



Recognition of the Right to Participation of Tribal Peoples in the Repatriation of Lombok Treasures

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Article	Abstract
<p>Keywords: Right to Participation; Tribal Peoples; Repatriation; Lombok Treasures</p> <p>Article History Received: Mar 3, 2024; Reviewed: Mar 4, 2024; Accepted: May 15, 2024; Published: May 17, 2024.</p>	<p><i>This research explores the absence of the peoples of customary law in returning Lombok treasures before, during, and after repatriation, while international law and law in Indonesia recognise and respect the right to self-determination and participation of the people of customary law in a cultural sector. This article employed a normative-legal method supported by conceptual and case approaches. A descriptive-prescriptive method was employed, and data were analysed using content analysis. The results show that the government faces the challenge of determining official representatives of tribal peoples. Another challenge came from inadequate infrastructure and budget. The absence of the tribal peoples has led to the failure of achieving the reconciliation of unfair history, blocked access to helping with the research on the origin of the objects of cultural heritage, reinforced the content of agreements and cooperation of repatriation, and reintegrated the missing objects into their cultural context. This gap can be solved with two strategies reinforcing the role and participation of the tribal peoples in the repatriation process, namely by setting up the legal framework for the repatriation of cultural heritage objects and strengthening the involvement and legal standing of the tribal peoples. Through the study of Lombok treasures, this research contributes a valuable lesson and awareness, indicating that the State should recognise the right to participation of the peoples of customary law in an attempt to repatriate other objects of cultural heritage in the time to come.</i></p>



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INTRODUCTION

The existence of Lombok treasures has a long history for both Indonesia and the Netherlands. Earlier, these treasures were under the ownership of the Mataram Kingdom before they were looted by KNIL troops during the expedition of Lombok far back in 1894. This troop looted 230 kilograms of gold, 7,000 kilograms of silver, and jewelry as well as gemstones in a large amount from Cakranegara Palace. Most of these items were transported to the Netherlands in 1896 and sold to cover the cost of war and to feed the widows whose husbands were members of KNIL troops and killed at war. The remaining 500 objects were stored in Rijksmuseum, Amsterdam, and were transferred to the National Museum of Ethnology, now part of the National Museum van Wereldculturen (NMVW) (Colonial Collections Committee of Netherlands, 2023b).

For Indonesia, treasures are a significantly valuable cultural legacy and they hold significant historical and cultural meaning serving as the identity of the nation. In 1951, the Indonesian Government, represented by Muhammad Yamin started to fight for the repatriation of part of the objects of Lombok treasures (Drieënhuizen, 2018), followed by the recommendation agreed upon by Indonesian and Dutch experts in 1975 (Van Beurden, 2021). This diplomacy yielded fruitful results marked by the repatriated Lombok treasures in two stages: 1977 and 2023.

What stands out is the reasons behind the return of these 243 objects of Lombok treasures in 1977, given as a present marking the 200th anniversary of Museum Nasional Indonesia (Adinugraha, 2016), while the repatriation in 2023 was to support human rights and cultural rights, allowing the claim on repatriation to be more than mere transfer of “material objects” (Lenzerini, 2016), but also as compensation given over injustice affecting tribal peoples in the past. These claims emerged and reactivated the memory of Tribal Peoples of a series of discrimination in the past, including the seizure of cultural heritage left by the ancestors, abuse of natural resources, and violence within the purview of colonial history (Breske, 2018).

The confession of such injustice in history along with its reconciliation plays a major part as the symbol of the struggle of Indonesian diplomacy, bringing back the history of the lost identity of the Tribal People of Lombok. However, these Tribal People have never been involved in all stages of repatriation: before, during, and after the repatriation of Lombok treasures to Indonesia, contrary to the fact that the participation of the Tribal Peoples in culture is recognized by and governed under the international law and the law in Indonesia.

Furthermore, the return of Lombok treasures to this nation has raised a question regarding the ownership of these objects, the right to protect and manage the objects, and the access given. Currently, the treasures brought back to Indonesia are entirely owned and managed by the Central Government, stored in the safe of Museum Nasional Indonesia, and they are occasionally displayed for the public during the exhibition (A. Allamanda, personal communication, 21 July 2023; Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, 2023). This trend is certainly against the objective of reconciliation over the injustice in the history and the interest of the Tribal People of Lombok.

Historically, the ownership of cultural heritage varies, depending on the customary traditions of ethnic groups across the archipelago, and this matter is often governed

under the matters of matrilineal and patrilineal legacy. Uprooting the origin of the cultural heritage of its community will certainly spoil the legacy that exists in the surroundings. Lombok treasures are the objects of cultural heritage under the ownership of the Mataram Kingdom and they serve as intangible cultural heritage that should live amidst the Tribal People of Sasak, Lombok. However, these days, the chance of returning these objects to their places of origin where they were first looted has been overlooked in the policy of the Central Government. Although the Object Repatriation Committee involves ambassadors, experts from varied disciplines, and curators, none has represented the Tribal Peoples in the repatriation concerned (Smith et al., 2023).

Departing from the above issue, this research seeks to consolidate the lesson learned from the seventy-two-year efforts of repatriation of Lombok Treasures before, during, and after repatriation. This research also aims at designing, facilitating, and balancing the authority of the Central Government tending to be dominant by encouraging the ideal participation of the Tribal Peoples in repatriation.

METHOD

This research employed a normative-legal method supported by conceptual and case approaches (Al-Fatih, S, 2023). The conceptual approach is used to construct a comprehensive and theoretical argumentation on the right to self-determination and participation and to conduct a particular study on the peoples of customary law in Lombok and its history. The repatriation of Lombok treasures to Indonesia in July 2023 was picked as the research topic. This research is descriptive-prescriptive, which transcends the elaboration of the facts; it also entails findings-based recommendations in constructing the legal framework for the participation of the tribal peoples in the repatriation process. The collected data were then analysed using content analysis through data codification topic identification. The results were further interpreted to draw conclusions and answer the research problems.

