

# The Undeclared Defeat: Indigenous Identity Politics in the Indonesian Law on Advancement of Culture

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## Abstract

This study critically examines the existence of indigenous peoples within the framework of promoting cultural rights in Indonesia. The main reason for this study is that the Indonesian Law on Advancement of Culture enacted in 2017 did not explicitly include indigenous peoples as a crucial aspect of preserving cultural activities. Consequently, there has been no significant policy reform from the Indonesian government to maintain the rights and existence of indigenous peoples, primarily their cultural rights. From a human rights perspective, culture shapes indigenous peoples' collective identity and political force, hence Indonesia is responsible for protecting and fulfilling their collective rights. Based on the discourse analysis, this study examines two questions: First, to what extent does the recognition of indigenous peoples in the Law on the Promotion of Culture ensure the promotion of the cultural rights of indigenous people? Secondly, what government policies are directed to fulfill indigenous peoples' rights? The finding of this study is that the partial recognition of cultural rights for indigenous peoples affected the undisputable conflicts surrounding sacred rites, which affected the promotion of the collective identity of indigenous people.

Keywords: *Cultural rights, Identity, Indigenous politics, Land, Marginalization*

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## I. INTRODUCTION

In 2021, the International Work Group for Indigenous Affairs (IWGIA) noted that 18 to 19 percent of Indonesia's population comprises indigenous peoples.<sup>2</sup> According to UNESCO, Indonesia has 50 to 70 million customary entities that have succeeded in making it a superpower of culture.<sup>3</sup> Ironically, aside from the recognition of their cultural wealth, indigenous peoples as a cultural subject in Indonesia still struggle to recognise their traditional rights, such as local religion, customary institutions, indigenous land, and their traditional rites.

Investment-based regulations such as the Job Creation Law enacted in 2020 and its subsequent regulations have contributed to the acceleration of grabbing indigenous peoples' land and violating their traditional rights. The law is expected to boost economic development and increase investment, potentially converting land, including customary land owned by indigenous people, into profit. Investment-based regulation is also a knot of tenurial conflicts between indigenous peoples and the government, indigenous peoples and corporations, and indigenous peoples and security forces, that have not been resolved. In many cases, people have even been expelled from their land, becoming victims of human rights violations by state apparatus.<sup>4</sup>

The tenurial conflict caused by the seizure of 1,800 hectares of customary land of the Dayak Majun tribe in East Kalimantan<sup>5</sup>, and an area of 184,046 hectares of customary land of the three largest tribes in Papua (Marind, Auyu, and Mandobo) by foreign palm oil investors<sup>6</sup> have illustrated the paradox of state policy and the protection of cultural rights. For the Dayak Majun tribe, this grabbing of customary lands has not only damaged ecosystems and limited community access to natural resources but has also affected several sacred rites, such as funerals for the ancestors of the Dayak Majun tribe and the

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2 IWGIA, "Indonesia - IWGIA - International Work Group for Indigenous Affairs", online: <<https://www.iwgia.org/en/indonesia.html>>.

3 Admin, "Indonesia superpower country of culture: UNESCO", (6 November 2017), online: *Perm Deleg Repub Indones UNESCO* <<https://kwriu.kemdikbud.go.id/en/news/indonesia-superpower-country-of-culture-unesco/>>.

4 Chairul Fahmi & Muhammad Siddiq Armia, "Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms" (2022) 6:1 J Southeast Asian Hum Rights 1-25.

5 Aryo Bhawono, "Dayak Marjun Desak Pengembalian Tanah Ulayat", (18 March 2022), online: *betahita.id* <<https://betahita.id/news/detail/7294/dayak-marjun-desak-pengembalian-tanah-ulayat.html>>.

6 Agus Andrianto, Heru Komarudin & Pablo Pacheco, "Expansion of Oil Palm Plantations in Indonesia's Frontier: Problems of Externalities and the Future of Local and Indigenous Communities" (2019) 8:4 Land 56.

destruction of the sacred forest by logging of rare trees they protect.<sup>7</sup> In comparison, the significant impact of land acquisition by investors for Marind, Auyu, and Mandobo tribes led to unfair land transfers from the indigenous landowners, reduced welfare of people due to loss of livelihoods, and impacts on food security. Moreover, the land use rights agreement does not explicitly state whether the company should return the land to the community owners at the conclusion of their operation.<sup>8</sup>

These concerns become a bitter reality when we consider that the Basipae tribe in East Nusa Tenggara has been driven from their customary lands permanently, as the government has refused to return the land borrowed for animal husbandry since 1982. The customary land area of 3,700 hectares belonging to the Basipae tribe has usufructuary status. It is controlled by the provincial government, leading to prolonged conflicts because the Basipae people refused to extend the contract to use their customary land. Recently, the Basipae tribe continued to struggle because they want the customary land - including the forest- to be returned to its original function as a conservation area (known as Nais Kio), where farming and hunting activities are not allowed.<sup>9</sup>

Indigenous land conflicts between the state, indigenous peoples, and investors often escalate into criminalising indigenous peoples who try to defend their territories or make a living from their occupied ancestral land. This criminalisation occurred with the tribal chief of the Kinipan Community in Lamandau, Central Kalimantan, who was arrested for the alleged theft of a chainsaw belonging to a palm oil company in 2020, after five Kinipan residents were previously arrested on charges of theft and violence.<sup>10</sup> Even though they were released due to limited evidence, the struggle to defend their territory from company expansion is not equitable to the government's efforts to protect the Kinipan tribe entities and their customary land.

The suppression of indigenous peoples through criminalisation also happened to the Suku Anak Dalam (Orang Rimba) people in Jambi, South Sumatera, with accusations against local people of shooting the company's security guard when he tried

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7 Bhawono, *supra* note 4.

8 Andrianto, Komarudin & Pacheco, *supra* note 5.

9 Ayomi Amindoni, "Masyarakat adat Besipae di NTT yang 'digusur' dari hutan adat Pubabu: 'Kami hidup di bawah pohon'", *BBC News Indones* (August 2020), online: <<https://www.bbc.com/indonesia/indonesia-53839101>>.

10 Sapariah Saturi, "Berawal Konflik Lahan, Berujung Jerat Hukum Orang Kinipan", (27 August 2020), online: *Mongabay.co.id* <<https://www.mongabay.co.id/2020/08/27/berawal-konflik-lahan-berujung-jerat-hukum-orang-kinipan/>>.

to find food sources in the forest that the palm oil company had controlled.<sup>11</sup> In this case, the government had turned a blind eye to the Orang Rimba community, who had lost their source of livelihood because their territory had been turned into oil palm plantations. Oil palm plantations, when planted, affect food crops such as tubers and fruits, which are not able to be grown as a source of food for the local people.

Indigenous peoples have an intrinsic relationship with their environment. Their traditions, knowledge, and cultural identity are deeply linked to the natural environment in which they live. Each disturbance to their natural environment, as in the case of the Dayak Majun, Marind, Basipae, Kinipan, and Orang Rimba tribes, affects their unique culture, language, knowledge, and traditions.<sup>12</sup> This conflict seems to show that in the political-economic context, the state is a vital institution that often emphasises the existence of indigenous peoples as marginal communities. Despite this fact, the customary rights of Indigenous people are regularly obscured in a maze of laws designed to protect them; however, state actors tend to do the opposite. As a result, Indonesia's Indigenous people continue to struggle to have their rights to their customary lands recognised.

