

STRUCTURAL VIOLATION OF INDIGENOUS HUMAN RIGHTS IN INDONESIA: A CASE STUDY OF MERAUKE INTEGRATED FOOD AND ENERGY ESTATE (MIFEE) IN PAPUA

KEKERASAN STRUKTURAL TERHADAP HAK MASYARAKAT ADAT DI INDONESIA: STUDI KASUS MERAUKE INTEGRATED FOOD AND ENERGY ESTATE (MIFEE) DI PAPUA

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Abstrak

Merauke Intergrated Food and Energy Estate (MIFEE) adalah program pembangunan ekonomi skala besar di Merauke-Papua. Program ini bertujuan untuk menghasilkan tanaman pangan dan bahan bakar hayati untuk pasar domestik dan internasional sebagai respon dari krisis pangan dan energi. Karena kebutuhan tanah yang sangat luas, proyek ini telah melanggar hak milik (hakatastanah) dari masyarakat adat Malind. MIFEE juga telah melanggar hak-hak ekonomi, sosial dan budaya masyarakat Malind yang ditandai dengan penurunan kualitas hidup akibat pelaksanaan proyek ini. Dengan menggunakan teori kekerasan struktural dari Galtung (1969) yang dikembangkan oleh Ho (2007) dalam konteks hak asasi manusia, artikel ini berargumen bahwa orang-orang Malind menderita pelanggaran struktural pada hak asasinya dengan adanya proyek MIFEE.

Kata kunci: kekerasan struktural, hak asasi manusia, MIFEE, Papua

Abstract

The Merauke Integrated Food and Energy Estate (MIFEE) is a large-scale economic development program in Merauke, Papua. It aims to produce food crops and biofuels for domestic and international markets in a response of food and energy crises. Due to the extensive needs of land, this project has violated the property rights (rights to land) of indigenous community, the Malind people. It also has contravened the economic, social and cultural rights of Malind people seen from the decreasing of life quality. Using Galtung (1969) theory of structural violence that developed by Ho (2007) to human rights context, this paper argues that the Malind people have suffered structural violation on their human rights through the MIFEE project.

Keywords: structural violation, human rights, MIFEE, Papua

Introduction

After the political and financial crisis around 1998-1999, in the recent days Indonesia is one of the most democratic countries in Southeast Asia (Cochrane, 2014). The Organisation for Economic Co-operation and Development (OECD) also includes Indonesia as one of the countries with the highest Gross Domestic Product (GDP) growth during 2000-2014 (OECD, 2014, p. 2). Under President Yudhoyono (2004-2009 and 2009-2014), Indonesia establishes an economic development scheme called the Master Plan for Acceleration and Expansion of Indonesia Economic Development (*Masterplan Percepatan dan*

Perluasan Pembangunan Ekonomi Indonesia or MP3EI). It aims to increase the economic development of Indonesia, through 4012 trillion rupiah (USD 455 billion) investment in eight strategic programs and 22 key economic activities (Government of Indonesia, 2011, p. 49). It divides Indonesia into six economic corridors. The eastern part of Indonesia, namely Moluccas Islands and Papua's region, becomes the Centre for Development of Food, Fishery, Energy and Mining¹ (Government of Indonesia,

¹The other five economic corridors are: (1) Sumatra as the center for production and processing of natural resources and as nation's energy reserves,

2011, p. 47). Merauke, a district in the east end of Papua Island, specifically becomes the food and energy estate. The program is better known as the Merauke Integrated Food and Energy Estate (MIFEE).²

MIFEE is a transformation of Merauke Rice Estate (MIRE) project. Previously, it has been implemented by Johannes Gebze, the District Head of Merauke (2005-2010) since 2007 (Zakaria (et.al), 2011, p. 9). As a giant scale economic development program, it aims to produce food crops (not only rice) and biofuels for domestic and international markets³ (Government of Indonesia, 2010). It is also expected to increase rice and food production,⁴ decrease the food imports, and generate employment opportunities in the agriculture sector (Government of Indonesia, 2010, p. 39). MIFEE splits Merauke into ten agricultural production centres and give concessions to 44 corporations⁵ for 2,144,650.99 hectares of land (Ito, Rachman, & Savitri, 2014).

