

The following is a non-official translation by UNORCID for the benefit of the stakeholders. UNORCID does not guarantee the accuracy of the translation. The official version is the original Bahasa Indonesia version.



Statement of

Prof. Dr. Balthasar Kambuaya, MA

The State Minister of Environment

for

The National Workshop on Forestry Forest: the Constitutional Court Ruling No. 35/PUU-X/2012

Jakarta, 29 – 30 August 2013

The Head of the UKP4, H.E. Mr. Kuntoro Mangkusubroto,
The Director UNORCID, Mr. Satya S. Tripathi,
Ladies and gentlemen, participants of this workshop,

May peace be upon us,

Let us offer our gratitude to the Almighty God; only with His blessing we can gather here this morning at the National Workshop on Forestry Law: the Constitutional Court Ruling No. 35/PUU-X/2012.

In this occasion, I would like to express my gratitude and give my appreciation for the initiative to host this National Workshop, involving all stakeholders in order to explore inputs and ideas to support the implementation of the Constitutional Court Ruling No. 35/PUU-X/2012, particularly related to four themes: the definition of customary claims, options for governance and conflict resolution, implications for REDD+ and long-terms and mid-term priority steps.

Honorable participants of the workshop,

We should be thankful to the Almighty God because Indonesia is blessed with abundant natural resources, pluralisms in the people and its biodiversity.

Two-third of Indonesia is comprised of forests and a large number of the people, especially who live in villages, depend on the forests for their livelihood. Moreover, the communities including indigenous peoples, because of their local wisdom and traditional knowledge, play an important role in efforts to conserve the environment.

Ladies and gentlemen,

Law No. 32/2009 on Environmental Protection and Management (*Perlindungan dan Pengelolaan Lingkungan Hidup*, PPLH), focusing on the importance of indigeneous peoples' roles in environmental conservation. Article 2, for example, regulates that the environment shall be protected and managed in a participatory manner by involving local wisdom. Likewise, Article 10 (2) regulates, among others, that PPLH planning should involve local wisdom and the community aspirations. The strategic role is acknowledged and accommodated in policies, plans and programme. Article 63 (1) mandates the tasks and authority of the Government to make policies regarding the procedures to recognise the existence of indigeneous peoples, local wisdom, and the rights of indigeneous peoples related to environmental protection and management.

The Constitutional Court Ruling No. 35/PUU-X/2012, have large implications on the recognition of indigenous peoples, especially the four articles reviewed: Article 1, Article 4, Article 5, Article 67 of Law No. 41/1999 on Forestry. This has large impacts in the management of Indonesia's forests and the recognition of indigenous peoples' rights. According to the Constitutional Court Ruling, customary forests are forests located in indigenous peoples' territories, and state control of forests shall be implemented by taking into account the rights of indigenous peoples, provided that the indigenous peoples concerned still exist and it is in line with the evolution of the society and the principles adopted by Indonesia as regulated in laws, in which state forests do not include customary forests.

Law No. 11/2013 concerning the Ratification of the Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Obtained from Their Utilisation also provides opportunities for arrangements regarding the utilisation of Genetic Resources (SDG) and traditional knowledge fairly and equitably. This will have large implications on the recognition of indigenous peoples, their local wisdom and rights.

It is estimated, however, that various issues will emerge, such as the unavailability of baseline data about the existence of indigenous peoples as owners of traditional knowledge, issues related to the certification of traditional knowledge related to SDG owned by more than one group of people and issues about the establishment of an institution to represent indigenous peoples.

Ladies and gentlemen,

To address to aforesaid issues, the role of local governments is crucial in making policies concerning the recognition of indigenous peoples, local wisdom, and the rights of indigenous peoples related to environmental protection and management at the sub-national level, ranging from identification, verification, legalisation, determination, recognition and capacity building for indigenous peoples. Several local governments have issued regulations about the recognition of indigenous peoples and their traditional rights, such as the Local Regulation of Kampar District No. 12/1999 on *Ulayat* Rights; the Local Regulation of Lebal District No. 32/2001 on the Protection of the *Ulayat* Rights of Baduy People; the Local Regulation No. 3/2004 on the *Ulayat* Rights of Indigenous Peoples and the Local Regulation No. 4/2004 on the *Ulayat* Rights of Lundayah People of Nunukan District. To support efforts the stock-taking of indigenous peoples, the Ministry of Environment drafts a policy concerning the Procedures for Recognising Indigenous Peoples, Local Wisdom, and the Rights of Indigenous Peoples. This draft policy has been communicated to all provincial and district governments.