In this research context, indigenous peoples are often recognised by the state as ordinary citizens, faced with a lack of recognition and protection from the state based on their indigeneity. Although the concept of multiculturalism practiced by the state is claimed as an attempt to protect cultural diversity and traditional entities such as indigenous peoples, at the same time, the state has marginalised indigenous peoples from their traditional rights to land, natural resources, and sacred rites. Regulations that specifically arrange the promotion of cultural rights, according to Law Number 5 of 2017<sup>13</sup>, have not been able to place indigenous peoples in a 'safe zone' when faced with state or corporates intrusion upon their traditional assets. The terminology for promoting culture did not appear suddenly; the Law was enacted because of a constitutional order.<sup>14</sup>

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11 CNN Indonesia, “Konflik Lahan Suku Anak Dalam-Korporasi Sawit, Polisi Klaim Persuasif”, (4 November 2021), online: *nasional* <<https://www.cnnindonesia.com/nasional/20211104093844-12-716429/konflik-lahan-suku-anak-dalam-korporasi-sawit-polisi-klaim-persuasif>>.

12 Juliana Nnoko-Mewanu, “When We Lost the Forest, We Lost Everything” (2019) Hum Rights Watch, online: <<https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>>.

13 Widya Noventari & Andhika Yudha Pratama, “Analisis Strategi Kebudayaan dalam Undang-Undang Nomor 5 Tahun 2017 tentang Pemajuan Kebudayaan dalam Rangka Memperkokoh Bingkai Integrasi Nasional” (2019) 13:1 *J Ilmu Huk* 1-14.

14 *Republic of Indonesia 1945 Constitution*, 1945 art 32: concerning the promotion of culture stipulates that: (a). the state promotes Indonesian national culture in the midst of world civilization by guaranteeing the freedom of the people in maintaining and developing their cultural values; and (b). the state respects and maintains regional languages as national cultural assets.

This Law is the first regulation established by the government to interpret Article 32 of the Constitution (UUD 1945) concerning the promotion of culture. This Law was also enacted as part of the legislative measures from Indonesia as a state party to the International Covenant on Civil and Political Rights (ICCPR), intended to align Indonesian laws with Article 27 of the ICCPR which stipulates that the rights of members of minority groups, including indigenous peoples, must be recognised by the country where the group is located. These rights include enjoying their culture, embracing and practicing their religion, and using their language. The Article 27 of the ICCPR also interprets inclusively the protection of community rights/collective rights, not only individual rights, because in order to enjoy individual rights, community rights must be protected first.

The Indonesian constitution requires recognising and preserving the nation's culture. The regulation's political purpose is to fulfill people's rights to express their culture to promote civilization, unity, and integrity, as well as the welfare of the Indonesian people. This context means that the spirit of Article 32, in the context of the Law on the Advancement of Culture, is to strengthen national culture through a national development framework that makes the state the facilitator.<sup>15</sup>

Using the logic of sociological imagination<sup>16</sup>, this study finds a conceptual ambiguity between the spirit of recognising traditions and the failure of the state towards indigenous peoples as cultural subjects in the Law on Advancement of Culture, which has declined into cultural liberalisation promoted by the state apparatus. On a localised scale, this can be seen through an incident at the end of 2020, when a Sakai tribal farmer in Riau was criminalised for clearing agricultural land in his customary forest, which was the concession land of the company PT. Private Arara (Sinar Mas Group).<sup>17</sup> Similarly, the Tenggerese people living around the Selogendhing Lumajang cultural heritage site also experience many formal constraints that make them legally weak when attempting to claim their traditional territory. Now, most of the customary lands (or *hila-hila*) have been seized from the control of the Tengger indigenous people because the area has been privatised with the knowledge and tacit endorsement of the state. The emergence of land certificates on customary land is an example of the state's presence in legitimising the practice of land grabbing.<sup>18</sup> Furthermore, the privatisation of these customary lands has

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15 *Ibid.*

16 C Wright Mills, *The Sociological Imagination* (New York: Oxford University Press, 2000).

17 Hans Nicholas Jong, "Indonesian court jails indigenous farmer in conflict with paper giant APP", (2 June 2020), online: *Mongabay Environ News* <<https://news.mongabay.com/2020/06/bongku-indigenous-people-riau-sumatra-indonesia-app-pulp-paper-arara-abadi-prison-sentence-conflict/>>.

18 Tania Murray Li, "Centering labor in the land grab debate" (2011) 38:2 *J Peasant Stud* 281–298.

threatened the existence of cultural sites, which are symbols of the existence of local religions and religious traditions of the Tengger indigenous people. In other words, the legality granted by the state has eliminated access to land while destroying the sacredness of religious practices carried out by the Tengger indigenous people.

*Hila-hila* (ulayat land) as a territorial identity is one of the tactics maintained by the Tenggerese indigenous people when negotiating with the state regarding their rights to protect and develop culture. Through these efforts, the Tenggerese indigenous people fight for the values they profess and believe in, explaining that the transcendental relationship between religion and the land gives them life. The Tenggerese indigenous people express this through the term "*mengalah bukan berarti kalah*" (undefeated defeat), which is intended as an effort to respect state policies on the one hand and the struggle to return *hila-hila* as their identity, on the other.

"*Mengalah bukan berarti kalah*" (undefeated defeat) confirms the position of the Tengger indigenous people in carrying out covert resistance to state authority, which in Scott's terms (1990), is referred to as a 'hidden transcript'.<sup>19</sup> The difference with the concept described in Scott's study, however, is that the resistance of the Tengger indigenous people has the effect of strengthening solidarity, which can negate the emergence of individual resistance. In addition, the resistance is flexible in that the Tenggerese indigenous people can understand and consider the types of resistance carried out according to their interests. In this context, the Tengger indigenous people are not in a hurry to carry out their tactics and struggles. Instead, they prioritise their relationship with transcendental nature, using it to reflect on their relationship with the state regarding the issue of *hila-hila*. This situation raises questions about how much the state has recognised indigenous peoples, especially their culture, and what the government has done and can do to fulfill their rights within the framework of advancing national culture. This research is expected to support local government efforts in formulating policies that provide equal protection and respect for indigenous cultures.

## II. A GLOBAL FRAMEWORK OF RECOGNITION

Article 27 of the ICCPR and the International Covenant on Social, Economic, and Cultural Rights was enacted in 1966 and ratified by Indonesia in 2006. These two instruments contain provisions that ensure the protection and fulfillment of cultural rights, non-discrimination, and equality for indigenous people. Since then, the

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<sup>19</sup> James C Scott, *Domination and the arts of resistance: hidden transcripts* (New Haven: Yale University Press, 1990).

promotion of the rights of indigenous people has been developed globally. The ratification of ILO (International Labor Organization) Convention No. 169 of 1989 marked international recognition of the existence of indigenous peoples throughout the world and their inclusive rights.<sup>20</sup> The significant recognition of Indigenous people is explicitly addressed in the United Nations Declaration on the Rights of Indigenous People (UNDRIP), adopted by the UN General Assembly in 2007. Even though UNDRIP is a non-binding instrument, it carries moral and political weight and is expected to be crucial in shaping national policies, judicial decisions, and policies for indigenous people worldwide.

However, recognition at the contextual level is the most difficult thing to prove. The state's subjectivity in interpreting 'recognition' has reduced various rights that indigenous peoples should have. Moreover, no single authority at the national and international levels has the authority to assess whether a country has provided recognition or whether the form of recognition is appropriate.