MIFEE is mainly established as a consequence of the food and energy crises in 2007-2008 influencing some developing countries. Indonesia was not one of the affected countries. Nevertheless, the Government of Indonesia showed its commitment to assist other affected countries. Through a series of conferences conducted by The Indonesian Chamber of Commerce (*Kamar Dagang*

(2) Java as the driver of national industry and service provision, (3) Kalimantan as the center for production and processing of national mining and energy reserves, (4) Sulawesi as the center for production and processing of national agricultural, plantation, fishery, oil and gas, and mining and (5) Bali-Nusa Tenggara as the gateway for tourism and national food support (Government of Indonesia, 2011, p. 47).

² The Ministry of Agriculture of Indonesia officially launched MIFEE in 11 August 2010.

³ MIFEE is a massive-scale development. It targets 1,282,833 hectares of land, that are developed in three phases: (1) 423,251.3 hectares (2010-2014), (2) 632,504.8 hectares (2015-2018), and (3) 227,076.9 hectares (2020-2030) (Government of Indonesia, 2010, p. 36).

⁴ It is expected to upsurge rice, soybeans, maize, sugar, crude palm oil, and cattle production up to 1.95 million tons, 167,000 tons, 2.02 million tons, 2.5 million tons, 937,000 tons and 64,000 heads consecutively (Government of Indonesia, 2010, p. 39).

⁵ See Ito (et.al, 2014, pp. 36-37) and a brief profile companies in *awasMIFEE!* (2012, pp. 29-47) to find the company list with concession.

Indonesia or KADIN), the concept of MIFEE was formulated. There were two conferences held in 2010 titled "Feed Indonesia, Feed the World" and in 2012. President Yudhoyono showed his concern by attending these two conferences (Maulia, 2010; KADIN, 2012).

On the other hand, Papua is one of the underdeveloped regions in Indonesia. In 2010, Papua's Human Development Index (HDI) was the lowest (54.45) compared to other provinces in Indonesia. It has been increased slightly (56.75), but the HDI of Papua remains the lowest amongst other provinces in Indonesia (Badan Pusat Statistik, 2016). MIFEE sounds promising not only to fulfil the food and needs nationally and internationally, but also for the local development of Papua and Merauke. Besides migrants, some of Merauke inhabitants are Malind indigenous groups.⁶ As an indigenous group, the Malind people subsist by collecting sago, fishing and hunting animals. Land has a very essential meaning for their lives, both economically and traditionally relating to the myth Malind's origin (Forest People Programme (et.al), 2013, pp. 19-25; Muntaza, 2013b). For the Malind people, the land is their mother known as 'Mama Malind' (Sanjaya, 2013).

In fact, MIFEE has violated the basic rights of Malind people. Due to the extensive needs of land for agriculture, some reports show that the companies of MIFEE project have grabbed the Malind people's lands as their livelihood sources in several villages in Merauke; thus, they experience food crises (see for examples Zakaria (et.al), 2011; *awasMIFEE!*, 2012; Forest People Programme, 2013). Some non-governmental organisations (NGOs) have

⁶ The total population of Merauke district in 2012 was 213,075 people (Statistics of Merauke, 2013, p. 3). The indigenous people constituted approximately 25% of the population or 50,000 persons (Perkumpulan Sawit Watch (et.al), 2011). Migrants from Java, East Nusa Tenggara and South Sulawesi dominated Merauke population due to transmigration program initiated by the New Order regime (1965-1998) (Forest People Programme (et.al), 2013, pp. 17-19). Besides Malind, there are also some other ethnic groups, such as Morori, Kanum, Yeinan, Muyu, Mandobo, Mappi, and Auyu (Forest People Programme (et.al), 2013; Perkumpulan Sawit Watch (et.al), 2011). However, this paper only focuses on the Malind community, as a dominant group of Merauke inhabitants and is mostly affected by MIFEE project.

reported this situation to the United Nation (UN) Committee on the Elimination of Racial Discrimination (CERD) in 2011 (Perkumpulan Sawit Watch (et.al), 2011). As stipulated in Indonesia's 2012 Universal Periodic Review (UPR), CERD sent a letter to Indonesian government in the same year asking '...regarding the measures taken to seek free, prior and informed consent from the Malind and other indigenous peoples in Papua before carrying out the MIFEE,' with its Early Warning and Urgent Action Procedure, but has not received any response (United Nation General Assembly, 2012a, p. 5).

