



# The Legal Protection System of Indigenous Peoples in Southeast Asia

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## Article

## Abstract

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*Globalization has a bad impact on the indigenous peoples in Southeast Asia countries. The demands of globalization have led the governments in Southeast Asia countries to exploit and industrialize indigenous regions excessively, resulting in marginalized indigenous peoples and the threat of extinction. Not intended for the benefit and welfare of indigenous peoples, the policy made by the government in several Southeast Asia countries did much to reduce the value of humanity and the rights of indigenous peoples. Even with rapid industrialization in Southeast Asia countries, many indigenous peoples are poor, left far behind, and illiterate due to isolation from the outside world. This paper aims to analyze the legal protection of indigenous people in Southeast Asia, especially in facing digital age. By normative juridical method, this paper found that the government and developers' exploitation of indigenous peoples in the region has always been laden with conflicts between the government, the developers (economic motive), and indigenous peoples, and such conflicts of interest are usually won by the interests of the government and/or developers. Indigenous peoples' right to sue for damages caused is sometimes hampered with difficulty simply because the government holds powerful and dominant standing in courts. Moreover, most countries in the Southeast Asia region does not have customary courts in their judicial institution.*



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## INTRODUCTION

Southeast Asia as one of the strategic areas sitting in the world trade routes between Asia and Australia has a very large ethnic diversity (Bertrand & Xu, 2023). Based on Asia Indigenous Peoples' Pact (AIPP) in the report entitled ASEAN's Indigenous

People: The International Work Group for Indigenous Affairs (IWGIA) and Asian Forum for Human Rights and Development (FORUM-ASIA) in 2010, at least 2/3 of the total 300 million indigenous peoples are in Asia and two-thirds are in Southeast Asia (Asia Indigenous Peoples' Pact (AIPP), 2010). This estimate represents the number of indigenous peoples recognized by governments in Southeast Asia countries, either those having blended into modern societies or those still traditionally living in the forests. Nevertheless, the remaining indigenous peoples have been off the radar, isolated further from the country and modern life and the number is huge. Therefore, providing accurate or even close figures representing Indigenous Peoples populations in Southeast Asia is a challenge (Gilmour et al., 2023).

According to the Asia Indigenous Peoples' Pact (AIPP), there are around 50-70 million indigenous peoples (29% of the total population of Indonesia) divided into 700 indigenous communities although the new government recognizes 365 ethnic and sub-ethnic groups. Malaysia has approximately 3.4 million indigenous peoples (12% of Malaysia's total population), divided into 96 indigenous communities. Brunei Darussalam has 8 indigenous communities with a total population of 71,000 (16.7% of the total population of Brunei); the Philippines with about 12-15 million indigenous peoples with a customary group officially recognized by the government of 115; Cambodia with 24 indigenous groups with a total population of 197,000 (1.34% of the total population); Vietnam with 53 indigenous groups with a total population of 10 million; Laos with 49 indigenous peoples officially recognized by the government with a total population of 2.4 - 4.8 million people; Thailand with 34 indigenous peoples with a total population of 1.1 million people, and Myanmar with 115 indigenous peoples with a total population of between 14.4 and 19.2 million people. To sum up, Southeast Asia is home to officially recognized 1,194 customary groups overall with a total population of 120-123.5 million inhabitants (Asia Indigenous Peoples' Pact (AIPP), 2010).



Figure 1. The distribution of indigenous peoples in ASEAN countries (Asia Indigenous Peoples' Pact (AIPP), 2010).

Unfortunately, the demographic and ethnographic potential of indigenous peoples in the Southeast Asia region is being hindered by the rapid growth of globalization and industrialization of oil palm and mining industries. Investors' pressures for industrial purposes have been made to secure land acquisitions (Widiyono & Khan, 2023). Most of the forests in the Southeast Asia region are home to tens of millions of indigenous peoples whose existence is guaranteed under the country's constitution and international covenant (Colchester, 2011). However, market demand that tends to increase, especially for palm oil, is the main cause of rapid and widespread land acquisition in the territory of indigenous peoples in Southeast Asia. Malaysia and Indonesia are the largest oil palm plantations in Southeast Asia with an area of 4.7 million ha of palm oil in Malaysia and 9.4 million ha of palm oil in Indonesia.

In general, Indigenous Peoples often live in rich areas of natural resources (Abas et al., 2022; Jamin et al., 2023). This condition is becoming the target of resource extraction and development programs by the Government and multinational companies. In the name of modernization and development of the nation's development, the existence of indigenous peoples is affected by Mining and logging, large-scale plantations and infrastructure programs. This project is usually carried out without notice, consultation and approval, affecting the communities and leading to the massive migration of

indigenous peoples from their hometowns. As a result, various customary tenure systems over forests and various natural resource management systems managed for hundreds of years are scrapped in order to meet the country's purposes (Forest Watch Indonesia/Global Forest Watch, 2001).