The definitive concept of 'recognition' has been a long-standing issue when discussing indigenous peoples.<sup>21</sup> Recognition is the first thing that must be obtained before they can enjoy their rights. It can be said that recognition is *primus inter pares* (first among others) for fulfilling and protecting rights, involving, and promoting indigenous peoples by the state (government). Several international instruments, such as the 1989 ILO Convention and UNDRIP, place the principle of 'recognition' before other basic principles.

The ILO convention places the principle of recognition in its preamble, which mandates that states must recognise the aspirations of indigenous peoples to exercise power and control over their institutions, way of life, and economic development, as well as to maintain and develop their identity, language, and religion within the framework of the state of affairs in the country in which they live.<sup>22</sup> Thus, the ILO places the principle of recognition, attached to the principles of self-determination and self-governance, over its customary entities. This provision is aligned with the nature of indigenous people nationally and internationally, focusing on their struggle for self-determination and self-

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20 International Labor Organization, *The International Labor Organization (ILO) is the UN agency promoting internationally recognised labor rights. The ILO Convention on Indigenous and Tribal People, often called the Indigenous and Tribal People Convention, was enacted on June 7, 1989, at the 76th conference in Geneva, as a response to the different levels of legal recognition and social and political realities for over 370 million indigenous and tribal peoples worldwide in 70 different countries.* (1989).

21 C B B, "International Recognition and Protection of Fundamental Human Rights" (1964) 13:4 Duke Law J 846-866.

22 *Ibid.*

governance over their land and resources when threatened by national or international economic interests.<sup>23</sup>

UNDRIP places the principle of ‘intensive recognition’ in its five general principles. The first is recognition of the inherent rights of indigenous peoples, which stems from their political, economic, social, and cultural structures, religious traditions, histories, and philosophies, and, in particular, their rights to land, territories, and natural resources.<sup>24</sup> The first principle also recognises indigenous peoples’ physical or material assets as essential to the manifestation of their cultural activities. Recognition of physical assets such as land, territory, and biological resources is necessary because it intersects with the principle of control by the government as the personification of the state. At the constitutional level, Indonesia favours the state as the authority to regulate the allotment of natural resources, above indigenous peoples.<sup>25</sup> In practice, this concept of state control often negates the rights of indigenous peoples to the physical assets that they have inherited from generation to generation because the distribution of the country’s natural resources targets large-scale business activities that are more profitable for the state financially in the name of national economic growth.<sup>26</sup>

The second UNDRIP principle is the recognition of traditional knowledge, culture, and customary practices of indigenous peoples, including immaterial assets known as ‘intangible cultural property’, often overlooked by the state.<sup>27</sup> Traditional knowledge is essential to indigenous peoples’ intellectual and cultural heritage because it reflects their social and historical identity.<sup>28</sup> Recognition of traditional knowledge, including the wealth of rituals and ceremonial traditions of indigenous peoples, is an essential contribution to the continued existence of indigenous peoples. In many cases of expropriation of customary lands by the state or corporations, which result in damage to sacred places, immaterial losses are often ignored in court.

The lawsuit brought by the indigenous people of Momo, Papua, against the construction of the Trans-Papua Road is one case that shows the paradox of recognising

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23 Cirkovic & Elena, “Symposium: Lands, Liberties, and Legacies: Indigenous Peoples and International Law” (2006) 31:2 *Am Indian Law Rev.*

24 *United Nations Declaration on the Rights of Indigenous Peoples*, 2018.

25 *Article 33, paragraph (3) of the Indonesian constitution (1945 Constitution) stipulates that all resources in the territory of Indonesia are controlled by the state, whose designation is for the welfare of society in general.*

26 Alpi Sahari, “The Rights of Controlling State in Indonesia Against Land Tenure of Customary Law Community” (2021) 2:2 *Randwick Int Soc Sci J* 141–148.

27 *United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 23.

28 *Traditional Knowledge & Indigenous Peoples*, by Uliya Popova (L’auravet’ an Information & Education Network of Indigenous Peoples (LIENIP), 2010).



the legal rights of indigenous peoples. As part of the National Strategic Project (PSN), which also receives solid legal protection and legitimacy from the government to accelerate national development, this project neglects the fact that indigenous people are threatened due to the overlapping of infrastructure developments with customary lands. The Agrarian Reform Consortium in 2021 found that the PSN had "succeeded" in increasing agrarian conflicts by 123 percent compared to 2020, later called 'National Scale Evictions'.<sup>29</sup> The larger scale of conflict caused by the PSN occurred when regulations simplified the land acquisition process, leading to land-grabbing practices against indigenous peoples. The case clearly illustrates how the state ignores the impact of damage to sacred places and sites of indigenous peoples.

In the 2019 Supreme Court decision, it can be seen that judges neglected the immaterial losses of the Momo indigenous people of West Papua, in the form of damage to sacred places and rites. This neglect damaged the balance of relations between indigenous peoples and their ancestors, as well as facilitating a loss of peace in their lives due to curses or calamities which allegedly arise from the damage.<sup>30</sup> Immaterial losses arising from damage or loss of cultural rites and traditions of indigenous peoples has become the most formidable challenge for local people attempting to protect their land. Proving the existence of a spiritual connection with cultural rites and immaterial losses that cannot be replaced is legally difficult.

The third UNDRIP principle states the recognition of the right to self-determination and the right to freely determine political status, as well as economic, social, and cultural development.<sup>31</sup> The principle of self-determination sometimes has ambiguity when applied to the context of indigenous people. It describes claims to autonomy of the political power and economic freedom of a group of people. However, there is a fundamental debate over who has the right to claim self-determination. According to Duttal and Sinha, although "people" in self-determination is still unclear, "people" in a specific context can refer to the people of a country, people under colonialism, foreign domination, minority people, and indigenous peoples.<sup>32</sup> Even the International Court of

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29 Dwi Bowo Raharjo & Yosea Arga Pramudita, "Proyek Strategis Nasional Infrastruktur Sebabkan 38 Konflik Agraria Sepanjang 2021", (6 January 2022), online: *suara.com* <<https://www.suara.com/news/2022/01/06/154353/proyek-strategis-nasional-infrastruktur-sebabkan-38-konflik-agraria-sepanjang-2021>>.

30 *The decision of the Supreme Court of the Republic of Indonesia Number 120/Pdt.G/2018/PN.Son*, 2018. However, in this decision, the judge only granted the request for compensation for material losses in using customary land in the construction of the Sorong-Manokwari Trans-Papua Road for 30 billion Rupiah.

31 *United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 23.

32 *Ibid* at 3.

Justice (ICJ) views self-determination as an essential principle in contemporary international Law that every country must respect.

Unfortunately, there are two crucial problems regarding the condition of self-determination for indigenous peoples. On the one hand, indigenous peoples continue their struggle to gain recognition of their rights from the state, while on the other hand, non-indigenous citizens and the government struggle to understand the basis of these rights.<sup>33</sup> In this context, Indonesia firmly stated that the term self-determination does not apply to the people's right to an independent state and cannot be construed as legitimising or encouraging actions that would divide or undermine the integrity territory or political unit of an independent State.<sup>34</sup>

The fourth UNDRIP principle is the recognition of all human rights recognised by international Law and the collective rights of indigenous peoples. One characteristic of indigenous peoples is collectiveness. The rights owned by indigenous peoples are collective rights, which have benefited not only individuals as part of a community but also the community as a whole. Therefore, according to Bennett, a group of indigenous peoples cannot collectively provide individual rights to live according to their traditional norms if they are included in a democracy where the majority live by different norms.<sup>35</sup> In other words, to fulfill indigenous peoples' human and collective rights, the state needs to enter into the collectivist dimension of indigenous groups, each of which has different characteristics.