Based on that background, this paper asks to what extent MIFEE has become an example of indigenous human rights violations in Indonesia. In addition to the direct violence that experienced by the Malind people (Zakaria (et.al), 2011, p. 44), this paper argues that MIFEE is a form of structural violation of the human rights of Malind community, leaving them impoverished and cut off from their traditional livelihood. Structural violence, a concept proposed by Galtung (1969) and developed by Ho (2007) in human rights context is used to describe the ways government policies (structure) become violation tools toward the Malind peoples' human rights.

This paper splits into three parts. Part one examines the concepts, namely structural violation of human rights as well as indigenous land right. The following part discusses how Malind people experience structural violation through MIFEE project. In details, this part describes (a) spatial planning policy as a tool enabling the availability of Malind people's lands for MIFEE project; (b) the contribution of Papua Special Autonomy Law and Papua indigenous land rights toward structural violation through MIFEE; (c) the decreasing of Malind people's life quality; and (d) the human rights violation through MIFEE. The last part provides conclusion.

Structural Violation of Human Rights and Indigenous Land Rights: A General Framework

This paper argues that MIFEE is a structural violation to indigenous human rights. To comprehend the problem, two concepts are explored. First section discusses structural violation on human rights. Second, it elaborates

indigenous land rights, particularly rights to land structurally violated in the case of MIFEE.

Structural Violation on Human Rights

Galtung describes the concept of structural violence for the first time in his article titled "Violence, Peace, and Peace Research" (1969). Galtung defines violence as 'the cause of difference between the potential and the actual.' He highlights the two key words from that definition, namely 'potential' and 'actual'. Violence exists when the gap between the 'potential' and 'actual' become greater (Galtung, 1969, p. 168). For an example, he describes a case of tuberculosis. When someone died due to tuberculosis in the 18th century, it cannot be claimed as violence. At that time, it might be unavoidable as the tuberculosis medication was hardly found and the health facilities were limited. However, that is not the case for the recent days. If someone dies because of the same disease, whereas tuberculosis medication is readily available and health facilities have grown, then violence is occurred (Galtung, 1969, p. 168).

Galtung distinguishes three types of structural violence: (1) personal, (2) structural and (3) cultural.⁷ Nevertheless, this paper is more focused on personal and structural violence. He suggests that structural violence is the opposite of personal violence. While in the personal violence, the actor is more easily observed and recognizable, in structural violence there might be no one violating others (Galtung, 1969, pp. 170-171). Furthermore, he states that, "the violence is built into the structure and shows up as unequal power and consequently as unequal life changes" or in other words social injustice, such as poverty (Galtung, 1969, pp. 171-172). Structuralism emphasises on the society features, whether on interdependent and interconnected relationships among human beings, communities and organisations, and/or institutions (Landman, 2006, p. 45). Individuals are not assumed as actors, who are totally free because they act within a structure constructed for their interests, identities and interactions (Landman, 2006, p. 45). Based on this explanation, the focus of this paper is the violation occurred due to the state's policy.

⁷See further in another article of Galtung "Cultural Violence" (1990).

Galtung's concept on structural violence, however, invites some criticisms. One of them is Boulding's piece titled "Twelve Friendly Quarrels with Johan Galtung" (1977). According to Boulding, the concept of structural violence is too simplistic. He suggests that poverty should include structural features in societies, since violence in economic dynamics are dissimilar with those in politics. For Boulding, the violence and structural violence is more rhetorical for political mobilisation against perceived injustice, rather than as an academic discourse (Boulding, 1977, pp. 83-84).

Despite the critics, Galtung's concept on structural violence is still useful to understand human rights discourse. Ho (2007) develops the concept of structural violence into structural violation on human rights. According to her, structural violence happens because of unequally distributed power harming those with lesser one (Ho, 2007, p. 4). Furthermore, structural and systemic causes have put a group of people at a greater human rights violation compared to other groups (Ho, 2007, p. 15). She refers to tuberculosis example of Galtung. If a country decided to shift the budget of tuberculosis medication and health care to another sector, then the violence occurs because it increases the disparity between the potential and the actual of recovery from the disease (Ho, 2007, p. 11). Basically, she proposes the notion on how entities that have greater power, like states, constrain the choices made by the entities that have less power, like individuals, and how this restriction becomes a human rights violation (Ho, 2007, p. 3). Furthermore, Chapman (1996) classifies three types of the structural human rights violations. First, a violation is consequences of government's actions and policies. These are mostly because of obligation infringement. Second, a violation is correlated with the ability of government to treat individuals non-discriminatively. Third, a violation is occurred as the results of the state's failure to fulfil a minimum principal obligation toward those particular rights, especially if a state agrees to a particular covenant on human rights. Therefore, it is in charge of every structural violation of the rights (Chapman, 1996, p. 43).

