed by criminalization, arbitrary arrests, killings, torture, intimidation, forced evictions and other forms of human rights violations, remain unsolved.
17. One of the cases on ancestral domain appropriation occurred in the Ompu Ronggur community of Toba Batak – the highlander of North Sumatra who have an ancient tradition of tapping resin in the forest. In 2004, a large part of their indigenous territory was subject to a concession permit to establish Eucalyptus plantation granted by the Government to a pulp and paper company, the Toba Pulp Lestari (TPL). Their repeated calls to the State to return their lands were ignored. The TPL continues to destroy their land, including resin trees and other resources, destroying their traditional livelihoods, and making them very poor. Moreover, the TPL operation has resulted in the criminalization against members of the Ompu Ronggur community. In 2021, the ILO issued a decree recommending that the Ompu Ronggur community resubmit their request for recognition as Indigenous Peoples (MHA) and for the local government to issue a decision without delay. Although the community resubmitted their request, the government failed to comply with the ILO's decision.

Recommendations:

- a. The Government of Indonesia to enforce the law in an open and accountable manner as well as impose sanctions on companies and parties who are proven to have violated the rights of Indigenous Peoples.
- b. The Government of Indonesia and investments to respect the rights of Indigenous Peoples to Free, Prior, Informed Consent (FPIC), especially when their ancestral domain are the targets of development plans.
- c. Providing remedies for the rights of Indigenous Peoples that have been violated.

IV. Indigenous Women, Children and Youth

18. Women, youth, and children are an important part of Indigenous Peoples. However, in the social life and development processes, women, youth, and children are not given adequate attention by the government. This can be seen in the development and natural resources management issues, where women experience gender-based violence. Indigenous women are not given the opportunity to participate and provide inputs related to development. They do not even have secured tenure rights over customary land. Land ownership is not only a tool for the survival of Indigenous women, but also as a place for nursery, life, and identity for Indigenous women.
19. Indigenous women as part of Indigenous Peoples have an extraordinary role in the development of this nation apart from being in the frontline as protectors of the Archipelago cultural values and local wisdom. Indigenous women have a great contribution to economic resilience, play a major social role, and actively preserve the natural environment¹⁰. But unfortunately, many Indigenous women still experience stigma and discrimination due to the strong patriarchal culture, the lack of engagement in the development process, the gender-based violence, being trapped in poverty, and other problematic issues.¹¹
20. It was shown that 67.4% of Indigenous women were never consulted in the development process taking place in their respective customary areas, 33% of Indigenous women stated that they had difficulty getting nutritious food, 87.8% perceived that poverty still existed in their community, 38.9% stated that child marriages still occur in Indigenous communities, and 14.6% stated that there was physical/sexual violence from their husband or partner.¹²
21. Indigenous children and youth have no different situation as they also experience violence both in socio-cultural life, development, and natural resource management. This can be seen from the absence of initiatives involve children and youth in the process to enable children and youth friendly development and natural resources management.
22. To date, the Indigenous women, youth and children in the customary context have not received legal protection, because the government has not ratified the Indigenous Peoples Law which also regulates the protection and fulfillment of Indigenous women, children, and youth's rights. In the contrary, there are many violations committed by the state by issuing various discriminatory local regulations or policies against women, children, and youth in Indigenous communities.

Recommendations:

- a. The Government of Indonesia and development institutions to adhere to the principles of full and effective participation of Indigenous Women and Youth in policy formulation

¹⁰ Kemenpppa.go.id (press release number: B-350/Set/Rokum/MP 01/12/2020)

¹¹ *ibid*

¹² Fact Sheet and Analysis 'Embracing the Dream of Sustainable Development Goals from the Perspective of Indigenous Women', Chairperson of the Archipelago Indigenous Women Organization, Alliance of Indigenous Peoples of the Archipelago (PEREMPUAN AMAN)

- and development processes. In addition, it also considers the best interests of Indigenous children in policy formulation and development.
- b. The Government and investment to pay attention to the interests of women in managing natural resources by involving women in making policies and development plans, this is very important so as not to have an impact on the survival of women in the future.
 - c. The Government of Indonesia to develop policies on the preservation of local culture because the local culture is an element that forms the identity of Indigenous women.