RESULTS AND DISCUSSION

The Principle of the Right to Self-Determination of the Tribal Peoples in the Repatriation of Cultural Heritage

The self-determination principle (Gusti Ayu Khanaya Manohara et al., 2023) has been controversial in international law, and to date there has not been any universal definition accepted widely, giving unfair access to interpreting and using this principle for the interest of particular groups. The end of World War II marked the new history of the self-determination principle enshrined in Article 1 paragraph (2) of the UN Charter "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"

However, this charter has shortcomings because it defines the concept of or differentiates the varied practices of self-determination, does not coercively impose liability on member states directly, and does not give a straightforward interpretation for the right of the minority to separate themselves from their countries of origin (Aditya & Al-Fatih, 2021), or the right of the colonised countries to be independent. Proclaiming the principle or the right to self-determination of every country, the UN

Charter only gives attention to the countries whose political status and rights have been rejected (Manan, 2016).

Following the establishment of the Charter, the United Nations General Assembly passed the Universal Declaration of Human Rights (henceforth referred to as UDHR) in 1948, but UDHR does not specifically refer to the right to self-determination (Kirgis 1994). The key point of the UDHR related to the theory of self-determination lies in Article 29, paragraph (2) "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

The restriction of the right to self-determination is designed to safeguard the right of every person (not restricted to those aiming to determine their fate) (Yakub Aiyub Kadir, 2023), and the general interest of the international communities can be adequately handled by means of the approach to human rights because the international legal framework of human rights recognises the restriction of rights and offers ways of considering the execution of rights within the context of the interest of all parties prone to the impact of the execution. This framework also allows every country to act in line with the interest of all the citizens in its regions according to the portion of recognition given. Countries, therefore, may restrict the execution of the rights of individuals or particular groups to safeguard the rights and interests of other individuals or communities as long as this restriction is not oppressive (Mccorquodale, 1994).

Entering the Cold War, the demand for decolonisation from socialist countries and the independent ex-colonised countries was getting more pronounced (Sterio, 2010). Self-determination is defined as the right, and the interest of the 'Colonised' communities will no longer comply with the interest of another country in terms of legal, political, economic, social, or cultural aspects (Vrdoljak, 2008). The history of the Declaration of the Granting of Independence to Colonial Countries and Peoples was adopted by a UN General Assembly Resolution 1514 (XV) on the 14th of December 1960. One of the objectives of this Declaration states, "all peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development."

This Resolution and the validation by the International Court of Justice facilitate the articulation of self-determination as an international human right (George, 1993). At least, there are two International Covenants that are legally binding in which the right to self-determination is straightforwardly declared: the International Covenant on Civil and Political Rights (henceforth referred to as ICCPR) and the International Covenant on Economic, Social, and Cultural Right (henceforth referred to as ICESCR) (Hannum, 1998). Article 1, paragraph (1) in these two Covenants states, "All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development." Article 1 paragraph (1) of these two International Covenants replicates the phrase in A United Nations General Assembly Resolution 1514 (XV). With the presence of the International Bill of Human Rights (United Nations Human Rights Office of the High

Commissioner, n.d.), self-determination has shifted from the narrow colonial context, and it has become the right of all citizens universally welcomed (Vrdoljak, 2008).

The international communities have given special attention to tribal peoples (Jamin et al., 2022) regarding self-determination-related matters, as enshrined in the United Nations on the Rights of Indigenous Peoples (henceforth referred to as UNDRIP), which serves as the most comprehensive international instrument regarding the rights of tribal peoples (Aditya & Al-Fatih, 2023). This Declaration sets out the universal frameworks on the minimum standards for life continuity, dignity, and well-being of tribal peoples worldwide and elaborates on the prevailing standards of human rights and the fundamental freedom that fit the current conditions of tribal communities. (United Nations Declaration on the Rights of Indigenous Peoples, 2007).

UNDRIP formulates the guarantee of the right to self-determination specified in Article 3 and 4:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

In an ideal perspective, the right to self-determination in the purview of international law is expected to yield more just international communities in which the relationships between countries, development, and human rights can grow. If it is not like what is expected, it is considered a “breach”. However, self-determination is not entirely “self-made”. Instead, it clings to the changing and subjective external standards. Furthermore, the right to self-determination is widely described as a doctrine of institutional legitimacy. When a breach takes place, the state or its citizens maintain and improve the realization of the right to self-determination through prevailing institutional practices (Keal, 2007).

Departing from the above history of the law, the self-determination principle is primarily intended to give freedom to people as part of the community to determine their political status and develop economic, social, and cultural aspects (Moltchanova, 2009). The development of these three aspects are inextricable because with self-determination in the management and utilization of cultural heritage, tribal peoples will have control over the economic and social development of their communities (Manuel et al., 2019).

However, the implementation of the right to self-determination always faces challenges. The first controversial element has a bearing on the self-determination principle regarding the interpretation to discover who is categorized as “people”. Debates over this matter involve the interpretation of the definition of the term “people” and the right per se, which may refer to the population of a state, colony, individual groups, or ethnic groups and race sharing national similarities (Gudeleviciute, 2005).

In the scope of international law, the self-determination principle is not taken as the right of the people, but more as a principle. International law consistently relates this principle to the concept of “people” in the context of a former colonized state. Within the colonial context, the self-determination principle is strictly regulated, particularly within the legal frameworks developed by the United Nations. Many cases regarding the implementation of the principle of self-determination have taken place in several countries resulting from the decolonization process post-World War II. This decolonization process gave rise to new states through the implementation of self-determination principles (Hadi, 2012). However, some regional areas where the self-determination process is debated have issues with the rights of tribal peoples to self-determination in independent states.

In the last four decades, the demand for self-determination rights among Tribal Peoples on a global scope has grown stronger, being mainly focused on the recognition of the property rights to the cultural heritage of Tribal Peoples. The right to self-determination of tribal peoples is prompted by intense invasion and exploitation. This exploitation involves the rejection of the tribal government and political rights; coercive restriction of native tradition, language, and ideology by the ruling government; the elimination of the knowledge of tribal peoples affecting their welfare; and the seizure of natural resources and the livelihood of future tribal peoples (Fukurai, 2018).