Indigenous People's Land Rights

This paper from the very beginning has stated structural violation to Malind people human rights has taken place through MIFEE,

mainly in a form of land grabbing. Therefore, it is also important to examine the concept of indigenous peoples' rights to land. Land is essential to indigenous people because it is embedded in their economic resources, identity, self-determination and cultural significance (Gilbert, 2007, pp. xv-xvi).

The Universal Declaration of Human Rights (UDHR) Article 17 guarantees the rights to property, including land. Specifically on the issues of indigenous people, some international law mechanisms guarantee the access of indigenous people to their land through Articles 13 to 19 ILO Convention 1989. Also in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), in the article 8, paragraph 2 b) set that states should be responsible for providing effective instruments to prevent any action, which leads to the dispossession of indigenous peoples' land, territories and resources. In article 10, the declaration guarantees that indigenous people cannot be forcibly relocated from their land and territories, and no relocation shall occur without their free, prior, informed consent. The relocation also should provide fair compensation and the possibility to return. Additionally, through article 25 and 26, the Declaration recognised the spiritual and cultural relationship between indigenous people and with their traditionally owned, occupied or used lands. Therefore, states must give legal recognition and protection to these lands and resources with respect to the traditions, customs, and tenure system that belong to the indigenous people (Schutter, 2009, p. 8). However, Schutter (2009), based on his reports on the right to food to the UN, concludes that indigenous peoples are vulnerable to widespread, large-scale land grabbing in the world. In the Southeast Asian context, Magallanes & Hollick show that as the most vulnerable group in the societies, indigenous people have suffered more from the effect of development in Southeast Asia, happening in the form of losing their lands (Magallanes & Hollick (eds.), 1998, pp. 6-7).⁸

⁸ Some case studies of structural violation of human rights to indigenous people in Southeast Asian countries are presented in this book. For example, Orang Asli, an indigenous group in Malaysia, experienced human rights violation that occurs in the form of loses their land and marginalised in development program as a whole due to unequal position with the Malay majority (Sullivan, 1998).

Indonesia is one of the countries signing the UNDRIP (Steni (ed.), 2010, p. 24). According to violation approaches articulated by Chapman (1996), the Indonesian government is obliged to fulfil the minimum principal of indigenous rights, particularly with regard to land. Besides signing the UNDRIP, Indonesia also recognised indigenous rights through the Indonesian Constitution of 1945; specifically in article 18 B verse (2), which specifically states the nation's recognition of indigenous people along with their traditional rights, which are to be guaranteed through Indonesian law. Moreover, article 28 I verse (3) stipulates that cultural identity and indigenous people rights are respected. Indonesia in decentralised system even provides wider opportunity to protect the rights of indigenous people. Local governments now have authorities to manage themselves, including the creation of some policies in accordance with local social-political dynamics. Davidson and Henley (2007) suggest that identities are strengthening in many of Indonesia's regions after the collapse of the authoritarian regime. The identity strengthening is also manifested in the issuance of local laws, which guaranteed the rights of indigenous people rights in each region.

However, Arizona (et.al, 2010) highlights another article in the Indonesian constitution: Article 33 verse (3), which asserts the control of the state with regard to access to natural resources (including land) and this has led to the negation of indigenous people rights to land (Arizona (et.al), 2010, pp. 1-2). Their study shows that although the rights of indigenous people have been guaranteed by the state through the constitution at the national level and local laws in regional level, at the implementation level the law mechanism does not work. The lack of implementation is due to the unavoidable natural resources exploitation by the local authorities in decentralised Indonesia. Besides, it is guaranteed by Article 33 of the Constitution, the decentralisation law instructed the local government to find its own revenue to bring

Another example is from the Philippines, where indigenous people of Mindanao lose their ancestral land because of gold mining transnational companies (Hyndman & Duhaylungsod, 1998). The majority of the case studies presented in this book show structural violation of indigenous human rights, which particularly occurred because of inequalities of power and resulted in the loss of indigenous people land (see further Magallanes & Hollick (eds.), 1998).

prosperity to the people in their own areas (Article 1 Clause (5) Law No. 32 of 2004 on Regional Autonomy). The indigenous people rights are increasingly weakened mainly due to the state policies related with the exploitation of natural resources by grabbing the indigenous people land (Arizona (et.al), 2010, pp. 116-117).