For example, In Indonesia, more than 7.5 million hectares of land are covered by oil palm plantations (Aditya & Al-Fatih, 2021), many of which have been established in forest lands traditionally used by indigenous peoples (Colchester, 2011). Reports published by Forest Watch Indonesia and the World Resource of Indonesia in recent years indicate that land acquisition for oil palm plantations is in line with serious violations of the rights of native inhabitants. Their lands are often forcibly taken without prior knowledge, consent, and compensation. In addition, over the last few decades, indigenous peoples in Indonesia have suffered from the impacts of mining, logging, transmigration and other forms of development projects. Amungme indigenous peoples of West Papua, for example, have been affected by Freeport mining for almost 50 years. They lost their shelter, livelihood, and culture because the Ertsberg mountains, the sacred mountains, have been flattened and become the world's largest gold and copper mine. Although Freeport Company can gain a profit of 112 M per day from mining tens of tons of gold and copper, the livelihoods of local indigenous peoples are still far from prosperity.

Four million hectares of land are planted with oil palm in Malaysia. Like Indonesia, indigenous peoples in Malaysia have to suffer from unfair land grabbing without notice and compensation. After the forced relocation of 15,000 indigenous villagers for the controversial Bakun dam project, the Sarawak state government has announced plans for another 12 mega-dam project in the Renewable Energy Corridor, which is intended to generate cheap electricity for Malaysia's manufacturing industry. Grid Corporation of China (SGCC) has promised an investment of US\$ 11 billion. The number of people facing evictions remains unclear, but the scale of their impact on indigenous peoples will be enormous. According to the Financial Times of London, up to 608,000 people may face relocation (Asia Indigenous Peoples' Pact (AIPP), 2010).

In Kamboja, Economic Land Concessions (ELCs) for commercial plantations, including, inter alia, rubber trees, cassava, and corn for biofuel are grown on Indigenous soil. According to the Ministry of Agriculture, Forestry and Fisheries (MAFF), since May 2010, the ELC has approved the establishment of 85 companies covering a total land area of 956,690 ha located in 16 provinces (MAFF Kingdom of Cambodia, n.d.). Many cases of forced evictions of indigenous peoples have been reported as a result of ELCs. The number of concessions for Mining also increased. Since 1996, Indigenous Peoples In Ratanakiri, Mondulkiri and Stung Treng Provinces have been affected by social, economic, cultural and environmental damage from hydroelectric projects under construction and operation in the upper reaches of Sesan, Srepok and Sekong Rivers in Vietnam and Laos (Asia Indigenous Peoples' Pact (AIPP), 2010). Further study is currently happening for seven additional large dams on all three rivers in Cambodia,

members of ten indigenous peoples living along the Sesan, Srepok and Sekong rivers in Ratanakiri, Stung Treng and Mondulakiri provinces in northeastern Cambodia (Asia Indigenous Peoples' Pact (AIPP), 2010).

Meanwhile, in the Philippines since 1990, the Philippine government Approved more than 300 mineral production from various agreements and four Financial and Technical Assistance Agreements whereby the latest contract permits foreigners to hold mining operation licenses (Cruz, 2006). Between January and March 2010, the Mining and Geosciences Bureau (MGB) National approved 20 new exploration permits covering 122,000 ha. The mining application has covered more than 40% of the total land area. Most of the mineral-rich land is located in the domain of the ancestors of native inhabitants, with up to 60% of the ancestral domain affected by mining applications and 39 of the 63 government-priority mining projects directly overlapping with the ancestral domain. In June 2010, the Philippine government granted 157 Certificate of Domain Title Patent (CADT) covering a total of 4,294 Million hectares, but many ancestral domains remain unknown and unprotected. The awarding of CADT has also not been sufficient in protecting indigenous peoples from encroachment by mining companies since the National Indigenous Peoples Commission has shown it to legally manipulate FPIC, a process that benefits companies rather than the indigenous peoples who own the land that should be retained (Asia Indigenous Peoples' Pact (AIPP), 2010).

The existence of indigenous peoples holds a very important role in maintaining and preserving the natural resources owned by each country to ensure sustainability. Indigenous peoples on small islands live a subsistence life and utilize natural resources more wisely through some local wisdom. Indigenous peoples survive in the tradition passed down from generation to generation, and this lifestyle is inseparable from how customary rules are binding, rendering them obedient and isolating themselves from cultural intervention. Some indigenous peoples have rules for members of their communities when they choose to interact with outside cultures. One example of how indigenous peoples maintain the preservation of natural resources can be seen in the traditional culture/wisdom of Sasi that exists in the Maluku Islands and its surroundings. Sasi is a rule to conduct a moratorium on the extraction of biological resources in the form of sea products or crops up to a certain period of time to balance the needs of indigenous communities with the availability of natural resources (Harkes & Novaczek, 2002). The process of extracting biological natural resources with the sasi method proved able to maintain the availability of food sources, so their sustainability can be maintained for their needs.

The governments of Southeast Asia countries have the responsibility to protect indigenous people's rights in their territory based on regulation. Governments in Southeast Asia countries have an obligation to protect indigenous peoples' rights in their territories in accordance with international laws, constitutions and covenants of the United Nations. However, the policies issued by the government are often more inclined

to the interests of investors. This can be proved by the ambiguity in the indigenous peoples' legal standing in a lawsuit filed for damages. In Indonesia, the ambiguity towards the existence of indigenous peoples is evident in Article 18B paragraph (2) of the Indonesian Constitution which states that indigenous peoples are recognized with conditions as long as they are alive and in accordance with the development of society and the principle of the Unitary State of the Republic of Indonesia, as governed by law. Article 18B paragraph (2) is unclear and does not expressly position the indigenous peoples; it does not specify the rights and position of indigenous peoples within the framework of state policy more broadly in social welfare efforts together. It is also deemed to be lenient because there are no enforceable arrangements to overcome the field problems that have been experienced by indigenous peoples such as the "expropriation" of *ulayat* and the threat of criminalization from existing law, especially natural resource-related legislation.