Ladies and Gentlemen,

The process of identifying indigenous peoples is a fundamental effort to recognise the rights of indigenous peoples. The identification and verification of indigneous peoples can be done by everyone, including indigenous non-governmental organisations, such as the Indigenous Peoples' Alliance of the Archipelago (AMAN). Results of the identification of indigenous peoples, however, need to be verified by each sub-national government to get endorsement, recognition and for the initiative to be strengthened. The Ministry of Environment, in collaboration with AMAN, has started the identification of indigenous peoples and the mapping of indigenous peoples' territories in Indonesia based on local wisdom, using the right criteria and methods.

This indigenous peoples and traditional knowledge database is crucial to serve as inputs for the drafting of policies, such as policies on eco-region determination and spatial planning, the utilisation of traditional knowledge related to genetic resources, indigneous peoples' involvement in PPLH, and efforts to protect intellectual property (*Hak Kekayaan Intelektual*, HAKI).

Ladies and gentlemen,

Forest-related conflicts that have been happening so far, the people vs the state and companies, have been caused by claims from one party, in this case the state and companies, harming local communities. In 2009, it was found that around 6,000 conflicts reported were related to indigenous land or customary forests. Such conflicts were mostly related to the overlapping interests regarding customary forests and

forest land, the poor arrangements and recognition regarding to local wisdom, and methods to identify and verify indigenous peoples. All these conflicts were caused by different terminologies and criteria used to define indigenous peoples.

Through the aforementioned efforts, it is expected that the conflicts or social frictions involving indigenous peoples can be reduced or avoided because there has been a shift in the forest and forest land management paradigm, by respecting and protecting people's systems and rights when they are made as the main factor taken into account during conflict resolution.

Ladies and gentlemen,

The international community is currently discussing efforts to reduce impacts of climate change; one of such efforts is by reducing greenhouse gas emissions (GRK) from deforestation and forest degradation. In addition, efforts are being made to manage forests sustainably, conserve and increase forest carbon stocks, of which the programme is known as the Reducing Emission from Deforestation and Forest Degradation Plus (REDD+) Programme.

It is expected that the implementation of REDD+ in the future will be effective and efficient, and useful for optimal governance of the forests. Signs for the implementation of REDD+ is currently being deliberated at the national and international levels, including the involvement of indigenous peoples which will give economic, social and environmental benefits equitably. It is also expected that the implementation of REDD+ will not cause new conflicts, in particular with indigenous peoples.

It is clearly stated that the rights of indigenous peoples must be recognised in the implementation of REDD+ through:

- The implementation of safeguards, especially the social safeguard, to safeguard rights and recognise indigenous peoples' knowledge and rights, according to the situation and pursuant to national law, and with the UN Declaration on the Rights of Indigenous Peoples as reference.
- A transparent process and effective participation of stakeholders, especially indigenous peoples, in the implementation of REDD+ projects by applying the Free Prior Informed Consent (FPIC). This mechanism ensures that people receive free information and can give consent without being forced to. Benefits of applying FPIC include a decrease in the number of potential conflicts and an increase in the support given by stakeholders to REDD+ activities on the ground.
- The development of mechanisms for fair sharing of benefits and assurance that indigenous peoples are among the main beneficiaries of REDD+.
- The respect for the rights of indigenous peoples and local communities, including appreciation for traditional knowledge and the practices of natural resource and environmental management by indigenous peoples.

- The process of resolving issues related to the drivers of deforestation and forest degradation, land tenure, gender equality and forest governance.

With these steps, it is expected that new conflicts will not emerge and human resources' capacity, institutional capacity and indigenous peoples' wellbeing will be further improved.

At the national level, a number of instruments or mechanisms needs to be prepared, that can "guarantee" that the implementation of REDD+ will provide opportunities for indigenous peoples according to the national situation and pursuant to the prevailing national legislation.

Ladies and gentlemen,

In order to support the implementation of the Constitutional Court Ruling No. 35/2012, the following priority steps need to be taken in the medium and long terms:

- Develop policies to facilitate the improvement of indigenous peoples' role in the implementation of REDD+. Such policies will also protect the utilisation of forest resources traditionally by indigenous peoples.
- Develop governance and mechanisms for decision making in indigenous peoples' institutions, which should be pursuant to prevailing laws and regulations.

As final words, I would like to give my appreciation for this National Workshop and I would like to thank everyone who has contributed to this event. I hope this Workshop can benefit you and be a basis for all of us to keep trying to preserve and sustainably manage the environment.

Thank you,

Prof. Dr. Balthasar Kambuaya

The Minister of Environment, the Republic of Indonesia