Therefore, to avert the likelihood of oppression and exploitation, some agreed and validated regulations in international law regulate self-determination among the Tribal Peoples in cultural context as follows (Skrydstrup, 2004):

1. Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act);
2. The Native American Graves Protection and Repatriation Act (NAGPRA) 1990;
3. Developing ethical framework and strategy in Canada so the cultural institutions and the State can work together;
4. The 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples;
5. International Decade of the World's Indigenous People, which led to the proclamation of two decades (1995-2004 and 2005-2014); and
6. *Establishment of the UN Permanent Forum on Indigenous Issues.*

Several agreements on the self-determination of Tribal Peoples in cultural contests at an international level indicate that there is the interest of Tribal Peoples in promoting their cultures. Therefore, there have been countless claims over the repatriation of international cultural heritage involving tribal peoples as claimants. The demand for repatriation of Tribal peoples regarding the state response as requested is far from what is expected. Repatriation represents a complex diplomatic process with massive consequences. The countries taking control over cultural heritage objects are aware that there are varied interests involving varied rights holders and all these interests are protected by domestic law and/or international law (Lenzerini, 2016).

In addition to such interests of those expecting to bring back their cultural heritage objects, the right to the ownership of the cultural heritage objects that private owners

or museums have fought for is also something to be taken into account. It also holds true for the interests of the states taking control over the objects to ensure that their collections remain intact. Most European countries are concerned about the consequences resulting from such repatriation, and this concern is due to the pride of having the objects and putting them as part of the collections of the cultural heritage of colonial time and as a national identity attached to the efforts made to maintain these collections. In a more pragmatic scope, the demand for repatriation by Tribal Peoples may also provide access to similar claims in other matters, which is likely to curtail significant parts of their collections (Lenzerini, 2016).

Legal Frameworks of the Right to Participation of Tribal Peoples in the Repatriation of Cultural Heritage: International and National Levels

The historical journey of the law to the repatriation of cultural heritage at an international level has been complex, giving rise to the dialogues that yielded conventions, international treaties, doctrines, and theories on the repatriation of cultural heritage (Esterling, 2023). The periods of returning cultural heritage have been carefully classified by Skrydstrup into four periods, where the last period is related to the “Recognition of the Fourth World” (Skrydstrup, 2004). The term “Fourth World” was first coined by George Manuel in his work in 1974, *The Fourth World: An Indian Reality*. As the National Brotherhood Leader of India in Canada (Manuel & Posluns, 1974), he presented critical perspectives in understanding tribal Peoples that are culturally and historically different and compliant with the exploitative law of the State (Hall, 2003).

The rights of Tribal peoples, particularly in terms of culture are recognized and guaranteed by international law reflected through various conventions, one of which is in the ILO Convention 169 requiring the government to take necessary measures to involve Tribal Peoples in the formulation, implementation, and evaluation of the program to ensure that the policies made do not violate the interest of Tribal Peoples (International Labour Standards Department, 2013). Furthermore, the 1972 World Heritage Convention, the UNESCO 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, the UNESCO 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions, and the United Nations Declaration on the Rights of Indigenous People (UNDRIP) also require states to provide opportunities for Tribal Peoples to participate. Through these international conventions, the participation of Tribal Peoples has been the phenomenon of new public policy serving as the strict international standard of human rights (Bortolotto, 2017; Di Giovine, 2017).

Indonesia as an independent state has the right to self-determination along with its strength and ability to sort out political, social, economic, and cultural affairs (Valadez, 2001). In terms of culture, Article 32 paragraph (1) of the 1945 Constitution of the Republic of Indonesia implies that the state develops national culture amidst the global civilization by guaranteeing the freedom of its people in maintaining and developing cultural values”. The interpretation of national cultures encompasses all the outcomes of the mind, sense, and will of the people of Indonesia, including the genuine and old cultures forming the culmination of local cultures across Indonesia.

The nationalists living in a colonial era and the heroes of the Independence labeled the identity of the culture of Indonesia entirely as the culture of Nusantara. This indicates that the unique “local genius” is involved as owned by the peoples of Nusantara and viewed as one of the sole sociocultural units (Acciaoli, 2001). Although the local culture has been part of the Unitary State of the Republic of Indonesia, Article 18B paragraph (2) of the 1945 Constitution requires the state to recognize and respect the unity of the peoples of tribal communities and their traditional rights. It implies that the state is obliged to guarantee the rights over the cultural identities of the peoples of tribal communities (Keal, 2007).

Theoretically, not only are the peoples of tribal communities formed based on genealogical ties and territory-related, but they are part of the tribes residing across Indonesia and they carry values and cultural elements. Indonesia is home to 366 tribes all over the archipelago (Wulansari, 2018). Therefore, all the measures taken by the government must head for developed civilization, cultures, and unity to bring back the cultural heritage of the nation from abroad for the sake of the dignity of the identity of Indonesia.

The repatriation of cultural heritage has been a sensitive issue. When it comes to the cultural heritage of the tribal communities, the complexity of the issue often escalates (UBC Museum of Anthropology, 2008). In the eyes of the tribal communities, the essence of cultural heritage is widely understood within the historical, political, and legal dimensions. This repatriation often transcends the perspectives regarding ownership; such repatriation plays a vital role in ensuring the protection of the cultural identity of the tribal communities and the sustainability of the culture and physical conditions (Jaelani, et.al, 2023). In other words, the repatriation of cultural heritage has been an urgent issue amidst the presence of Tribal Peoples worldwide, and this matter should be seen as part of the history and experiences that the Tribal Peoples gained during colonial times along with the consequences (Prażmowska-Marcinowska, 2022). The report by Experts on the Rights of Tribal Peoples regarding repatriation recommends that stakeholders take the human rights-based approach to repatriation. All the experts have always tried to follow this recommendation and to concretize this approach to involve the participation of the Tribal Peoples. This approach is expected to make significant contributions (Tünsmeier, 2022).