In other countries such as Malaysia, Thailand, Myanmar and the Philippines, the existence of indigenous peoples is also protected by law and constitution. When the government faces a dilemmatic situation protecting indigenous peoples or building industry, the government will be more inclined towards industrial development which ultimately forces indigenous peoples to be alienated from their homeland. Not even the least of which the government uses military force when indigenous people stand against the government policy. In situations of strong internal and militarization conflicts such as in Myanmar and at lower levels in the Philippines, indigenous women and girls become victims of sexual harassment, rape and other forms of atrocity at the hand of the state security forces.

There are reports that the Myanmar Army used to arrest the leader of the village. These incident has affected traditional culture because nowadays women are currently appointed as the leaders of villages due to a lower likelihood of being killed. However, these changes have placed women at the forefront of human rights violations. This violation is a crime against humanity and war crimes that women leaders are forced to testify like in the events of the crucifixion, people burned alive, raped, including gang rape, varied forms of torture, including beatings and torture underwater, people buried in their heads into the ground and beaten to death, arbitrary executions, beheading and forced labor. Women leaders have been deliberately targeted for gender-based violence, including gang rape. Pregnant and lactating female leaders have been subjected to hard labor and being interrogated exhaustingly.

Seeing this phenomenon, Southeast Asia countries are still required to protect the rights of indigenous peoples based on the obligations derived from the common human rights instruments to which they are signatories. Instruments containing provisions relevant to indigenous peoples include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

Southeast Asian countries are also obliged (although only politically) to comply with the standards set forth in key UN minority instruments, the Declaration on National or Ethnic Rights, Religious and Linguistic Minorities. It is now widely accepted that indigenous peoples can use the protection afforded by minority instruments without harming their claims because the indigenous minority's provisions have been repeatedly committed by the UN Human Rights Committee ('HRC') to protect the rights of indigenous peoples.

## **METHOD**

Research on indigenous peoples is frequently conducted in the normative legal field (Ansari & Negara, 2023), and this study is no exception (Irwansyah, 2020). In this study, data from a literature-based search were employed, and they were then examined further, utilising a comparative and case study method (Al-Fatih & Siboy, 2021). The findings of a prescriptive analytic method will lead to the discovery of a new model for protecting indigenous peoples in the Southeast Asia region in the digital era.

## **RESULTS AND DISCUSSION**

### **Violation of Indigenous People's Rights by Countries in Southeast Asia Countries**

Currently, Southeast Asia countries still do not have regional covenants binding on their member countries' efforts to protect and respect the rights of indigenous peoples. The only international instrument currently fully devoted to the protection of indigenous peoples is the ILO Convention on Indigenous Peoples that has not yet been ratified by Southeast Asian countries (Xanthaki, 2003). Although the Convention is non-binding, these countries in Southeast Asia have begun its function as an important political tool for the development of indigenous peoples' rights. For example, the Convention has been used as a model in the drafting of laws such as the 1997 *Adat* Law on Human Rights in the Philippines and the new Land Act in 2001 in Cambodia. The Laotian government has also expressed interest in the ILO Convention 169 and has initiated a review of existing policies on indigenous peoples (International Labor Organization, 2001) in view of the interests of Southeast Asia countries in the ILO Convention 169 and its position as the only indigenous rights instrument today.

Unfortunately at the same time, Southeast Asian countries have consistently not participated in international human rights monitoring council dealing with the rights of indigenous peoples (Xanthaki, 2003). For example, a council based on the United Nations agency have repeatedly reprimanded Southeast Asia countries for failing to submit the necessary monitoring reports. In addition, Southeast Asia countries have not been vocal in the UN debate on the rights of indigenous peoples. This reluctance causes limited availability of credible information on the rights of indigenous peoples and, more importantly, a lack of serious discussions with the states on the situation of indigenous groups in their area.

According to the report of Asia Indigenous Peoples' Pact (AIPP), the biggest challenge of indigenous peoples in Southeast Asian countries today is the recognition given by the government and their escape from intimidation, discrimination and genocide by both the investors and the government. Developing countries generally welcome international companies and are willing to work with them, even willing to sacrifice their environment and local people, as they see further involvement with these companies as a means to advance the economic development of their own country. In Asia, the negative impact of such a project is added with a lack of genuine recognition and effective participation in the process (Wardana & Salman, 2023). Land use policies are designed to attract development projects and are often linked to the assimilation of indigenous peoples into the public (Transnational Investments Report (United Nation Doc E/CN.4/Sub.2/1994/40, 1994), 1994). Especially with the welcoming of the ASEAN Economy Community (AEC), the existence of the indigenous community is highly under threat because the AEC is the gateway to trade liberalization in Southeast Asian countries. The projects in welcoming the AEC by governments and multinational corporations are now a threat to indigenous land rights and survival in this land.