In this situation, the land grabbing has threatened the source of livelihood of indigenous people. Moreover, it has increased the gap between the actual and the potential. Therefore, it should be seen as violence according to Galtung's definition (1969). Furthermore, according to Chapman's categorisation on violation (1996), the emasculation of indigenous people rights to land is also structural violation of human rights. Instead of protecting, the state, through its action and policies has infringed the rights of indigenous people. The next section explains how the structural violation of indigenous peoples' human rights occurs through MIFEE.

MIFEE and Structural Human Rights Violation towards Malind Community

There were some cases of land grabbing experienced by Malind people. A case study from Zanegi village was the one most often raised in the studies about MIFEE. In the village, Medco, a big corporation⁹ that was involved in MIFEE developed an industrial forestry plantation. Some reports show that Medco approached the villagers in a deceitful way (awasMIFEE!, 2012, pp. 14-15; Zakaria (et.al), 2011, pp. 65-67). It held a ceremony in 12 December 2009 and gave a Certificate of Appreciation to the villagers. While usually the grantor only signs a certificate, Medco asked the village head and traditional leader to sign the document and gave them 300 million rupiah. In June 2010, a conflict occurred when the company tried to remove wood that they had logged from the forest near the village. The villagers were upset because there was no discussion about how Medco will compensate them for the wood. The villagers thought that the money that came along with the Certificate was goodwill money rather than a compensation for the wood, but Medco had a different view. It claimed that the certificate had an appendix that mentioned the compensation for the wood valued 2,000 rupiah per cubic metre. The rate was very

⁹See further explanation about this company in awasMIFEE! (2012, pp. 31-33)

far below the standard rate for the wood. When the villagers would sell it to wood traders the value would often be 180,000-200,000 rupiah per cubic metre. Regardless of the trickery, Medco thought only to compensate the villagers for the wood while in fact its operation was more than just a logging concession. The company aimed to grow trees on the land of the villagers, which in turn has led them to their land being dispossessed (awasMIFEE!, 2012, pp. 14-15; Zakaria (et.al), 201, pp. 65-67). Besides, the company did not hire teachers nor built a school, a place of worship, and roads. Medco also used violence through police and military officers to threaten the villagers (awasMIFEE!, 2012, p. 15).

Another case of land grabbing emerged from Boepe village. Zakaria (et.al, 2011, pp. 67-68) notes a more deceitful act by the same company in that village. Boepe villagers were promised that Medco would build a place outside of the village after a relocation conducted in 2009. The relocation aimed to create a plant-breeding area in Boepe village. While Boepe was already a restricted area, the location that Medco promised was never built and the villagers became homeless and landless. The relocation compensation money given by the company also had been spent (Zakaria (et.al), 2011, pp. 67-68). Medco's deceitful methods to take over the land also happened in the other several villages, like Kaliki and Sanggase. Other companies also did a similar thing in order to get the land from the Malind people. Like the Rajawali group did in Onggari and Domande villages, as well as Dongin Prabhawa company in Nakias village (awasMIFEE!, 2012, pp. 17-18).

Muntaza (2013a) notes that the land dispossession has led the Malind people to a food crisis. The land, where they planted sago has been grabbed. The forest, where they used to hunt, has been felled. She also shows that the company's activities by disposing waste from their heavy equipment has polluted some rivers feeding the water springs of Malind villages. Some cases of children and maternal malnutrition and diarrhea arose (see also Forest People Programme (et.al), 2013, pp. 40-41). In general, the situation of Malind people is not only infringe the UDHR Article 17 on Property Rights, but also UDHR Article 22 on Economic, Social, and Cultural Rights. The violence and the increasing gap between the potential and the actual of Malind people have been described.

The following four subsections draw how MIFEE and the land dispossession as examples of structural violation to the indigenous human rights of the Malind people.

Make the land "available" through Spatial Planning Policy

The main requirement of the MIFEE project was land in the Merauke area. Therefore, a mechanism to make the land available to the companies involved in the project was needed. The land must be released from the status as conservation forests or customary tenancy. From the total area of 46,791.63 km² or 4,679,163 hectares (14.67 per cent of Papua province) (Statistics of Merauke, 2013, p. 3), only 4,92 per cent of is not a forested area. One thing that has to be remembered is that the Malind people also owned, used and occupied the forested and non-forested land in Merauke. To make it available, the Indonesian Chamber of Commerce, an organisation whose members have business interest in MIFEE project, requested a spatial planning policy.