In the Netherlands, for example, Rijksmuseum has tried to initiate collaboration in the repatriation of cultural heritage to the countries of origin by involving the active participation of Tribal Peoples. They initiated research on the origin of the collections and got involved in dialogues with the countries of origin where the collections were obtained. Some other museums have also begun with the collaboration involving other countries of origin through exhibitions, education programs, and repatriation of cultural heritage (UBC Museum of Anthropology, 2008). The National Museum of Global Culture issued the principles showing how to deal with the claims over the repatriation of colonial objects. These principles bear some changes in museum communities, including the will to place the “communities on the same platforms as national collections” and to get involved in dialogues with the members of tribal communities and the states from which the objects were obtained (Tünsmeier, 2022).

However, the development and movement brought about by the experts at an international level are not congruous with the policies that allow for the

participation of Tribal Peoples in Indonesia in the repatriation process. The regulation of repatriating the cultural heritage of Indonesia positioned overseas is general and there have not been any specific delegated regulations regarding the involvement of the tribal peoples, thereby leaving incompleteness in the norms. Law Number 11 of 2010 concerning Cultural Heritage (henceforth referred to as “**Law 11/2010**”) only regulates the repatriation in Article 20 of Law 11/2010, stating “The returning of Cultural Conservation from Indonesia available outside the territory of the Republic of Indonesia shall be conducted by the Government according to the ratified international agreement, bilateral agreement, or delivered directly by the owner, unless agreed otherwise as long as not contradictory to the provisions of the legislation”.

Article 26 paragraph (3) of Law Number 5 of 2017 concerning Cultural Development (henceforth referred to as “**Law 5/2017**”) formulates one of the measures taken to secure the objects of cultural development through repatriation. The alternative of repatriating such objects may involve purchase, collaboration, and advocacy at the international level, where this measure should be the task of the Minister responsible for government administration in the scope of cultural and foreign affairs. To date, the implementation of Law 11/2010 related to the repatriation of cultural heritage is only specified under Government Regulation Number 1 of 2022 concerning the National Registrar and the Conservation of Cultural Heritage (henceforth referred to as Gov.Reg. 1/2022), particularly in Article 25 of Gov.Reg 1/2022 regulating the registration of the objects presumed as cultural heritage (henceforth referred to as “ODCB”) under the ownership of the Indonesian Government existing abroad through the representatives of the State of Indonesia located abroad under the Minister.

Considering that the legislation in Indonesia is centralistic, this tendency may leave the consequence which narrows the likelihood of the government to repatriate the cultural heritage as part of the collections housed in museums, libraries, and archive centers worldwide. Meanwhile, the involvement of the Tribal Peoples before, during, and after the repatriation is expected to have significant impacts on both diplomatic and negotiation processes.

Furthermore, within a particular standard, the participation of Tribal Peoples in the repatriation must comply with the following fundamental principles: (1) good faith; (2) based on sincere and continuous dialogues between countries and Tribal Peoples; (3) participation is considered before action plan; (4) involvement of recognized representatives of tribal communities; (5) in compliance with sufficient social procedures, language, and culture; (6) intended to gain approval from Tribal Peoples invited to dialogues; and (7) the existence of recognition and implementation of the agreements made (Kuprecht, 2014)

Critical Analysis of Participation of Tribal Peoples in the Repatriation Process of Lombok Treasures

Most of the cultural heritage of Indonesia housed in the Netherlands is historically under the ownership of the Tribal Peoples and Kingdoms ever existing before Indonesia earned its independence (Sudarto, 2016). On 10 July 2023, the Netherlands returned 472 objects of the cultural heritage of Indonesia (Government of the

Netherlands, 2023), consisting of 335 treasury objects of Lombok looted from Cakranegara Palace, Mataram Kingdom, Lombok (Colonial Collections Committee of Netherlands, 2023b), four Singhasari statutes stolen from Singosari Temple, Malang (Colonial Collections Committee of Netherlands, 2023d), *keris* seized from Klungkung Kingdom, Bali (Colonial Collections Committee of Netherlands, 2023a), and 132 objects of *Pita Maha* Collection taken from an Artist of the tribal community in Bali (Colonial Collections Committee of Netherlands, 2023c).

However, no one representing the tribal communities has been invited to the repatriation before, during, and after the process of the repatriation. On the contrary, these objects of cultural heritage represent an essential part of forming the cultural identity of the majority of tribal communities which hold spiritual values more than material connection with their cultural heritage (Lenzerini, 2016).

Considering the experiences that other countries gained, repatriation of cultural heritage is a success with the active participation of the Tribal Peoples as the subjects who claimed the objects returned. For example, the Museum Te Papa Tongarewa in Wellington, New Zealand, and the National Museum of Indian-American in Washington DC, USA are the two actively doing repatriation benefitting Tribal Peoples. Since the 1980s, the repatriation has been supported by the American, Canadian, Australian, and New Zealand governments. The following are some of the successful examples of repatriation at an international level: (1) the returned 48 clothes of Aymara to the community of Andes in Coroma, Bolivia by the US in 1992 (Conroy, 1992); (2) the body of Sarah Baartman brought back to home country (or commonly known as “Hottentot Venus” from the National Museum of Natural History in Paris to South Africa in 2002 (Renold et al., 2013); and (3) the return of totem pole of G’psgolox stolen and brought to the Museum of Ethnography Stockholm in 1929 to Haisla Tribe in Canada in 2006 (Jessiman, 2011). The above examples show significant success in the repatriation of cultural heritage (Skrydstrup, 2004).

However, this raises the question: why have the Tribal Peoples of Indonesia not been involved in the repatriation process? The author, departing from this question, has mapped the main issue faced by the central government in involving Tribal Peoples in the process of the repatriation of the treasures of Lombok:

1. Lombok Treasures Representing the National Cultural Heritage instead of Local Heritage

The Indonesian government asserts that the cultural heritage of Indonesia housed abroad represents the national cultural legacy, considering that every claim of repatriation taking place has always been addressed to the objects of cultural heritage that hold significant and vital values for the cultures, history, and religions in Indonesia (Van Beurden, 2022). Article 42 of Cultural Heritage implies that the objects of legacy could be assumed as the objects of national cultural heritage as long as they meet the following requirements:

- a. The embodiment of the unity of the state;
- b. Valuable creation representing the uniqueness of the national cultures of Indonesia;
- c. Cultural heritage with its rare types, unique designs, and rare availability in Indonesia;
- d. The proof of evolutions of civilization and transboundary and cross-regional

cultural exchange for those extinct or alive in society; and/or

- e. Essential examples of traditional residential areas, cultural landscapes, and/or the utilization of endangered unique spaces.