Indigenous land ownership has not been secure in most of Southeast Asia. Countries in the Southeast Asia region generally react in three different ways to the concept of customary land ownership: (1) not recognizing ownership by any individual, including indigenous peoples; (2) Provide limited protection of customary land rights; And (3) provide strong protection against customary land rights (Hidayah & Al-Fatih, 2019; Xanthaki, 2003). In general, the three ways of the conception of customary land ownership are juridically guaranteed by both the laws and ministerial regulations, but are weak in their law enforcement. This can be seen when investors invest in customary land with a large profit value, in which the government will soon revise the law into a flexible one on behalf of the state development.

In the Mekong region, the implementation of the Greater Mekong Subregion Program (GMS) involving six countries - Cambodia, China (especially Yunnan and Guangxi provinces), Laos, Myanmar, Thailand and Vietnam has contributed to the rapid economic growth in most of these countries (Ransley et al., 2008). However, it has a negative impact on indigenous peoples. The project was funded by the Asian Development Bank (ADB) and started in 1992 with an ambitious vision to integrate six countries into a single unlimited economy. It also aims to improve poverty alleviation, environmental protection, sustainability and human resources. The GMS program resulted in the construction of roads, bridges, dams, airports, ports, hotels and casinos throughout the region and has brought international agreements on trade, energy, tourism and the environment among Mekong governments (Ransley et al., 2008)(Sukardi et al., 2022). Notwithstanding the contributions to the economy, the growth also triggers socio-economic imbalances, deforestation, declining river health, and loss of biodiversity. The ADB's Participatory Poverty Assessment for Laos in 2006 shows that, in many rural areas,



the poor are generally the same or even worse. The conclusions drawn in the poverty assessment report for Laos are widely applicable to indigenous areas elsewhere in the GMS program area as well as in Southeast Asia (Ransley et al., 2008).

Violations of rights in indigenous peoples also occur with violence and human trafficking. In Malaysia, the State has transferred its duty to provide services to Indigenous Peoples to companies that permit deforestation for the construction of dams and plantations in indigenous territories (The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), 2010). Moreover, The condition where Penan's women and girls are raped by Samling loggers, and timber conglomerates operating in Sarawak, is directly due to the vulnerability posed by the issues of accessibility to educational facilities for Penan society, discrimination and neglect of the State, and lack of protection of the rights of the community custom. The trafficking of indigenous women and children is also a major problem happening on the Myanmar border with China and Thailand. One hundred and thirty-three verifiable cases of alleged trafficking involving 163 women and girls from Kachin and North Shan states were documented between 2004 and 2007. Of the confirmed cases, 90 were marketed to men in other countries such as forced brides and 94% of women were sent to China (Misti, 2008).

Similar incidents also happened in Myanmar and the Philippines with extreme violent conditions. In Myanmar and the Philippines, indigenous women and girls become victims of sexual harassment, rape and other forms of cruelty at the hands of the state security forces. Reports indicate that the Myanmar Army used to arrest the leaders of villages. This incident has affected traditional culture because nowadays women are appointed as the leaders of villages because they seem unlikely to be killed. However, these changes have placed women at the forefront of human rights violations. This violation is a crime against humanity and war crimes that women leaders are forced to testify like crucifixion, people burned alive, raped, including gang rape, many forms of torture, including beatings and torture underwater, people buried in their heads into the ground and beaten to death, arbitrary executions, beheading and forced labor. Women leaders have been deliberately targeted for gender-based violence, including gang rape. Pregnant and lactating female leaders have been subjected to hard labor and being interrogated exhaustingly.

Myanmar itself has become the country with the highest level of human rights violations in Southeast Asia. One of the most obvious examples of logging approved by the military for strategic and financial purposes was a decision in December 1988 by the Burmese State Restoration and Restoration Council (SLORC) to award contracts to Thai logging companies along the Thailand-Myanmar-triggered border with the discontinuation of official development assistance and concessional loans after the events of September 1988. Within a few months, 42 five-year logging concessions were granted to 36 companies, many of which were related to Thai military interests rather than specialized forestry companies. At a cost of \$ 112 million a year, earning from the

concession can double government income from wood. Many logging concessions are deliberately located in rebel-held areas. The most important strategic consideration is the logging road. The government can not bring the full weight of its military superiority against the ethnic army because of the lack of road access. But once the logging road is bulldozed, the Burmese army can move forward quickly. There was a very close correlation between granting concessions and the timing of military attacks against minority ethnic (Brunner et al., 1999).

Given this reality, it is not surprising that the sustainability of indigenous peoples has become a serious concern of the international community. Intimidation by the government is not only aimed at indigenous peoples but also at adat leaders who fight for their rights (Fadli et al., 2023). In Sarawak, Malaysia, 15 indigenous leaders who submitted their petition to the government opposing the dam construction proposal that would affect their communities were arrested for illegal assault and detained for eight hours in 2009. They were released but still had to appear before the Court to face their demands (Asia Indigenous Peoples' Pact (AIPP), 2010). While in the Philippines, traditional leaders who are at the forefront of aggression against mining and development in the Cordillera are victims of extrajudicial killings and enforced disappearances. Among the more than 70 cases of nationally reported extracurricular murders overseas are Markus Besar, the famous native leader of the Cordillera Peoples' Alliance, who was killed along with an innocent witness in 2006 when he and his son were at their home; James Balao, a native leader and human rights defender from the Cordillera region, who was kidnaped by state troops accused in 2008 and has never been seen again since then (Asia Indigenous Peoples' Pact (AIPP), 2010). The same condition also occurred in Indonesia after the new order. Indigenous peoples are recognized by the constitution, albeit ambiguous.