For example, in the realm of customary rights, the collective rights of indigenous peoples include more than just the rights related to territories and physical assets in the form of land or forests where they live and seek life resources. Not all indigenous peoples recognise customary rights. Whilst the Minangkabau indigenous people may have known ulayat rights and ulayat land since ancient times, the Tengger people, in comparison, do not necessarily understand their collective assets as ulayat rights.<sup>36</sup> The Tengger people may not be familiar with the concept of customary rights, but they are familiar with the term *hila-hila*, which means sacred land, which is the collective asset of the Tengger people.<sup>37</sup> Thus, the concept of collective rights of indigenous peoples does not only

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33 Mark J Bennett, *"Indigeneity" as Self-Determination* (Rochester, NY, 2005).

34 *Addendum of the ratification of ICCPR on the Law Number 12 of 2005*, 2005.

35 *Ibid* at 93.

36 Zefrizal Nurdia, *Peralihan Dan Kondisi Kekinian Hak Ulayat Pada Keekerabatan Matrilineal (Studi Empirik Atas Hak Ulayat Nagari Di Minangkabau)* (Universitas Andalas Padang, 2020).

37 Wira, *Interview with Mr. Wira, Father Shaman of Tengger, and Head of Community, Senduro, Lumajang* (2023).

concern economic assets alone but also includes social and cultural assets that signify the attachment between indigenous peoples and their territories and ancestors.<sup>38</sup>

The fifth principle of recognition of indigenous peoples is recognition of their situation, history, and cultural background, which differs in each region. Multiculturalism experts believe that recognition of the situation, history, and background of indigenous peoples should not only be viewed from the perspective of the process of forming their culture but also from a historical point of view. In this regard, the rejection of the sovereignty of indigenous peoples, land grabbing, and all efforts to destroy their cultural practices can be viewed as the rejection of recognition.<sup>39</sup> Historical injustices shape the character of indigenous peoples and can measure the extent to which the state recognises their rights of origin, as opposed to simply formal recognition based on their present existence.

In practice, there are differences in the scope of recognition of every country and every indigenous people. The historical traces of the recognition of the Inuit tribes who inhabit the Arctic region reflect how the concept of recognition has a biased dimension. It is noted that the Inuit tribe in Nunavut (Canada) is a tribe that managed to get recognition and build its government in 1993 through a long negotiation process.<sup>40</sup> Meanwhile, the Greenland Inuit tribe, the oldest Inuit tribe, has received recognition from the Kingdom of Denmark since 1979 but has not explicitly received recognition of its autonomous government.<sup>41</sup> Both these Inuit peoples are supported by the recognition of their country through laws such as the Greenland Home Rule Act of 1978 and the Nunavut Act (S.C. 1993, c. 28), which marked the rise of Inuit nation to maintain control over its territory.

Nevertheless, the history of recognition of Inuit tribes gives two hypotheses: First, fundamental differences exist in how much 'recognition' can be given. The recognition received by the Inuit in Nunavut is quite comprehensive, not only territorially but also acknowledging their struggles, ideology, traditions, and history. Meanwhile, the recognition given to the Inuit people in Greenland is only limited to territorial recognition. Second, the first thing that triggers the acquisition of this recognition is

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38 Nurdia, *supra* note 35.

39 Hidayat & T Obby, *Pendidikan Multikultural Menuju Masyarakat 5.0* (Muhammadiyah University Press, 2022).

40 Holly Dobbins, *Nunavut, A Creation Story. The Inuit Movement in Canada's Newest Territory* (Dissertations, Syracuse University, 2019) [unpublished].

41 Katja Göcke, "The 2008 Referendum on Greenland's Autonomy and What It Means for Greenland's Future" (2009) 69 *ZaöRV* 103-121.

acknowledgement of territory. The two nations obtained recognition from their countries based on their presence in the region for an extended period.

Recognition becomes problematic when international instruments issued by the ILO and UN raise fundamental questions, especially in the context of indigenous peoples. The administrative argument put forward lies in the accessibility of rulemaking, autonomously under the authority of the ILO, which has confirmed the practice of marginalisation. The ILO emphasises problems in labour relations where indigenous peoples become objects of exploitation. Furthermore, the issue of domination in production relations is placed as a factual condition. The benefits derived from natural exploitation and the minimum spending to pay for localised labour have opened a new awareness of the fate of indigenous peoples.

Globalisation was formed as a continuation of political-economic practices from the colonial era, leaving behind the complexity of issues related to human dignity, not only in the context of the formation of the independence of the nation-state after the Second World War but also in the context of how human rights need to be a priority when carrying out capital accumulation. However, the severe work of multinational organisations is ensuring that human rights issues are brought to attention, though this ideally should be carried out in a nation-state context.

The Tengger tribe is an indigenous people living around Mount Bromo, East Java. Its distribution area includes the Probolinggo, Lumajang, Malang, and Pasuruan Regencies.<sup>42</sup> However, among the Tengger people who live in these areas, the tribe in the Ngadisari Village area, Probolinggo Regency, has the more 'advanced' culture and civilization, with regards to their cultural knowledge and self-determination. Tourism development is one element that increases the economic income of the Tengger people in the Ngadisari district.<sup>43</sup> In addition, horticulture, which has become the identity of the Tenggerese people, is a commodity that has delivered political transformations and changed the structure of capital ownership.<sup>44</sup> The benefits derived from the growth of natural tourism and the authenticity of cultural practices have positioned the Tengger people as an attractive tourist destination. However, the dependence of the Tengger people on cultural rites and the sacredness of their places of worship, such as at the top

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42 Syarif Hidayatullah, *Filsafat dan Kearifan dalam Agama dan Budaya Lokal* (Yogyakarta: Gadjah Mada University Press, 2020).

43 Medea Utomo, Kliwon Hidayat & Yayuk Yuliati, "The Meaning of Agriculture and Tourism Activities for Tengger Society in Wonokitri Village, Tosari District, Pasuruan of Regency" (2015) 26:1 HABITAT 40-46.

44 Robert W Hefner, "SEVEN. Politics and Social Identity: The 1965-66 Violence and Its Aftermath" in *SEVEN Polit Soc Identity 1965-66 Violence Its Aftermath* (University of California Press, 2020) 193.

of Mount Bromo, has created ambiguity. Moreover, the consecrated lands are located in a national park area, so management and conservation issues are under the central government's authority. This also provides a different dimension regarding the concept of recognition based on indigenous peoples' territorial position.

Theoretically, Hegel's concept of recognition comes from a struggle - not just a struggle for property, resources, and land, but a moral struggle to form a new entity with a new quality, which ultimately recognises the other.<sup>45</sup> Indigenous peoples receive recognition from other communities and the state as genuine sovereign entities. Reciprocally, indigenous peoples also recognise the state as a formal institution with the authority to regulate and manage natural resources. In the context of the Tengger tribe, they have accepted that state authority is above the autonomy of indigenous peoples, especially since the formalisation of their local religion into the five state-recognised religions. However, the state has never agreed on the cultural rights of the Tengger people, as proven when the Tengger tribe loses their customary land. Even the state lacks the power to return customary land that has become individual property.