VI. Indigenous Peoples' Rights to their Territories and Natural Resources

23. The Indonesian government is now actively promoting the Social Forestry program. However, the program is not in accordance with the spirit of constitutional recognition of Indigenous Peoples and their traditional rights. While customary forest is built on the recognition of the Indigenous Peoples rights of origins, the other forms of social forestry such as Community Forests, Village Forests, Community Plantation Forests, and Forestry Partnerships require permit from the government, so they are not recognition of rights. In many places, social forestry schemes in the form other than customary forests have become a means of ancestral domain appropriation. To date, there have been 240,000 hectares of ancestral domain dispossessed under the social forestry scheme in the form other than customary forests¹³.
24. To date, the Government has recognized nearly 60,000 hectares of customary forest, including the 9 customary forest units covering 13,122 hectares mentioned in the 2016 Government report. In fact, apart from customary forest, there is a procedure for recognizing communal land. Since 1999, the Government has only succeeded in establishing almost 20,000 hectares of Indigenous Peoples communal land. Considering only 17.6 million hectares communal land that have been mapped by far, it would take Indonesia tens or even hundreds of years to complete the recognition of ancestral domain, either through customary forests or through procedures for recognizing communal lands.
25. The beginning of 2022 was marked by the enactment of Law Number 3 of 2022 concerning State Capital on February 18, 2022. AMAN estimates at least 20,000 Indigenous peoples would become victims of the new State Capital development project in East Kalimantan. The 20,000 Indigenous peoples derive from 21 Indigenous communities, 19 of which are in North Penajam Paser District and 2 are in Kutai Kartanegara District. There are 11 ancestral domains included in the core zone of the new State Capital development project.¹⁴ In the past, this area was under the permit given by the Government to investors engaging in mining and plantations. The formulation of this Law was done without the full and effective participation of the Indigenous Peoples, making the constitutional rights of the Indigenous Peoples in the new State Capital are very prone to violation.

¹³ AMAN 2021 Annual Report

¹⁴ Ibu Kota Pindah, AMAN Ingatkan soal Potensi Sengketa Lahan, January 2022,

<https://www.cnnindonesia.com/nasional/20220119171509-32-748713/ibu-kota-pindah-aman-ingatkan-soal-potensi-sengketa-lahan>

Recommendations:

- a. The government must immediately make corrections to its unilateral decisions that have ignored the existence of Indigenous Peoples and their traditional rights, including the rights to ancestral domain.
- b. The government to resolve prolonged tenurial conflicts in the territory of the new State Capital and ensure an honest, open, and fair conflict resolution that prevents Indigenous Peoples from losing their tenure rights over their ancestral domain.

VII. Failure to Implement UN Recommendations: Treaty Bodies, Special Procedures and Agencies

26. The Government of Indonesia's neglect of its international obligations continues. The government has never seriously responded and implemented recommendations by various UN Agencies, Treaty Bodies, and Special Procedures on the rights of Indigenous Peoples. It is proven by the failure to respond to formal communications requesting evidence that the state has adopted recognition and safeguards to protect the rights of Indigenous Peoples. The response of the Indonesian government in various communications has always been disproved by reports from non-state parties, especially CSOs, on the actual situation facing Indigenous Peoples in Indonesia.
27. The UPR Working Group for Indonesia in 2017 recommended that the Government of Indonesia adopt 3 important recommendations from Guatemala, Mexico, and Peru. These important recommendations include inviting the United Nations Special Rapporteur on the Rights of Indigenous Peoples to Indonesia and the recognition of the rights of Indigenous Peoples over their territories. The Indonesian government subsequently failed to demonstrate its commitment to recognizing and protecting the rights of Indigenous Peoples by refusing to adopt the recommendations, let alone at the implementation.
28. In addition, the CESCR in its Concluding Observation in 2014 asked the Government of Indonesia to pass the Indigenous Peoples Bill into a law as part of carrying out the constitutional mandate¹⁵. The CESCR then states that the Indigenous Peoples Law must contain several matters relating to self-identification, the right to own, develop, control, and use ancestral domain and the natural resources contained therein. This must be carried out by upholding the FPIC mandated by UNDRIP. Until now the Indigenous Peoples Bill is still in the National Parliament as a draft and has always failed to be passed into law. Meanwhile, the current policies are still too complicated go through for the recognition and protection of Indigenous Peoples.
29. In line with the CESCR, several other bodies and mechanisms under the United Nations, such as CERD, UN Special Rapporteur on the Rights of Indigenous Peoples and ILO also ask

¹⁵ See, e.g., CERD Concluding Observations: Indonesia, E/C.12/IDN/CO/1, 19 June 2014, para 38.

the Indonesian government to seriously recognize and protect the rights of Indigenous Peoples which are translated into a *legal framework* so that they can be implemented.

Recommendations:

1. The Government of Indonesia must immediately hold a dialogue with Indigenous Peoples to redraft or reformulate the contents of the Indigenous Peoples Bill and enact it into law. This is part of carrying out the constitutional mandate and recommendations of various UN Treaty Bodies, Special Procedures, and Agencies.
2. The Government of Indonesia to immediately respond to formal communications from UN Treaty Bodies, Special Procedures, and Agencies and provide answer in accordance with actual conditions at the national and local levels, especially with regard to the recommendations given to the Indonesian government.
3. Extend an invitation to the Special Rapporteur on the Rights of Indigenous Peoples, and other relevant mandates, to Indonesia to examine, monitor, advise, and publicly report the situation of human rights, in particular Indigenous Peoples' rights, in Indonesia.