Indigenous peoples respond to government action often by staging demonstrations and filing lawsuits in courts. However, the courts generally favor government interests even though there are also trials that have favored plaintiffs (indigenous peoples) as in Sarawak, Malaysia, in the case of Kayan communities against the government of Sarawak, Land and Survey Department, Land Custody Development Authority and IOI Pelita Plantation Sdn. Bhd (an oil palm subsidiary of IOI) managing to restore the rights to their customary land ownership after struggling for more than 12 years in the High Court (Borneo Resource Institute of Malaysia, 2010). However, most of the legal actions taken by indigenous peoples in Southeast Asian countries are beaten by governments or multinational companies (Wulandari et al., 2022). If indigenous peoples are openly intimidated and discriminated against by the government, international law may offer limited assistance for ownership claims. International instruments generally do not set different property rights standards; Only a few, scattered provisions protect property. One such provision is Article 17 of the Universal Declaration of Human Rights, which sets the right of everyone to own property, alone and collectively, and the right not to be arbitrarily

deprived of a person's property. However, UDHR does not offer a mechanism for compensation.

Southeast Asian peoples have the potential to use the Convention on the Prevention and Punishment of the Crime of Genocide to secure land rights. The Genocide Convention specifies certain actions that are included in the definition of 'genocide', including actions that deliberately lead to the living conditions of the group to be calculated to produce physical damage in whole or in part. Arguably, the restriction on indigenous land ownership has a critical impact on the demographic and social situation of indigenous peoples of Southeast Asia, undermining their ability to survive. However, the Genocide Convention provides that 'genocide means the following acts committed with the intent to destroy' a particular group. It may be difficult to prove that restrictions on customary land rights directly aim to destroy indigenous groups. It is interesting to note that the Declaration on the Rights of Indigenous Peoples draft in its current form stipulates that indigenous peoples have the right not to be exposed to genocide, which includes actions that have intent or purpose.

### **Legal Protection Mechanism on Indigenous Peoples in Southeast Asia**

#### **1. State in Southeast Asia Obedience towards Human Rights Instruments for Indigenous People**

Human rights protection towards indigenous peoples is set forth in several international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Abolishment of Discrimination against the Rights of Indigenous Peoples (International Convention on the Abolishment of All forms of Racial Discrimination). The instruments of human rights protection also describe the various rights that must be protected and guaranteed by the state, including the right to self-development, the land, and natural resources, and the right to freely choose between accepting or rejecting a project to take place in their customary territory (Right to Free, Prior and Informed Consent). Despite such arrangements, however, the majority of countries in Southeast Asia often do not comply with the instruments of human rights protection for these indigenous peoples, especially in the digital age.

Some cases of human rights violations against indigenous peoples occurring in Southeast Asian countries indicate that instruments of human rights protection are not capable of being morally or juridically binding to the offenders. Here are some Southeast Asian countries' obedience data on international human rights instruments:

**Table 1. Southeast Asian countries' obedience data on international human rights instruments**

State	Case	Human Rights Protection Instrument	Case Progress
Cambodia, China (especially Yunnan and Guangxi provinces), Laos, Myanmar, Thailand and Vietnam	Greater Mekong Subregion (GMS) Program, A program involving several countries in the Mekong River region to improve welfare	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 25 and 26 on the Rights of Land, Territory and Natural Resources in it for indigenous peoples	<ol style="list-style-type: none"> <li>1. It is expected to increase the level of welfare of member states</li> <li>2. Reports from ADB, the GMS does not show significant welfare improvement figures</li> <li>3. GMS precisely leads to increased socio-economic imbalances, deforestation, declining river health, and loss of biodiversity in which the majority of indigenous peoples reside</li> <li>4. States involved in the GMS program, it is difficult to enforce and guarantee human rights for their own communities as they are bound by GMS regulations</li> </ol>
Malaysia	Plantation in Ulu Baram, Sarawak	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 3 on the Right to Self-Development	<ol style="list-style-type: none"> <li>1. Sexual harassment of indigenous peoples, especially women whose territory is used for plantation</li> </ol>

			<ol style="list-style-type: none"> <li>The government loses to the owners of capital that controls plantations if the cases of human rights violations are brought to the court of justice</li> </ol>
Thailand	Occupation of customary land for housing	International Covenant on Civil and Political Rights Article 27 of the State Obligation to Protect and Provide Human Rights Safeguards for the Minority Society; United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 10 on the Right to Resist, or Receive a Project to be conducted in their Indigenous Territory	<ol style="list-style-type: none"> <li>Customary land taken over by developers to be settled</li> <li>Indigenous peoples as land owners, lost in the seizure of the land, causing them to be marginalized from the territory to which they should be entitled</li> </ol>
Myanmar	Rohingya Expulsion	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 3, 20, 21, 23, 29 and 32 on the Right to Evolve	<ol style="list-style-type: none"> <li>Rohingya is an ethnic-religious minority of Islam inhabiting Rakhine and surrounding areas</li> <li>With various allegations, the people of Rohingya ethnicity were expelled from their territory</li> <li>The Burmese government even mobilized armed forces to carry out the Rohingya expulsion</li> </ol>