At a national level, the Ministry of Education, Culture, Research, and Technology, and the Ministry of Foreign Affairs are responsible for the diplomatic process of returning the objects of the cultural legacy of Indonesia located abroad. Under the Directorate General of Culture, the Committee of Repatriation of Collections Originated from Indonesia in the Netherlands was established. This establishment aims to contribute suggestions, opinions, and data as part of the plan to repatriate the collections of cultural heritage of Indonesia. This committee consists of:

- a) The Team Leader: I Gusti Agung Wesaka Puja (the Former Indonesian Ambassador for the Netherlands)
- b) A secretary: Bonnie Triyana, S.S.
- c) Archeologists
- d) Curators (under the Ministry of Education and Culture).

This committee plays an essential role as a contact person connecting to the Committee of Repatriation in the Netherlands and helps with intensive coordination with the Ministry of Education, Research, and Technology and the Ministry of Foreign Affairs in the Process of the discussion and the drafting of the substances specified in the agreements jointly agreed upon by the two States (A. Allamanda, personal communication, 21 July 2023).

The success of the repatriation of the Lombok treasures deserves appreciation, but the political paradigm of the law concerning repatriation that is too centralized will need to be transformed into a participative paradigm. The Central Government needs to be aware that the collections of the objects of Indonesian cultural heritage housed in museums, libraries, and archive centers in the Netherlands for hundreds of years have eroded the cultural identity of Tribal Peoples. The cultural heritage indicating the origin of the cultural identity of a tribal community or the tribe of the nation has not successfully been passed on to the next generations (Krieg, 2016). The disappearing cultural continuity and identity have caused significant losses that young generations of tribal communities have to bear, particularly the community in Lombok. Therefore, through active participation, the people of tribal communities are entitled to gain benefits from the culture passed down by their ancestors to ensure improved quality of life and well-being (Grüb & Martin, 2020). Furthermore, this participation of the tribal peoples before, during, and after the repatriation is expected to solidify the national identity.

2. Questionable Issue Regarding Recognized Representatives of Tribal Peoples

Lombok Island, located in the West Nusa Tenggara, is home to 90% of the people of Sasak Tribe, while the rest of the population covers Balinese, Chinese, Arab people, Bugis people, and Javanese. In the 19th century, demographically, West Lombok was resided by the minority ethnic of Bali with a population of 50,000 people, while East Lombok was more dominated by the people of Sasak Tribe with a population reaching 600,000 people, and the remaining 6,000 consisted of the mix between Bugis, Mandhare, Arab, and Chinese ethnics (Van der Kraan, 1980).

During the expedition of Lombok back in 1894, Lombok treasures were looted from the Mataram Kingdom, one of the branches of the dynasty Karangasem-Bali in Lombok. Hindu-Bali ethnic moving to Lombok for several generations blended into the local community, and some were married to the people of the Sasak Tribe. This amalgamation formed the solidified identity of the members of the Lombok-Bali community. At the time of the conquest of the Dutch colony, Anak Agung Ngurah Karangasem was a powerful ruler in Lombok (ruling from 1839 to 1894). During the coup, Cakranegara Palace was taken down, and the king together with his two sons were exiled to Java Island. The Dutch quickly imposed new colonial power and enforced strict colonial government (Telle, 2011). The official heirs of the Mataram Kingdom remain to be seen and unidentifiable. Following the establishment of the republican state, the sovereignty and the existence of the Mataram Kingdom faded away.

The above issue indicates that the Central and local governments will need to properly identify the Tribal Peoples to officially appoint tribal representatives in the process of the repatriation of Lombok treasures while determining the location where the treasures should be permanently kept after the repatriation. The coordination for this matter is considered important to decide the official representatives of the Tribal People of Lombok with the support of wider society because these representatives are to be responsible for determining the policies concerning repatriation. The participation of the representatives at an initial stage is vital since it disseminates knowledge and marks the history of the objects concerned. Furthermore, they will need to adhere to applicable laws, regulations, and protocols. This approach is expected to expedite the repatriation process and help protect the management of the repatriation, related institutions, tribal communities, and individuals (Pickering, 2020).

3. Infrastructure and Finance

Museums are essential facilities in the protection of the management and utilization of the objects of cultural heritage. Of the total 10 regencies/municipalities in the Province of West Nusa Tenggara, only two regions have local museums, namely the Regency of Bima (Asi Mbojo Museum and Samparaja Museum) and the Regency of Sumbawa (the Local Museum of the Regency of Sumbawa) (Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, 2024). Lombok Island, on the other hand, has no museums, and it should receive attention from the provincial government of West Nusa Tenggara, considering that Lombok is home to potential cultures and tourism. Some customary villages hold a long history and are home to unique cultures that can be leveraged for the sake of local economic development (Provincial Government of West Nusa Tenggara, 2022).

Unfortunately, as reflected in the Data of Regional Development Plan of the Province of West Nusa Tenggara 2024-2026, the programs planned for the development of local museums in Lombok are absent (Bappeda Provinsi Nusa Tenggara Barat, 2023). Worse, there have not been any fund allocations granted for the State Budget through the policy of transfer to regional areas for several regions in the Regency of Lombok regarding Operational Aid in the Administration of Museums and Cultural Park (Ministry of Finance, 2024).

Insufficient financial aid from the central and local governments to build museums to house Lombok treasures has hampered the tribal people from optimally

enjoying the outcomes earned from repatriation. The more objects to be repatriated, the more the distribution of the objects to regional areas needs to take place immediately due to the fact that the capacity of the National Museum of Indonesia has been quite limited to house all the objects returned.