According to Tamma and Duile, the concept of recognition must not be trapped at the material level, which is limited to the struggle for resources such as land and territory. It must also include immaterial aspects such as historical, ideological, and cultural aspects, including the perceptions of indigenous peoples towards the state and other communities.<sup>46</sup> When the state cannot recognise culture as an asset inherent in indigenous peoples, then all advancement will not result in the promotion of culture.

### III. MARGINALISATION OF THE TENGGER INDIGENOUS PEOPLE IN THE FRAMEWORK OF CULTURAL ADVANCEMENT LAW

#### 1. Indigenous Peoples and Marginalised Communities

The ILO provides several criteria for indigenous peoples as community entities with traditional lifestyles or a different culture and way of life from the national population/community, for example, in ways of living, language, and customs, including social and customary organisations and traditional laws.<sup>47</sup> The 1989 ILO Convention also

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45 Sukri Tamma & Timo Duile, "Indigeneity and the State in Indonesia: The Local Turn in the Dialectic of Recognition" (2020) 39:2J Curr Southeast Asian Aff 270-289.

46 *Ibid.*

47 *International Labour Organisation (ILO), Indigenous and Tribal Peoples Convention, Article 1.1 of Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, 1989.

mentions one specific criterion of “indigenous people”, as peoples who have lived in an area for generations with a history of continuity in this area before others "invaded" the area.<sup>48</sup>

In Indonesia, there are many different terms related to indigenous people. Whilst some simply use the term indigenous peoples, others use “Customary Law Communities” (MHA), “orang asli”, “pribumi”, “atau”, or “penduduk lokal”. The term “indigenous peoples” was unpopular in Indonesia before the reform era, possibly due to the fact that it does not clearly define indigenous peoples' identity, existence, or rights. It is not without reason that the state creates confusion about the concept of indigenous peoples.<sup>49</sup> With various concepts to express or represent indigenous peoples, they have created discourses to objectify and, at the same time, create a political system of citizenship for indigenous peoples.

This article refers to these unique entities as indigenous peoples without prejudice to the juridical clauses regarding the recognition of their rights in national and international legal instruments. In the experience of post-colonial countries, the formation of a national identity is a fundamental issue for constructing the concept of citizens. Nationality becomes the part that imagines the totality of the state in unifying or even directing the political aspirations of citizens. In other words, confusion becomes a political reality used to negate local identity through the metanarrative of nationalism.

The different concepts that represent the particularity of citizens in terms of “village people”, “natives,” or “indigenous people,” is under the authority of the ministries that regulate administrative matters. For example, the “village people” issue is part of Law 5 of 1979, which regulates village governance. The village is seen as an entity that runs an extension of the government without having autonomy in managing citizens, meaning it is limited to administrative issues. Consequently, “village people,” who are simultaneously used to standardise traditional institutions that existed before the state, have been politicised by the central government. Thus, the New Order government (in office from 1965 to 1998) systematically replaced, shifted, and negated local power through the village concept.

From constitutional and human rights perspectives, indigenous peoples in Indonesia should be seen as citizens with the same status and rights as citizens of other countries. However, this legal and political construction is inconsistent with the dynamics of relations between the state and civil society. As a result, indigenous peoples often face

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48 *Ibid.*

49 María do Mar Castro Varela & Carolina Tamayo Rojas, “Epistemicide, postcolonial resistance and the state” (2020) 23:2 *Postcolonial Stud* 226-240.

legal issues, such as tribal legality, religious legality, or legality of land and forest ownership, which leads to marginalisation. Legislation is also a classic obstacle to recognising customary forests as the requirements for submitting legal documents maintain that indigenous peoples have a decree or special regional regulation recognising their territory as customary forest.<sup>50</sup>

Another illustration of marginalisation is inability of indigenous peoples to defend their customary lands, often caused by issues of legality among indigenous peoples. This was experienced by the Tengger tribe; seventeen hectares of their customary lands have been privatised. Meanwhile, the local land office cannot restore customary land ownership because the Tengger tribe in Senduro, Lumajang, has no legal claims.<sup>51</sup>

In 1999, the Indonesian Human Rights Law, for the first time, accommodated indigenous peoples as a group of people with special rights. Furthermore, the results of the amendment to the constitution resulted in recognition of customary law community units in Article 18B paragraph (2): "The state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and under the development of society and the principles of the Unitary State of the Republic Indonesia which is regulated by law." According to Satjipto Rahardjo, the acknowledgment is still very vulnerable because it is based on three conditions: as long as they are still alive, following the development of society by the principles of the Unitary State of the Republic of Indonesia, and regulated in Law.<sup>52</sup> Thus, although the state's existence provides space for indigenous peoples, the issue of proof and harmony is still a debate that can be interpreted as a political commodity.

The political logic of recognising indigenous peoples cannot prevent marginalisation because the interpretation of state recognition is still very formalistic. Recognition of indigenous territory, customary law, and traditional institutions and rights by the state can be implemented by a public instrument, e.g., District Head Decree and local regulations. However, besides the formal schemes, there are also non-state mechanisms such as agreements between tribal communities and government or corporations that can

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50 CNN Indonesia, "UU Cipta Kerja Disebut Berpotensi Mengancam Hutan Adat", (16 October 2020), online: *nasional* <<https://www.cnnindonesia.com/nasional/20201016152450-20-559295/uu-cipta-kerja-disebut-berpotensi-mengancam-hutan-adat>>.

51 Lumajang DPRD, *Data from the Focus Group Discussion with the Lumajang DPRD, Regional Apparatuses of Lumajang Regency, Lumajang Land Office, and Tengger Community Representatives* (2023).

52 M Syamsudin, "Beban Masyarakat Adat Menghadapi Hukum Negara" (2008) 15:3 J Huk IUS QUIA IUSTUM 338-351.

guarantee the sovereignty of indigenous peoples and limit state law enforcement over their customary land.<sup>53</sup>

Proving the claims of indigenous peoples is a serious task that is quite difficult to do. Indigenous peoples consider that they have been marginalised, both in the life of the nation and state, where political, economic, social, and cultural issues are limited to local expressions.<sup>54</sup> Customary entities should be seen as a socio-anthropological fact of an institutionalised social grouping process, with or without the presence of the state, not a legal fact embodied in a political process such as formal institutionalisation.<sup>55</sup>

There is a strong connection between people's customs or traditions and people's religion, which often combine to form a community. Some indigenous communities are rooted in tradition, others in their religion and beliefs. However, religion and customs incarnated as culture cannot be equated. Religion is final, universal, eternal, and knows no change. Meanwhile, culture is particular, relative, and often temporary.<sup>56</sup> Therefore, culture can quickly adapt to certain local religious rites to achieve existence. Religion also often requires certain cultural symbols to be accepted in local communities.

In various countries, indigenous peoples are often part of marginalised communities. Marginalised communities are social groups or individuals who live on the margins of or outside of the social and economic order, without equal access to resources, opportunities, and rights recognised by society.<sup>57</sup> As well as physical isolation, marginalisation also encompasses the alienation of a group of people regarding control over political means (public participation in policy-making), economic means (land and natural resources), and social participation (all forms of social interaction).