In 2007, the Indonesian government signed its Law No. 26/2007 on Spatial Planning.¹⁰ Even as Indonesia implemented the decentralisation and regional autonomy policy that enabled local governments to manage their own localities, the spatial planning policy made sure that the national government could still govern spatial affairs.¹¹ The law also stipulated an article that makes this regulation as the legal basis to determine land function for investments.¹² In December 2007, the Coordinating Ministry of Economic Affairs asked the former district head of Merauke, Johannes Gebze to give a presentation about the Merauke Rice Estate (MIRE), the embryo of MIFEE. In March 2008, President Yudhoyono signed the Government Regulation No. 26/2008 on National Spatial Plan

¹⁰The old regulation on spatial planning, Law No. 24/1992 was revised to Law No. 26/2007.

¹¹Point C of the consideration of Law No. 26/2007 mentions that '...in order to strengthen national defense of Indonesia and in line with regional autonomy policy that gives greater authority to local government in spatial planning, the authority should be regulated in order to maintain harmony and cohesion between regions, and between central and local so I would cause disparity between regions.'

¹²Article 20 verses (2) c mentions that 'The spatial planning policy serves as guidelines for the location and function space for investments.'

as the derivative regulation of Law on Spatial Planning, which created Merauke as one of a Key Regions for economic growth. In May 2008, the Ministry of Public Works and Papua Governor were instructed by the president to prepare the land in Merauke, Mappi and Boven Digul for agricultural investment. In June 2010, a coordination meeting was held in Jayapura, Papua and ended in disagreement between the two camps. The first camp, the Ministry of Agriculture, the Ministry of Public Works and Merauke District Government preferred 1.2 million hectares of land being allocated for agricultural investments. This camp used the 'Feed Indonesia, Feed the World' slogan to get as much land as wide as possible for agriculture investment. The second camp, however, which consisted of the Ministry of Forestry and the Papua Provincial Government, preferred that if the land allocation for the agriculture investment was limited to 500,000 hectares. This option was chosen because the forest area in Merauke must be safeguarded to reduce emissions due to combat climate change, which also was Indonesian government policy, specifically under the Ministry of Forestry. The meeting failed to reach an agreement. However, a followed up meeting resulted in a temporary decision that allowed 550,000 hectares of land to be cultivated, until the Ministry of Forestry approved further forest conversion (Ito (et.al), 2014, pp. 41-42). These circumstances revealed a strong hierarchical process between the national and local government on designing MIFEE.

Ito (et.al, 2014, pp. 42-43) in their examination on MIFEE's policy discourse analysis shows that there were only 2.8 per cent of the total 550,000 hectares area that became food crops. The rest of the land was used to plant export commodities such as lumber, sugar cane and palm oil. The spatial planning for Papua province and Merauke district were still on hold based on the June 2010 meeting, while the Merauke district government continued to issue concessions to the corporations that wanted to invest in the area. In total, forty-four companies were granted permits to plant on more than 2 million hectares of land, which was far above the planned area for MIFEE, which was only 1.2 million hectares (Ito (et.al), 2014, pp. 42-43). The land concessions given to the corporations certainly was the same land that the Malind people owned, used and occupied in twenty-one villages. Therefore, the spatial planning policy

that enables land dispossession of the Malind people has become an instrument of structural violation to indigenous people rights.

Failure in the implementation of the Papua Special Autonomy and ambiguity in indigenous land status

In the previous section, this paper mentioned about the generally ambiguous position of indigenous people's land in Indonesia. The rights of indigenous people to land are recognised but at the same time it is undermined when the state wants to exploit natural resources. In the Papuan context, the indigenous human rights to land are also undermined in a more complex situation. Papua province is one of three regions, beside Aceh and West Papua, which have been granted Special Autonomy status, a higher degree of autonomy than other regions in Indonesia. This special autonomy status is given to the regions due to the emergence of secessionist movements triggered by historical grievances (Bertrand, 2004; Chauvel & Bhakti, 2004). The long grievance itself was intensified by two separate developments, namely (1) the large transmigration program that moved farmers from populous islands to Papua (Elmslie, 2010) and (2) the beginning of mining operation in Tembagapura by Freeport McMoran (Leith, 2003).