			<p>4. Some experts and observers mention that this includes Genocide in the modern era</p> <p>5. Human rights observers and human rights experts have filed a lawsuit up to the United Nations, but the Myanmar Government remains unmoved, even their leader Aung Suu Kyi, who has won a Nobel Peace Prize, has not fought the case</p>
Laos	The loss of Sombath Somphone	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)	<p>1. A regional and national leader in the rural development of Sombath Somphone disappeared at the Vientiane checkpoint, Laos, on December 15, 2012</p> <p>2. The government did not give any answer to Sombath's disappearance</p> <p>3. Sombath was deliberately eliminated by the Government through kidnapping because of Sombath's activities advocating for the rights of indigenous and minority communities in Laos</p>

Philippines	Mineral Mining	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 10 Right to Reject or Accept a Project to be carried out in the region of their Indigenous Lands	<ol style="list-style-type: none"> <li>1. The government has made 300 mineral mining agreements and 4 economic agreements related to mineral mining since 1990</li> <li>2. Between March and June 2010, the Earth and Mining Bureau (MGB) issued 20 new exploration licenses covering 122,000 ha of territory. Forty percent of mineral mining location is resided by the indigenous people of the Philippines.</li> <li>3. Based on reports from the National Commission on Indigenous Peoples, the government is alleged to have falsified customs management agreement documents for the mineral mining permit</li> </ol>
Cambodia	Economic Land Concessions (ELCs), A program of landfilling for agricultural areas (rubber, cassava, maize etc.)	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 10 Right to Reject or Accept a Project to take place in the region of their Indigenous Lands	<ol style="list-style-type: none"> <li>1. The ELCs project began in May 2010, when the Ministry of Agriculture, Forestry and Fisheries of Cambodia granted permission to 85 companies to manage 956,690 ha</li> </ol>

			<p>of land located in 16 provinces</p> <ol style="list-style-type: none"> <li>2. The project affected 10 Indigenous groups, including Sesan, Srepok and Sekong Rivers in Ratanakiri, Strung Treng and Mondulkiri</li> <li>3. The impacts felt by indigenous peoples undermine the social, cultural, environmental and economic order</li> <li>4. The community can not do much because the government has established the area based on ELCs documents</li> </ol>
Vietnam	Montagnards Ethnic	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 25 and 26 on the Rights of Land, Territory and Natural Resources in it for indigenous peoples	<ol style="list-style-type: none"> <li>1. Montagnards is the name of a village in Vietnam relocated by the government</li> <li>2. The relocation is done by the Ministry of Agriculture because the Montagnards area is used for logging activities</li> <li>3. Ethnic minorities of Montagnards are relocated to areas with low water content and minimal soil fertility</li> </ol>



Indonesia	Case of Mesuji	United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 25 and 26 on the Rights of Land, Territory and Natural Resources in it for indigenous peoples	<ol style="list-style-type: none"> <li>1. Land management agreement to be implemented in 1997 between community and SWA Company</li> <li>2. The agreement is for 10 years; the community is also promised to be compensated</li> <li>3. SWA Company sued the citizens under the pretext of default. Even PT SWA allegedly murdered two citizens who demanded their rights</li> </ol>
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Data Source:z(The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), 2010)

Table 1 indicates human rights abuses in Southeast Asian countries, where many of the cases of human rights abuses are centered on agrarian or land rights conflicts. In many cases, indigenous peoples as land owners are often defeated by businessmen who have a lot of money to explore and exploit indigenous peoples' lands. The activities affecting the area are also quite diverse, ranging from plantation and agricultural activities (such as those occurring in Indonesia, Malaysia, Laos, Cambodia, and Vietnam), to housing (Thailand) or even mining activities (Philippines). In some cases, indigenous peoples are often positioned as the aggrieved party, as experienced by the Ethnic Montagrads in Vietnam.

It was not only related to land rights, but some ethnic minorities who belong to indigenous groups who have inhabited certain areas are also often subject to discriminatory treatment from the government, like the one happening in Myanmar, where the Government through its armed forces expels the ethnic Rohingya, a moslem group of indigenous people in a Buddhist-majority country. Ethnic conflicts based on hatred against religious minorities also occur in Thailand (Pattani Moslems), the Philippines (Moro Moslems), Cambodian (Cambodia Moslems) and Indonesia (Tolikara, Papua). In a smaller space, human rights violations against indigenous peoples are related to violations of the right to self-development, such as engaging in politics ( in New Zealand, the Maori tribe get special seats in parliamentary elections) (Norilla & Mulyono,

2018). Special seats for Adata or ethnic origin are not found in Southeast Asian countries, fulfillment of education, welfare, health and so on.

The existence of international human rights instruments, both agreed by the UN and agreed in Southeast Asia, has not been able to become a tool for human rights enforcement in Southeast Asia. The number of human rights violations with the number of international and regional instruments related to the protection of human rights, shows the contradiction of functions and the binding power of human rights instruments. The existence of non-intervention principles in the ASEAN human rights declaration, for example, leads to opportunities for widespread human rights violations (Sinaga, 2013). The principle stipulates that Southeast Asia countries are not entitled to intervene in domestic human rights affairs in a country. In fact, in many cases, human rights violations occurring in a country often also involve foreigners.