Marginalisation can occur due to various characteristics, such as racial discrimination, gender, economic status, education level, isolation, or underdevelopment.<sup>58</sup> Various policies for the promotion of culture and customs have been undertaken, both at the central and regional levels. Many have had minimal public

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53 *Self-determined land rights in Indonesia: A review on various tenure recognition options*, by Rikardo Simarmata & Tody Sasmitha (Forest Peoples Programme, 2021).

54 Li, *supra* note 17.

55 Herlambang W Wiratman, *Demokrasi tanpa demos: refleksi 100 ilmuwan sosial politik tentang kemunduran demokrasi di Indonesia* (LP3ES, 2021).

56 Kastolani & Abdullah Yusof, "Relasi Islam Dan Budaya Lokal: Studi Tentang Tradisi Nyadran di Desa Sumogawe Kecamatan Getasan Kabupaten Semarang" (2016) 4:1 J Kontemplasi 51-73.

57 European Liberties Platform, "What is marginalization? What to do if you are marginalized?", (5 October 2021), online: *Liberties.eu* <<https://www.liberties.eu/en/stories/marginalization-and-being-marginalized/43767>>.

58 Kristian Alm & David S A Guttormsen, "Enabling the Voices of Marginalized Groups of People in Theoretical Business Ethics Research" (2023) 182:2 J Bus Ethics 303-320.



participation, up to and including the total elimination of the involvement of indigenous peoples and the privatisation of customary land by the state. This illustrates that marginalisation exists very closely to power relations. Whilst not all indigenous communities are marginal communities, it is true that worldwide, a majority have experienced historical and ongoing marginalisation due to colonialism, land dispossession, discrimination, and unequal access to resources and opportunities.<sup>59</sup>

The process of marginalisation occurs when indigenous peoples are removed from their land by those with greater political or economic power, or when they are forced to abandon their traditions and culture to comply with prevailing modernisation norms. The social and economic development process often results in unavoidable marginalisation for some customary entities.<sup>60</sup> The most common result of marginalisation is the loss of access by indigenous peoples to the land and natural resources that form the basis of their livelihoods, such as forests, rivers, or agricultural land.

On some occasions, indigenous peoples who have lived in their culture for generations decide to isolate their own communities from outside civilizations. These cultures are considered to have marginalised their own community, which is a subject of debate. However, it is precisely in this context that the state is responsible for ensuring that their rights are fulfilled, even if they choose to live in isolated areas. To assess whether indigenous peoples are marginalised, what must be observed is the extent to which state recognition can provide access to comprehensive sources of life and whether their hereditary culture has received 'acceptance' and 'protection' from the state.

## 2. The Cultural Rights of Tengger People: Do they come with Unintended Consequences?

Historically, the Tengger people faced significant pressure from the Dutch government during the colonial era. As described by Hefner, during the Dutch administration in the Pasuruan, Lumajang, and Jember regions, the people of Tengger were forced to meet the Dutch's fiscal needs through paying taxes and producing certain agricultural commodities.<sup>61</sup> This condition became a significant challenge when maintaining their own

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59 Amnesty International, "Indigenous peoples rights are human rights.", online: <<https://www.amnesty.org/en/what-we-do/indigenous-peoples/>>.

60 Cahyo Pamungkas, Irin Oktafiani & Leonardus Imbhiri, "Makna Pembangunan Bagi Orang Asli Papua: Studi Terhadap Marginalisasi dan Depopulasi di Tanah Papua" (2022) *J Ilm Hub Int* 16-38.

61 Robert W Hefner, *The Political Economy of Mountain Java: An Interpretive History* (Los Angeles: University of California Press, 1990).

cultural identity and social organisation amid the exploitation of nature and labour. Today, the people of Tengger face various challenges, such as environmental damage and a decreased quality of life due to the increasingly crowded tourism industry. Once again, the traditional way of life of the Tengger people is being threatened by rapid economic development and the expansion of the tourism industry after independence.

The Tengger people can be said to have experienced territorial, economic, and social marginalisation from the colonial through to the post-colonial era. Territorial marginalisation occurred when their forests and agricultural land were diverted for commercial plantations; economic marginalisation occurs due to the limited access of the Tengger people to economic resources due to the loss of their agricultural land; social marginalisation occurred when many immigrants from Central Java and Madura Island became workers in coffee plantations and sugar factories, thus making the Tengger people more alienated in their own territory.<sup>62</sup> Despite these challenges, the people of Tengger have managed to maintain their distinct cultural identity and social organisation. Today Tenggerese are still known for their distinctive belief traditions.

The traditions of the Tengger people, known as Hindu-Javanese (Hindu Kejawen) community, have their peculiarities. In his decades-long research on religion in Indonesia (especially on the island of Java), Hefner found that the religion adopted by the Tengger people is the original religion of the Javanese.<sup>63</sup> The Tengger religion is a mixture of animist beliefs, Hindu-Buddhist beliefs, and Islam.<sup>64</sup> Hefner describes the Tengger religion as not having rigid doctrines or dogmas but instead prioritising beliefs and practices passed down from generation to generation.<sup>65</sup>

The change in the belief system of the Tenggerese began when the New Order government implemented religious formalisation by implementing PNPS No. 1 of 1965 and further issuing Presidential Instruction No. 14 of 1967 regarding the policy of recognising religion by the state.<sup>66</sup> The presidential instruction was a regulation relating to the “natural” assimilation of ethnic Chinese religions, beliefs and culture as an effort to further Suharto's cultural politics. However, several implementations of derivative

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62 Robert W Hefner, *Hindu Javanese: Tengger Tradition and Islam* (Princeton University Press, 1990).

63 Muhammad Nur Prabowo Setyabudi, “One Tradition Three Religions (Dynamics of Tolerance of Religion and Culture of The Tengger Ngadas Community)” (2022) 24:2 J Masy Dan Budaya.

64 *Ibid.*

65 Hefner, *supra* note 60.

66 *This regulation underlines that the Indonesian state recognises religions in Indonesia as official religions, provides freedom of worship, and does not impose certain religions on society. The government also supports the construction of religious facilities and infrastructure for all religions the state recognises. However, through this regulation, the state only recognises five religions, namely: Islam, Christianity, Catholicism, Hinduism, and Buddhism.*

regulations had consequences for the practice of other religions and beliefs, which were also "intervened in and controlled" by the state. Moreover, as a result of this policy, the people of the Tengger tribe were faced with stigmatisation, labelled 'communists' and 'infidels,' which made practicing their religion difficult and scary.<sup>67</sup>

One of the characteristics of the Tengger religion is that there are rituals performed on Mount Bromo, a volcano that is considered sacred by the Tengger people. These rituals involve offerings of food and flowers and prayers chanted by local priests called *Romo Dukun*. A *Romo Dukun* is a 'chosen' person; a traditional leader who plays an essential role as a caster of holy spells (prayers) in various traditional ceremonies, such as marriages, deaths, births, or other rites of passage. Conversely, *Romo Mangku* are the religious leaders in Hinduism. The existence of both in the traditional ceremonies of the Tengger people has resulted in the finding that religion and tradition or culture go hand in hand in the Tengger tribe. While the state aspires to separate religion and culture, as well as culture from indigenous peoples, in the Law on the Promotion of Culture, indigenous peoples show a straightforward process of assimilation.