There is always a chance that the central government will need to assist the collaboration with private sectors to initiate the development and plan the cultural centers in Lombok Island with all the supporting facilities. When this development of the museums in Lombok can be manifested, business opportunities for 52 communities will also grow (Data Center and Information Technologies, Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, 2023). In the long run, the government needs to take steps to decide how investment can be gathered to create a permanent Cultural Center in Lombok to support this island as one of super priority tourism destinations.

Repatriation of Lombok Treasures: Behind Closed Door

1. Before: Claiming Process

The journey of the history of the repatriation in Indonesia for Indonesian cultural objects in the Netherlands is not short. The process involved, however, did not show satisfactory outcomes since only a small number of the objects have been successfully returned to the state by the Dutch Government. The agenda of repatriation has not been taken as a priority in the policies of the Indonesian Government. In 2021, the Ministry of Education and Culture made this repatriation a priority program, referring to the report of the Advocacy Committee of Repatriation of the Objects of the Dutch Colonial to the Minister of Education, Culture, and Science of the Netherlands on 8 October 2020 which recommended the return of artifacts and art objects obtained from Indonesia by the Dutch during the Dutch colonial time (Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, 2021).

In history, the repatriation of Lombok treasures involves two stages: 1977 and 2023, both of which did not involve the participation of tribal representatives in the negotiation. The repatriation of Lombok treasures in 1977 was based on the “joint recommendation involving experts from the Netherlands and Indonesia regarding cultural collaboration in Museums and Archives including the transfer of the objects” (Drieënhuizen, 2018). The repatriation in the second stage, 2022, began on 1 July 2022 when Indonesia requested the repatriation to the State Secretary of Culture and Media, the Netherlands, and this request was responded to by the Committee. The Committee performed an overarching investigation into the origin of those objects, the transfer, and how they were transported to the Netherlands. The Committee examined whether this matter also involved the seizure of the objects as intended in the policy framework. Furthermore, the Committee further took the steps to discover the owners of those objects and whether a permit was granted to take back and transfer the objects (Colonial Collections Committee of Netherlands, 2023b).

This investigation into these objects of cultural heritage has always been complex, but the government did not involve Tribal People or the sons of the soil who lost their objects seized from the Dutch during the war with the Dutch colonial. In this case, the central government will need further measures to appoint the official representatives of the tribal community. On the other hand, the repatriation process, from legal,

political, and administrative perspectives, could take place without involving the existence of the Tribal Peoples (Kuprecht, 2014; Van Beurden, 2021).

Following this issue, a question is raised over the significance of the participation of Tribal Peoples in the repatriation process. At the stage of the request regarding which objects were to be repatriated from the collections in the Museums in the Netherlands, the government of Indonesia only picked essential objects meaningful to the history and the culture of Indonesia. The terms “significant” and “meaningful” may carry profound meaning and subjectivity, depending on the perspectives of tribal peoples having a direct connection to the Lombok treasures. When the locals representing the tribal communities were not involved, another question over whom this significance is addressed is also raised. Departing from the above issue, it is implausible not to take into account the participation of the Tribal Peoples in the negotiation of the repatriation in the future.

The government will have to prepare preliminary studies regarding the origin of the objects as cultural heritage for repatriation. These studies act as the main entrance to the solution to the question of whether the repatriation will remain valid and will receive responses through the Repatriation Committee. The data of these preliminary studies of Lombok treasures can be obtained from the island, and this activity will certainly entail the active participation of the Tribal Peoples to provide the required information.

Their involvement at the initial stage of repatriation is necessary to uniform perceptions and expectations over the objects requested for repatriation involving the Central Government, Regional Government, and the Tribal People. Moreover, the rights to past events and the significance of customary values for the communities should also be taken into account. In terms of the absence of the full sovereignty of the Tribal Peoples, the state protecting these peoples is obliged to guarantee the space in which they can participate and negotiate in the government policy directly related to the interest of the Tribal Peoples and the objects repatriated. From this perspective, the practice of repatriation becomes the strategy, which leads to the capability of the Tribal Peoples to develop their cultural autonomy centralized within their own communities (Stutz, 2013).

2. Now: Process of Transfer to Indonesia

The negotiation process is the vital stage of the entire program of repatriation. This negotiation is aimed at discovering win-win solutions to the issues that have been taking place for centuries. On the grounds of brotherhood and good faith, the repatriation of Lombok treasures can be performed seamlessly with the support of responses or initiatives built by the Dutch government to return the colonial objects to the country of origin.

The Committee of Repatriation of Indonesia and the Netherlands conducted joint research and intensive coordination to agree on the basis for formulating the agreement. This agreement exists in the form of a technical arrangement based on the MoU between Indonesia and the Netherlands, signed in 2017, and it remains effective to date. This technical arrangement encompasses the following provisions (A. Allamanda, personal communication, 21 July 2023):

1. Distribution of roles and responsibilities of each party involved

2. The list of the objects of cultural heritage returned by the Netherlands to Indonesia.
3. Agreement on collaboration and information exchange between the two parties through research programs, funding, monitoring, and evaluation mechanisms.
4. Standard clauses concerning the effectuation of technical arrangement for the two parties involved.

The signing of the technical arrangement took place on 10 July 2023, including the ministries of the two countries as the signatories. Furthermore, when the transfer of the objects was agreed upon, the Acknowledgement of Transfer was issued. This document functions as proof that the objects have been received by Indonesia. However, this has left consequences, where the Netherlands is no longer responsible for the objects in case of issues arising, considering that the objects have all been transferred to Indonesia (A. Allamanda, personal communication, 21 July 2023).

Considering the above process, the author criticizes some matters concerning the consequences of the absence of the representatives of the Tribal People in the negotiation. First, the legal frameworks of the repatriation are specified in “Colonial Collections and a Recognition of Injustice” by the Advisory Committee on the National Policy Framework for Colonial Collections and Council for Culture, emphasizing the importance of the recognition of historical injustice and its reconciliation for the formerly colonized country. With the presence of the Tribal Peoples as the official representatives in this matter, injustice, and mistakes in the past should be amended to allow for reconciliation. Second, in terms of the Technical Arrangement between the Indonesian Government and the Netherlands, the absence of the involvement of the Tribal Peoples may lead to the failure of accommodating this agreement regarding issues like development aid and museum management in Lombok Island, transfer of knowledge through training for archeologists, curators, and practitioners of museums in Indonesia simply because the Netherlands is more advanced in reserving cultural heritage of the past.