In addition to the disobedience factor of Southeast Asian countries to international and regional human rights instruments, the widespread number of human rights violations can also be triggered by the absence of national human rights institutions in each country. Not many Southeast Asia countries have national human rights institutions. Furthermore, no NGOs are engaging in oversight of the fulfillment and guarantee of human rights. The following table compares the Human Rights in Southeast Asian Countries:

**Table 2. Human Rights in Southeast Asian Countries**

State	National Human Rights Institution	NGO	Problems
Indonesia	Yes	Yes	Land ownership, inter-religious intolerance, ethnic conflict, freedom of speech, expression and association
Malaysia	Yes	Yes	Land ownership, political violence, violence against foreign workers
Thailand	Yes	Yes	Land ownership, ethnic and minority conflicts, freedom of religious
Myanmar	None	Yes	Rohingya ethnic genocide, political and ethnic violence, citizenship status, IDPs and refugees, business and labor force violations
Laos	None	None	Ethnic minorities, Hmong refugee issues, freedom of speech and association
The Philippines	Yes	Yes	Land Ownership, gangster violence, ethical conflict

Cambodia	None	Yes	Land ownership, freedom of speech, assembly and expression and access to media
Vietnam	None	Yes	Freedom of religion, freedom of expression and speech, minority Montagnards
Singapore	None	Yes	Freedom of ownership (Singaporean citizens have the duration of ownership, e.g. of cars, motorcycles, buildings even including funerals)
Brunei Darussalam	None	Yes	Not yet found
Timor Leste	Yes	Yes	Human rights violations allegedly occurred during the succession of the founding of the state of East Timor

## 2. Establishment of Human Rights Courts in Southeast

Due to the loopholes in the ASEAN Declaration of Human Rights which cause Southeast Asian countries to disobey the instrument of regional human rights, a solution is such a need. The huge number of violations of human rights cases, especially the ones that happen to the indigenous people in Southeast Asia countries, is supposed to reunite the Southeast Asia countries to find the best solution. One of the solutions proposed is to make the Southeast Asian Court of Human Rights. The idea of the Human Rights Court is not something new. The implementation of the Human Rights Court has applied in several regions, namely Africa, America, and Europe. The purpose of the Human Rights Court establishment in the regions is to give protection to the people as an attempt to fulfill human rights.

The countries in each region have jointly made agreements beforehand as the foundation of the Human Rights Court establishment in the regions. The Inter-American Court of Human Rights, for example, was established following Agreement Number 448 in La Paz in October 1979 (Statute of The Inter-American Court of Human Rights, Adopted by The General Assembly of The OAS at its Ninth Regular Session, held in La Paz Bolivia, October 1979, Resolution No 448, 1979). The agreement regulates all matters related to the Inter-American Court of Human Rights, from judicial elections, and judicial tenure, to the main duties of the court. The Inter-American Court of Human Rights is located in San Jose, Costa Rica with 35 countries in the region of Latin America as the members that comply with the agreement. In the development, some other countries joined, while some of the members also withdrew; Venezuela, for instance, withdrew from the agreement to be unbound with the court in 2013. The withdrawal from the agreement is supposedly to report the human rights violations in the region countries given by the

Inter-American Court of Human Rights since 2002. Following the withdrawal of Venezuela, many have been worried about the fulfillment of human rights in Venezuela.

One of the cases in Venezuela is related to the torture of Raul Diaz Pena. He was jailed for bombing the Embassy of Spain in Colombia. Amidst his sentencing, the government of Venezuela was accused of torturing Diaz Pena, indicating a human rights violation. Experiencing such treatment led him to propose a petition to the Inter-American Commission on Human Rights in Washington, where the petition brought Venezuela to the Inter-American Court of Human Rights in Costa Rica. After the withdrawal, the government of Venezuela, especially the security enforcers, have been repressive to the protests of the people. This is obvious in a demonstration held on 1 April 2017, killing 70 demonstrators. The demonstration was staged to oppose the policy of President Nicolas Maduro. The political crisis and the repressive act from the security enforcers have opened an opportunity for human rights violations in Venezuela.

The people of Venezuela are also disadvantaged by the act of the Venezuelan government that chose to withdraw from the agreement of the Regional Court of Human Rights. This has hindered the process of the cases of human rights violations in Venezuela from proceeding to the Inter-American Court of Human Rights. Besides Latin America, European countries also made a similar agreement (Villiger, 2022). Based on the Convention for The Protection of Human Rights and Fundamental Freedom, The European countries established the European Court of Human Rights (European Convention of Human Rights, as amended by protocols Nos 11 and 14, as supplemented by protocols Nos 1, 4, 6, 7, 12, and 13., n.d.). The European Court of Human Rights is one of the oldest courts of human rights history which can be used as reference by the countries in other regions. Some cases of human rights violations have been convicted and sentenced by the court. It has to make sure that its 47 board members are obedient to the convention. Some countries including Russia, Turkey, Ukraine, and Italy are monitored by the court because the number of reports of human rights violations is high. In investigating the cases until sentencing, the European Court of Human Rights is so famous for being highly independent and fair that no country can intervene.