This becomes a problem when the state creates interpretations that run centrally, giving rise to discourses regarding the position of indigenous peoples who, in their daily lives, struggle to maintain their social spaces. The practice of tolerance, which is glorified in the context of a unitary state and also in the empirical dimension, uncovers the paradox of the state's failure to guarantee legal certainty derived through regulation. For example, Law No. 39 of 1999 concerning Human Rights, Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 23 of 2014 concerning Regional Government, and Law No. 6 of 2014 concerning Villages, which are assumed to provide space for indigenous peoples, continue to be interpreted in terms of the practical desire to gain financial benefits or mass mobilisation.

Existing regulations, especially in the national context, are challenging when creating an inclusive life order. The recognition of indigenous culture is denied by regulations which promote a culture that does not accommodate indigenous peoples' interests. Even the phrase indigenous peoples in the Law on the Advancement of Culture is only positioned as a descriptor of cultural aspects outside the object of this Law.<sup>68</sup> The separation between indigenous peoples and culture, which is the essence of their lives, illustrates another paradox that hinders the principle of social diversity.

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67 Ali Maksun, "Politik Identitas Masyarakat Tengger dalam Mempertahankan Sistem Kebudayaan dari Hegemoni Islam dan Kekuasaan" (2015) 17:1 *El Harakah J Budaya Islam* 18-35.

68 *Explanation of Article 13 paragraph (3) letter b of Law Number 5 of 2017 concerning the Advancement of Culture*.

The lack of perspective on fulfilling human rights is represented by the lack of awareness to push for a system that creates equality for indigenous peoples. Not only is this happening because of overlapping regulations that lead to confusion about interpreting policies, but also due to the absence of a work program for the Lumajang district office that explicitly protects the Tenggerese indigenous people. This situation means that in terms of planning and budgeting, indigenous peoples are still placed ambiguously.

#### IV. THE TENGGERESE AND ARTICULATING THE "TRUTH" IN REGULARITY OF RESISTANCE

Indigenous peoples claim Tengger can be interpreted as "*tetenger sing benar*" or a sign of the truth. Being Tenggerese and living in a changing society is a serious problem for indigenous peoples and the government. The problem of social transformation has consequences for the character of society, which can be seen in the existence of modern commodities. At the same time, the structure of work and social institutions is changing, indicating that the Tenggerese continue to develop tactics to survive with their traditions.

The complexity of the traditions that must be carried on and even taught as the cultural heritage of the Tenggerese indigenous people is inseparable from the modality designated for the ritual. On the other hand, there are various rules attached to ritual leaders, which simultaneously become a reference for spiritual practices for indigenous peoples. In this case, what is carried out as a ritual and a way of life for indigenous peoples is integrated with articulating the concept of truth.

Self-unification with natural cycles formed by ritual beliefs is articulated in the Tengger people's daily practices. The origins inherent in each tradition are a way of recognising the history and emphasising the meanings of the Tengger people. However, rituals also signify the change and loss of past concepts. Stigma and trauma exist in how the Tengger people carry out their daily lives; they are conditioned to accept unpredictable changes.

The Karo ritual has been used as an instrument that obscures social identity. The Tengger people and those who refer to themselves as the interchangeable ancestry continue to be involved in the Karo ritual. They use it to represent the connection between the past and today's conditions. How the Tengger indigenous people maintain relations with community members is understood as part of strengthening their identity

politics.<sup>69</sup> Conceptually, identity politics is interpreted as a strategy for mobilising differences to reinforce interests. In this way, identity is not necessarily interpreted as a strategy to unify or determine the direction of resistance, in which the question of hegemonic leadership becomes essential in moving the masses.

When discussing the identity politics of the Tengger indigenous people, what cannot be forgotten is how the state simplifies religious practices.<sup>70</sup> Rules designed by the Soekarno government era, including Law no. 1/PNPS/1965, were how religion and politics became part of the state's strategy in forming citizen submission. Religion, which is a private matter, was translated into a state affair so that national interests became a way to control and determine the existence of boundaries. in day to day life.

Variations in religious practices are not spared from state supervision, as is the case with the choice of the Tenggerese indigenous people to unite under Hinduism. In this sense, what the Tenggerese indigenous people were doing became a strategy to assert identity politics without confronting the state. With a religious tradition different from the Islamic religion adhered to by most Indonesians, the Tenggerese indigenous people used a cultural approach to reinforce their own identity politics.

Again, the traditional Karo ritual is practiced by anyone who believes they are descended from the Tengger ancestors. In this case, rituals are no longer limited by certain religious matters, instead they are constructed to emphasise that a common origin can unite a community without having to be interfered with by matters of identity politics. From a sociological perspective, obscuring identity in the space of identity politics is the basis for affirming the existence of a dominant group while at the same time encouraging the need to seek protection.<sup>71</sup> The Tenggerese indigenous people see social transformation in their environment creatively by being open to the possibility of surviving without changing their beliefs.

Discourse on marginalised communities in Southeast Asia cannot be separated from the theory popularised by James Scott, an anthropologist concerned with portraying the political reality of agricultural societies. Patterns of resistance specifically explore what happened in the Southeast Asian region, where the concept of the “weak” is the key to explaining political strategy.<sup>72</sup> The emphasis on a defeat that causes society to experience displacement while creating a non-confrontational character indicates that domination

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69 Stuart Hall, “2. Old and New Identities, Old and New Ethnicities” (2019).

70 Niels Mulder, *Mysticism in Java: ideology in Indonesia* (Yogyakarta: Kanisius, 2005).

71 Siti Alif Ulfah, “The Third Space Formation Of Hindu In Sidoarjo” (2021) 1:2 J Contemp Sociol Issues 110-123.

72 James C Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press, 1987).

cannot be fully read and studied through the lens of war or direct resistance. A researcher can find resistance tactics that use politics organically by studying daily political practices characterised by distributed power and the creation of plural dynamics.

During this research, *Romo Dukun* Gatot Harjo Wardoyo said that ritual practices are an integral part of the life of the Tengger indigenous people in the Lumajang region, especially in Kandangan Village. The stages carried out from generation to generation and the sacredness of the hegemonic elite mark leadership without any form of domination. The presence of the *Romo Dukun* in leading traditional rituals places him as a key figure that is always heard, especially his political stance, and does not want to get involved in profane activities. By emphasising spiritual behaviour and getting closer to nature, the *Romo Dukun* becomes an essential part of representing the political formations of the Tengger indigenous people.

The way of the *Romo Dukun* in leading and uniting traditions with belief practices is an example of the importance of traditional leaders. The existence of the Tenggerese indigenous people, who live in mountainous areas and have a dark history within the political context of 1965 in Indonesia, has led to an understanding of how belief is a way to protect oneself from state control, primarily through the practice of tolerance with culture as an instrument.<sup>73</sup> Relying on Parisada Hindu Dharma (the national institution for Hindu People in Indonesia), the Tenggerese indigenous people sought protection from the state by accepting religion. . They are able to consistently practice their own traditional rituals and, at the same time, their adopted religion, where the presence of shamans binds the connection between one generation and the previous generation.

The presence of the state remains a significant force, perceived as being able to ensure the continued existence of the Tengger indigenous people. On the other hand, the state is seen as being run by complex relations represented by structured government elites in the executive or legislative sense, meaning that indigenous peoples can build a network of power without being trapped in practical politics governed by the regional administration. The *Romo Dukun* explained the practice of the *Muhunen Yadnya Kasada* ritual carried out by all Dukun Tengger to inaugurate a new Dukun, articulating how religion as a belief system is unified without being limited by the existence of the government.