The Law No. 21/2001 on Papuan Special Autonomy, which implemented to reduce the secessionist sentiment through some development programs, clearly stipulates some verses that guarantee the rights of Papuan indigenous people. Article 43 verse (1) mentions that 'the Papua provincial government should recognise, respect, empower protect and develop the rights of indigenous peoples based on the provisions of the law.' In verse (2) and (4) the article specifically mentions Papuan indigenous peoples' right to land.¹³ However, the Special Autonomy law was not implemented properly. Widjojo (et.al, 2010) suggests that the

¹³ Article 43 verse (2) mentions that "The rights of the indigenous peoples in paragraph (1) shall include the right of indigenous people and their customary rights individual citizens concerned indigenous people," whereas verse (4) mentions that "the provision of communal land and the land of individual citizens of customary law for any purpose, done in consultation with the indigenous communities and concerned citizens to obtain agreement on the delivery of the required land and its compensation."

advantages of development done through the special autonomy policy centred only in urban and resource rich areas and not experienced by most indigenous Papuans. This lack of implementation of the special autonomy law, especially on indigenous rights to land, cannot be separated from state apparatuses' interest in Papua's natural resources, which had emerged before special autonomy status was granted (Wing & King, 2005). Another cause was there was no derivative rule of Papua Special Autonomy Law that regulates the more details instruction to implement the Law (Perkumpulan Sawit Watch (et.al), 2011).

The two derivative regulations which guarantee the access of indigenous people to land was only released in 2008, namely (1) the Regional Government Regulation of Papua Special Province No. 22/2008 on the Protection and Management of Natural Resources of Papuan Indigenous Communities and (2) the Regional Government Regulation of Papua Special Province No. 23/2008 on the Indigenous Land Rights and Individual Rights of Indigenous Communities on Land. The two derivative regulations which intended to guarantee Papuan indigenous rights to land were released after the MIFEE policy started to be designed, as the previous subsection explained. Therefore, these regulations also failed to ensure the rights of Malind people to land. Moreover, the majority of MIFEE area was classified as forest and this means it is in the Ministry of Forestry's jurisdiction. Law No. 41/1999 on Forestry in Article 1 verse (4) and (6) states that 'state forest' is 'forest that is on land that is not encumbered by land rights', which means it considers indigenous land rights. This Law has made the status of Merauke land ambiguous. Both the failure of the implementation of the special autonomy policy and the ambiguous status of Merauke's land show that the Indonesian government failed to protect Malind indigenous rights to land and hence it constituted the structural violation of indigenous human rights through MIFEE project.

After land dispossession: The jobs in MIFEE project are not for the Malind people

Besides increasing food production, the MIFEE was also supposed to recruit 44,900 people, both Papuans and migrants, to work in agriculture sector. It also aimed to raise the income of the people up to 130,500,000 rupiah per annum (Government of Indonesia, 2011, p.

39). However, it should be remembered that the Malind people are currently in a traditional stage, if we use Rostow's stages of economic growth model (Hunter, 2012). Involved in a large-scale agriculture industry like MIFEE, would be a giant leap for a hunting and food gathering based society like Malind. Therefore, the MIFEE policy's promise that it will employ them in the project is something that cannot be taken for granted.

Savitri (2013) reports that there were 49 male Zanegi villagers that worked for MIFEE project. All of them were recruited in Planning Department. Their real duties were to identify the types of wood to be harvested, identify the wood owners to make sure they receive the compensation payments as well as guiding the surveyors to delineate the next logging area or plant and watering the acacia seeds. The villagers were also recruited in Corporate Social Responsibility (CSR) Department to report on adverse or harmful incidents to the company, deliver the company's plans and offers and become the liaison between the company and the villagers. Most of them, however, were only to become a cleaning service for the company. The jobs do not look promising because after working for more than four years, those 49 men were still in daily labours status, instead of permanent employees (Savitri, 2013, pp. 70-72).

Now the question is, after the company recruited Malind people, did that make the villagers' lives better? Savitri (2013) shows her findings on the changes in production and consumption of the Malind people in Zanegi village who have been working for the company (Table 1).