3. Then: The Condition of Lombok Treasures Post-Repatriation

Following the signing of the Acknowledgement of Transfer from the Netherlands to Indonesia, Lombok treasures were packed and transported by the Dutch Government to Indonesia. Upon their arrival, the Indonesian Government checked all the objects returned, listed, and documented them before they were stored in the safe at Museum Nasional Indonesia (Hilmar, 2023).

To date, the government has not decided where to store Lombok treasures permanently. So far, Museum Nasional Indonesia has been chosen as the place for temporary storage of the objects due to the adequate security for storing the objects in other museums in Indonesia. Exhibitions displaying these objects may take place occasionally to inform which objects have been returned as part of the diplomatic measures between Indonesia and the Netherlands. The Central Government once planned to re-exhibit Lombok treasures on Lombok Island, but its preparation takes into account the conditions and safety of the objects to be further transferred to Lombok from Jakarta (Hilmar, 2023).

The above issue indicates that the Central Government is not able to involve the Tribal Peoples in the measures of protecting, managing, and utilizing Lombok treasures. It sounds inappropriate when those tribal peoples have to beg for room for participation in the protection, management, and utilization of cultural heritage objects originally owned by their ancestors.

The Strategies of Reinforcing the Role and Participation of Tribal People in Repatriation

Indonesia as the state of law places Tribal Peoples as an entity whose traditional rights are recognized and respected as long as they live according to the current development and the Principle of the Unitary State of the Republic of Indonesia. One of the government's responsibilities is to actively take diplomatic measures and conduct negotiations of the culture to stand for the rights of the Tribal Peoples, including the issues regarding the repatriation of Indonesian cultural heritage in the Netherlands.

Despite its power to initiate diplomatic measures and negotiation, Indonesia should not overlook the presence of Tribal Peoples in the involvement discussed above. At a global scope, the ability of Tribal Peoples to request repatriation has been too limited. Although the Netherlands is closely related to important persons holding traditional power in Indonesia, the Netherlands once rejected the request submitted by King Singamangaraja XI of Sumatera for the return of the King's Regalia (van Beurden, 2017). The growing number of parties involved in the claims of repatriation has sparked varied interests in an internal scope between the Indonesian Government and the Tribal Peoples. The Dutch Government anticipated any involvement in the conflict; therefore, the government narrowed the number of parties who might claim the objects of cultural heritage. That is, these claims can be done only by the states involved, while other parties in other countries do not have access to such claims. In this situation, the government has to spare room for the people of tribal communities to allow them to actively participate in repatriation at all stages. With this policy, the harmony of internal interests may ensue as a result of such repatriation.

A culture-based participation approach refers to the recognition of the co-existence of diverse cultures in a society whose members live as social individuals with the principle building on the recognition of diverse global perspectives, human rights, and the rights of the nation. This approach encompasses two dimensions: (i) power distribution in decision-making on the development priority and control over the life of society, and traditional life, and (ii) the recognition of tribal peoples and their special cultural identities without any discrimination (Inter-American Commission on Human Rights, 2021). Taking into account the above dimensions, the author came up with two strategies for reinforcing the role and participation of Tribal Peoples in the repatriation process.

1. Drafting Legal Frameworks for Participation-Based Repatriation of Cultural Heritage

Principally, every step taken to strengthen the protection and repatriation of the cultural heritage of Indonesia should involve the existence of tribal peoples. Cultural Heritage Law and Cultural Development Law do not spare room for tribal peoples to allow them to participate in the repatriation process. However, the embodiment of

restorative justice (Ekawaty Ismail et al., 2023) regarding repatriation depends on the rights necessities, and the will of the native peoples (Tyson, 2011).

In this matter, the Government needs to arrange the legal frameworks underlying the repatriation of cultural heritage in Indonesia, which asserts that repatriation should not only be based on the agreement of the two countries, but the presence of those representing tribal communities should also be considered. This is in line with the recommendation for participation in the governance of global cultural heritage as recently adopted by the Association of International Law, recommending that the participation be given to non-state actors and not as the prerogative right of the State. A participative approach to repatriation should be stimulated and adopted systematically within the entire process of repatriation at all stages: before, during, and after the repatriation (Hausler & Selter, 2022).

a. Preliminary Stage: Before Repatriation

The legal frameworks of repatriation are one of the vital documents made by the government to set effective strategies and measures in the repatriation of cultural heritage located overseas. These frameworks can take up to twenty years (long-term), five years (medium-term), and one year (short-term).

The respect given to the community of origin/the people of the tribal community along with their cultural traditions can take place by including traditional practices into the legal frameworks of repatriation. This should serve as a participation-based legal breakthrough (Tünsmeier, 2022):

1) Identifying the nexus between the objects and native community/tribal peoples

The first step in the process of repatriation is to identify the cultural objects to be returned and study their connection with the native community/tribal peoples. This approach will involve accurate studies of histories, cultural contexts, and the spiritual or social aspects of the objects for the native community. Therefore, active consultation through Focus Group Discussion with the native community or tribal peoples is necessary, especially for those with an interest in the cultural heritage objects. This will also allow for a better understanding of the cultural meanings and values regarding those objects and will ensure that the decisions made will be respected and recognized by the community concerned.

2) Identifying the entities trusted to safeguard the cultural heritage

The legal frameworks of the repatriation need to set clear regulations regarding the criteria for identifying lawful ownerships of the cultural objects looted and to determine how the native community/tribal peoples would approach the ownership and protection of the objects concerned. This approach will necessitate the identification and declaration by the Indonesian government, considering that the objects owned by tribal peoples vary (Breske, 2018).

Since the conditions of the peoples of tribal communities in the past when their treasures were looted are to be considered, the appointment of the representatives of tribal peoples is based on “the most significant relationship”. The significance of the relationship between tribal peoples and their cultural heritage involves the following:

- a. The site where the objects of cultural heritage were looted from.
- b. Those who inherit the objects of cultural heritage
- c. The recognition and knowledge of tribal peoples of the history of the objects of cultural heritage

d. The utilization of the objects of cultural heritage in tribal communities as religious media.