The Tenggerese indigenous people understand the importance of the state's existence and dominative power - even they understand that changes in the internal

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73 Setyabudi, *supra* note 62; Paul Stange, "Chronicles of Javanese Transition" (1993) 24:2 J Southeast Asian Stud 348-363.

structure of power are unpredictable. Therefore, there is a belief that they can ensure survival by focusing on life activities, especially working and carrying out traditional rituals. State domination is positioned as an external force which does not directly determine their lives. Even though the state has a bureaucratic apparatus that can display its repressive character, it cannot display a hegemonic model, which is still attached to the existence of Dukun Tengger. Hegemonic figures, who are spread throughout villages and unite in Paruman Dukun Tengger, are part of Parisada Hindu Dharma and are the basis for indigenous peoples to present figures to talk about religious affairs as well as daily affairs.

The Dukun Tengger, who represents sacredness in the life of the Tengger people, is a figure who listens to daily affairs and unravels the problems faced by indigenous peoples. Conceptually, the Dukun creates "hidden transcripts" meant to talk about social structures that suppress indigenous peoples. Hidden transcripts are speeches exchanged to ridicule or reduce dominative power. Developing a narrative of resistance against submission to the dominant group while at the same time emphasising the existence of transcendent absolutism is a tactic for creating "space in between." "Space in between," in the sense of Homi Bhabha, is a strategy for creating hybridity that mediates between marginality and domination, which is hegemonic and dominative.<sup>74</sup>

Indigenous peoples, in this context, see emphasising the awareness of the existence of spiritual power as a way of ensuring order in uncertainty. In this way, asserting identity politics without the need to seek legitimacy from the dominant power is an effective political instrument, especially for maintaining a way of life that believes in the spirit of openness in diversity. It turns a destructive and subduing power into a form of language game from which the subject has space to articulate resistance. Furthermore, the capacity of the hegemonic Dukun has led to the appearance of a symbolic form of resistance, appearing in politeness which is part of adherence to tradition and belief values.

## V. THE WILL OF ADVANCEMENT IN CULTURAL LIBERALISATION: THE FORMATION OF TENGGER CULTURAL POLITICS

The sentence "Cultural identity and traditional community rights are respected following the development of the times and civilization", contained in the 1945 Constitution Article 28 I paragraph 3, becomes the state's point as a determinant. The state must codify and simultaneously recognise which rights are perceived as part of national needs and follow current legal conditions. In this case, the historical experience of the Tengger indigenous

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74 Homi K Bhabha, *The Location of Culture*, 2d ed (London: Routledge, 2004).

people in dealing with and looking for alternatives to remain part of a national entity is an important note in this research. The limited power of state hegemony in reaching social spaces is understood systematically by indigenous peoples. Maintaining local leadership that is united in the leadership of ritual beliefs is a concrete action that determines the social formation of indigenous peoples.

Domination without hegemony becomes a political space contested to gain legitimacy from the mass base.<sup>75</sup> Thus, in post-colonial countries, especially those with cultural variations that are presented as elements of identity politics, hegemony that works at the local level becomes important when maintaining tradition. "*Mengalah bukan berarti kalah*" (undefeated defeat) is a concept strictly used to carry out the simultaneity of tradition, religion, and identity. Politically, what is done by indigenous peoples is part of the historical block in Gramsci's terminology (1971), namely the moment of transition of power that can create space for the strengthening of domination that appears in negating the existing power structure. However, when the power built has not fully gained dominance, leadership that moves in partial spaces can create strategies to determine who is part of the power and who is perceived as an entity outside of it.<sup>76</sup> Indigenous peoples and the *Romo Dukun* determine social entities that can align with the direction of their struggle to gain recognition.

Indigenous peoples conduct this struggle by talking about their identity, contesting in creating public interests, and further negotiating and asserting their cultural rights. Moreover, traditional rituals periodically carried out by indigenous peoples require the presence and protection of the state. Equal access to religious sites is part of what indigenous peoples celebrate. However, legality and ritual modalities are still a concern for them. The state's presence in providing access to village administration to manage and regulate policies at the local level has become an essential part of the dynamics of indigenous peoples. Thus, the issue of similarity of origin used to build dialogue with the village government has become an entry point in preserving the religious sites of indigenous peoples. At the same time, on the site, which is the centre of worship, the red and white flag is displayed, displaying state dominance.

Indigenous peoples state that citizens should receive equal recognition before the state. With traditions and belief systems that are different from those of the majority of

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75 Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India*, Convergences: Inventories of the Present (Cambridge, MA: Harvard University Press, 1998).

76 Richard Saull, "Rethinking Hegemony: Uneven Development, Historical Blocs, and the World Economic Crisis" (2012) 56:2 *Int Stud Q* 323-338; Adrian Rinscheid, "Crisis, Policy Discourse, and Major Policy Change: Exploring the Role of Subsystem Polarization in Nuclear Energy Policymaking" (2015) 1:2 *Eur Policy Anal* 34-70.



the country's citizens, the Tenggerese indigenous people use them as a medium to promote multiculturalism. Routinely the Tengger indigenous people, especially traditional leaders and Dukun, receive visits from educational institutions, where the introduction of traditional values passed down from generation to generation is constructively displayed to build recognition among fellow citizens.

The cultural approach of being open to learning and encouraging dialogue in understanding the importance of being an equal citizen is a strategy carried out without creating friction. In this way, identity politics is carried out by building constructive social spaces without being burdened by the need to change domination. By playing at the hegemonic level, indigenous peoples are in a position to build coalitions continuously. In this context, the community narrates land claimed as ancestral heritage, making it communal property. The profits obtained are fully used to finance the rituals by being owned and managed together. Unfortunately, the idea of the built social system was confronted by the local political system, which the village government monopolised.

Through the desire to formulate a tourism strategy as enshrined in the Law on the Advancement of Culture, indigenous peoples see room for strengthening identity politics through the liberalisation of the cultural and economic space. The traditional heritage owned by indigenous peoples, both as an intangible and a materially commodified culture, can become a space for asserting identity. Thus, the categorisation between the culture that can be presented to the public and that which is sacred as part of religious rites becomes vital for indigenous peoples to capitalise on without having to change their traditions.

## VI. CONCLUSION

Indigenous peoples are a vital part of the sustainability of the nation-state, fusing the concept of citizens and culture can dynamically shape the articulation of indigenous peoples. Historical experience places indigenous peoples in disciplinary complexities, operationalised by the state through multilevel and complexly intertwined regulations. However, space for dialogue on identity politics can still be fought for, especially with the hegemonic position held by “Romo Dukun” and traditional leaders in transforming state antagonism into force for advancing the interests of society.

The particularity of recognition created by the state, which is presented through regulations still seeking certainty to be implemented, is part of the struggle of indigenous peoples. Issues of traditions, religious rituals, and sacred sites are present in the Law on Advancement of Culture, where the power of self-determination at the policy level can

still be negotiated in line with the needs of both indigenous peoples and the state. Thus, the state, in the bureaucratic structure formed to be in touch with community activities (especially for indigenous peoples), should accept the possibility of independence in the cultural and economic space, which is fundamentally at odds with the commodification of culture in economic terms alone. Instead of escaping from the pragmatism imprisoned in the commodification of culture or as an over-promotion of culture, the state should create an accessible and equal social space for indigenous peoples by reimagining its desire for inclusivity.

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