The case of Yulia Tymoshenko, the former prime Minister of Ukraine who was sentenced in the country for the abuse of power, was also processed in the European Court of Human Rights. Tymoshenko reported her case to the court, confirming that she was a victim of human rights violation. Russia and Turkey have also been in the spotlight because the government's attitude towards the people is considered too repressive. Meanwhile, Italy was fined by the European Court of Human Rights for deporting 24 refugees from Somalia and Eritrea in 2009. With the existence of the Court of Human Rights, the countries in the European region are obedient and the fulfillment of human rights for the people, including immigrants with their fundamental rights, is enshrined. The Court of Human Rights is also implemented in Africa nearly under the same concept as that in America and Europe.

The establishment of The African Court on Human and Peoples' Rights/African Court began from the agreement and Protocol of the African Charter made in Ouagadougou, Burkina Faso, on 9 June 1998 and has applied since 25 January 2004. The African Court on Human and Peoples' Rights/African Court is located in Arusha, Tanzania (*African Court on Human and Peoples' Rights*, n.d.). The court tries to solve human rights violation cases in Africa, especially in the African Union. Violations in Delta Niger, Nigeria, genocide in Rwanda, civil conflict in Libya, Somalia, Sudan and others, are some other important cases to be solved by the court (Hansungule, n.d.). The presence of human rights courts in the 3 regions at least guarantees the essence of human rights. Therefore, the countries in Asia or ASEAN should also see the opportunity for the Court of Human Rights establishment in the region.

Considering the vast number of human rights violation cases, especially the ones that happen to the indigenous people (Zaimah, 2015), the ASEAN countries should start thinking of the Southeast Asian Court of Human Rights establishment. ASEAN has been developing rapidly, proven by the agreement of the countries in the region to protect and guarantee the human rights of the people through a special commission named the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR was established in 2009 and afterwards stated the ASEAN Human Rights Declaration (AHRD). The AHRD which was adopted in 2012 gives the opportunity and juridical fundamentals for the Southeast Asian Court of Human Rights establishment. This refers to the history of the court of human rights establishment in the region of Europe, America, and Africa, all of which began from the protocol or convention of human rights in the regions.

However, AHRD also has to be supported by the change of thought of ASEAN Way and Non-Intervening Principles, both of which may slow down the court of human rights establishment in Southeast Asia. The change of thought is essential to support the Court of Human Rights establishment in Southeast Asia, in which, in the implementation of the other regions, the Court of Human Rights often interferes with the human rights violations done by the state to the citizens or foreigners. The presence of a human rights court needs to be considered as the solution to disentangle the human rights violations often committed by government officials or businessmen in a country. The existence of a human rights court in Southeast Asia may come as a solution to cases of human rights violation. The technical mechanism of the Court of Human Rights can be discussed further in the Southeast Asia Summit of the next period, especially to face the digital age with the e-court model.

## CONCLUSION

Gaining recognition from the government and being free from intimidation, discrimination, and genocide by both the investors and the government remains the greatest challenge for indigenous peoples in Southeast Asian countries. Indigenous

peoples in Southeast Asia countries in general still live in the forest area offering very high economic value for the industry. However, this wealth turns into a resource curse for indigenous peoples, leaving them intimidated and their rights violated by both the investors and the government. Developing countries in Southeast Asia generally welcome international companies and are willing to work with them, even willing to sacrifice the environment and local people, as they see further involvement with these companies as a means to advance the country's economic development. Especially with the opening of the ASEAN Economy community, the customary community is very threatened, because the ASEAN Economic Community (AEC) is the gateway to trade liberalization in Southeast Asian countries. The projects in welcoming the AEC by governments and multinational corporations are now a threat to indigenous land rights. In Asia, the negative impact of such a project is added with a lack of genuine recognition and effective participation in the process. Land use policies are designed to attract development projects and are often linked to the assimilation of indigenous peoples into the general public.

Governments in Southeast Asia countries have an obligation to protect indigenous peoples' rights in their territories in accordance with international laws, constitutions, and covenants of the United Nations. However, the policies issued by the government are often more inclined to the interests of investors. In other countries such as Malaysia, Thailand, Myanmar and the Philippines, the existence of indigenous peoples is also protected by law and constitution. When the government faces a dilemmatic situation protecting indigenous peoples or building industry, the government will be more inclined towards industrial development that ultimately forces indigenous peoples to be alienated and out of their homeland, not even the least of which the government uses military force when indigenous people reject government policy. In situations of strong internal and militarization conflicts such as in Myanmar and at lower levels in the Philippines, indigenous women and girls become victims of sexual harassment, rape and other forms of atrocity at the hands of the state security forces. At the international level, the compliance of Southeast Asian countries in the fulfillment of community rights according to UNDHR from the UN is still questioned. For decades, Southeast Asian countries have consistently not participated in the international human rights monitoring council and monitoring council dealing with indigenous rights issues. Even the United Nations repeatedly rebuked the countries of Southeast Asia for failing to submit the necessary monitoring reports. In addition, Southeast Asia countries have not been vocal in the UN debate on the rights of indigenous peoples. This reluctance causes limited availability of credible information on the rights of indigenous peoples and, more importantly, a lack of serious discussions with the states on the situation of indigenous groups in their area.

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