3) Amalgamation of oral testimonies where relevant

Before the repatriation takes place, the tribal peoples hold a vital role in the research on the origin of the objects of cultural heritage since they are often knowledgeable about the local history and the cultural contexts of those objects. Their role may involve giving information on the origin of the objects, explaining the cultural meanings and values hidden within those objects, and helping understand the cultural contexts of the country of origin where the objects were obtained.

b. Implementation: The Process of Repatriation

When the process of repatriation is performed, tribal peoples are positioned as the Repatriation Committee as part of an expert team. The role of tribal peoples as experts will strengthen the position of the State in negotiating and helping explain the significance of the repatriation for their communities. They may also make contributions based on their local perspectives regarding the essence of maintaining and respecting their cultural heritage. They can also help with logistic processes and physical preparation required in the return of the objects.

c. Final Stage: Post-Repatriation

In post-repatriation, the role of the tribal communities remains, where they will welcome the returned objects and reintegrate them into the cultural context of their own. Traditional ceremonies and rituals are held to welcome those objects and respect the spirit of their ancestors. The tribal peoples will also have their role in educating the next generations about the essence of cultural heritage and the repatriation meaning as part of the identity and the continuity of their culture.

2. Strengthening the Legal Standing of the Tribal Peoples

The existence of tribal peoples in the history of the Indonesian government has been significantly through ups and downs. The depoliticization and uniformization policy during the New Order pushed the people of tribal communities to blend into one national entity representing a single identity, while the rest chose to remain adherent to the noble values of their ancestors. These values are internalized into the aspect of life in every individual or society collectively and manifested as government units at the levels close to their citizens, encompassing villages, kampungs, hamlets, *Nagari*, and other terms existing today (Dinas Pemberdayaan Masyarakat dan Desa Provinsi Banten, 2017).

As entering the reform era, tribal peoples are expected to promote their existence from the perspectives of law, tradition, and institution. The higher the existence level of a tribal community is, the more obvious the plausibility of strengthening the traditional sovereignty and its influence will be, which may yield dominant legal systems that allow them to be entitled to self-determination in various aspects, including culture. Furthermore, to strengthen the legal standing of tribal peoples following repatriation, the author recommends the development of inclusive museums as a follow-up to the protection, management, and utilization of cultural heritage objects repatriated. The concept of inclusive museums involves the following:

1. The Participation of Tribal Peoples

The State must facilitate the connection between museums and tribal peoples to ensure that when the sacred objects are repatriated and saved in the museums, the

tribal peoples are given the right to take care of and protect this cultural heritage according to the traditional practices they have been adherent to. Moreover, they should have a significant voice heard for decision-making in the context of collections, exhibitions, education programs, and museum management.

2. Respect for Cultural Heritage

Museums should be appropriately respected in terms of the cultural heritage of tribal peoples. This respect can be something permanent, putting the traditional life, including the beliefs, arts, and traditions of the peoples in the spotlight, and recognizing their contribution to the diverse cultures. To reinforce the legal standing and appropriately respect cultural heritage, the Government can accommodate the regulations concerning cultural heritage within the scheme of Cultural Heritage Law

3. Collaboration with Regional Government

Inclusive museums should establish solid partnerships with regional governments to ensure that the museum programs are integrated into the policies of local development, education, and tourism promotions. This collaboration entails the utilization of the museums as informal education centers and facilities for local tourism promotion.

4. The Involvement of Private Sectors

Private sectors, including local companies and financial institutions, also hold essential roles in supporting the development and operation of museums. This support can take sponsorship, donation, or strategic partnerships to guarantee the financial sources and technical support needed.

5. Education and Advocacy

Museums should serve as education and advocacy centers to help promote a better understanding of cultures, rights, and challenges that tribal communities are faced with. This element may cover education programs, workshops, and public dialogues focusing on relevant issues for tribal communities.

6. Accessibility and inclusiveness

The existence of inclusive museums is designed to facilitate all social tiers, including tribal peoples with special needs. This element should also consider physical disabilities for those with disabilities and the use of a language and interpretational approach that considers diverse cultures and languages.

7. Feedback and Open Evaluation

Museums can facilitate feedback and open evaluation mechanisms to hear the thoughts and experiences of visitors representing social groups, including those of tribal communities. These mechanisms should help museums improve programs and services to ensure that they are relevant and inclusive for all visitors.

By implementing the concept of inclusive museums, their existence is expected to serve as a bridge connecting the Central Government, regional governments, tribal peoples, and private sectors and to promote a better understanding of diverse cultures as well as to solidify the identity and the rights of the tribal communities.

CONCLUSION

The repatriation of Lombok treasures in 2023 marked the initiation of the repatriation diplomacy of cultural objects of Indonesia based on the enforcement of

human rights and reconciliation of injustice in the history committed by the government of the Dutch East Indies against the tribal communities in the past. However, all the processes of repatriation of Lombok treasures does not take even a single involvement of tribal communities. This is contrary to what is specified in international conventions and national law in Indonesia in which self-determination is guaranteed. To the governments, there have been several issues faced in the involvement of tribal peoples in the repatriation process: (1) Lombok treasures are the national cultural legacy, not the local legacy; (2) it is not easy to appoint peoples to be official representatives of tribal communities to participate in repatriation; (3) infrastructure and financial issues. The involvement of tribal peoples is significant since they hold important roles in the process before, during, and after repatriation by assisting the research on the origin of cultural heritage, strengthening the substances of the agreements and partnerships in the repatriation of the objects of cultural heritage agreed upon by the two states, and involving the tribal peoples in the protection, management, and utilization of cultural heritage objects. To fill the legal lacuna, the author aims to formulate 2 strategies to firm up the roles and the participation of the tribal peoples in the repatriation process by drafting legal frameworks for the repatriation of cultural heritage objects based on participative principle and strengthening the legal standing of tribal peoples.

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