The table above shows that the quality of the Malind's people life was decreasing after they were involved in MIFEE project. This is not to mention the Malind people who already experienced land dispossession and do not work for MIFEE project. Li (2011) suggests that in the event of acquisition of land, the corporation as business actors are only focussed on gaining profits, whereas poverty reduction through compensation and employment are not a company's concern. From this explanation, it is clear that the MIFEE project has been a structural violation because this state policy has increased the actual and potential gap in the Malind people's economic situation.

Table 1. The Comparison of Income and Expenditure of Zanegi Villagers

Per Family	Before worked for MIFEE Project		After worked for MIFEE Project	
Production per month	Meat 400 kg	Rp 15,000/ kg	Wages per day for 20 working days	Rp 50,000
	Total	Rp 6,000,000	Total	Rp 1,000,000
Consumption per month	Meat	No need to buy	Rice 90 kg	Rp 900,000
	Sago	No need to buy	Instant noodles 90 packs	Rp 180,000
	Banana	No need to buy	Canned fish, 15 cans	Rp 150,000
	Taro	No need to buy	Areca nut	Rp 300,000
	Rice 20 kg	Rp 200,000	Cigarette	Rp 105,000
	Areca nut	Rp 300,000		
	Cigarette	Rp 105,000		
	Total	Rp 605,000	Total	Rp 1,635,000

Source: (Savitri, 2013, p. 73)

Isolating Papua: Bury the Human Rights issues related to MIFEE

There are many studies that conclude there have been serious human rights violations in Papua (see for example Wing & King, 2005; Brundige (et.al), 2004; Fransiscans International, 2011). Besides recognising the indigenous peoples' rights as explained in previous subsection, the Special Autonomy Law was also mandated to achieve human rights protection agendas, through three mechanisms: (1) a human rights court to support the judicial accountability for previous human rights violation, (2) a Papua truth and reconciliation commission to clarify the history of Papua and formulate the reconciliation actions, (3) a Papua branch of National Human Rights Commission for judicial accountability and truth seeking (ICTJ & ELSHAM Papua, 2012, p. 9). However, ICTJ and ELSHAM Papua's report in 2012 shows that the Special Autonomy Law has not succeeded in meeting all the aims because of a combination between a weak government commitment to address those problems and broader failures to address the accountability, truth and justice issues at the national level (ICTJ & ELSHAM Papua, 2012, p. 10). Related to that unfinished agenda of human rights, Papua now still is a 'forbidden island' for foreign journalist, diplomats, and UN mechanisms (Harsono, 2013). In 2015, nevertheless, the current President of Indonesia, JokoWidodo, announced that foreign journalists are free to enter Papua, starting 10 May 2015. However, the freedom is not that free because the foreign journalists must obtain permission from the Indonesian government. The permit will be granted if the journalist has passed the selection in twelve ministries/state institutions in a mechanism called "security house" which coordinated by Foreign Ministry of Republic of

Indonesia (Wardhy, 2015). Therefore, this recent situation does not show any significant development on the efforts of opening Papua to the outside world.

Related to MIFEE, this isolation of Papua from the outside world has led to the disappearance of violation and land grabbing issues caused by MIFEE in the Indonesia's 2012 UPR, specifically in the Report of Working Group session (United Nations General Assembly, 2012b). Although in Indonesia there are many studies which found that there had been human rights violations suffered by the Malind people due to the implementation MIFEE, in the Indonesia's 2012 UPR, there was no single country that addressed the issue (United Nations General Assembly, 2012b). The unawareness of other countries towards MIFEE issues will exacerbate the human rights situation in Merauke that experienced by the Malind indigenous people. The limitation to access to Papua should not only be seen as avoidance efforts by the Indonesian government for every attempt to reopen past human rights cases in Papua, but also the avoidance of the government to resolve present human rights violation just like what happened to Malind people through MIFEE project. Therefore, it constitutes the structural violation to the Malind people human rights.

Conclusion

This paper has argued that MIFEE is a form of structural violation of human rights of Malind community through four aspects. First, the spatial planning policy has enabled the land in Merauke to be available to investors and this therefore dispossessed the Malind people of it. Second, the general failure of the special autonomy law that recognised the land status of

indigenous people and the ambiguity of forested land status in Merauke also violated the Malind's human rights to land. Third, the job provided by MIFEE since the very beginning are not designated for Malind people and in fact has only worsened their economic situation. Finally, the disappearance of MIFEE issues in the international community due to the isolation of Papua will exacerbate the human rights violations that suffered by the Malind people.

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