

Protection of Indigenous Peoples' Rights Through the Constitutional Review:

The Efforts to Achieve Sustainable Development Goals in Indonesia

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Abstract—One of the crucial SDGs is to promote peaceful and inclusive societies for sustainable development, to provide access to justice for all, and to build effective, accountable and inclusive institutions at all levels (Goal 16). In Indonesia, that one primary goal becomes one of the National SDGs' targets which is the realization of respect, protection, and fulfillment of human rights. This can only be achieved by more and more efforts in handling complaints of human rights violations. This paper examines the importance of protecting the rights of indigenous peoples as part of demand realization of SDGs in the human rights sector through the constitutional review (review act against the constitution) by the Constitutional Court. However, regulations related to SDGs in Indonesia have not provided a clear place for the Constitutional Court through constitutional review to take an active role in realizing SDGs. As a result, several violations of the rights of indigenous peoples which would be resolved through the constitutional review are met with various obstacles and are still frequently found in regards to the implementation of the Constitutional Court's decisions. This paper recommends the constitutional review be used as a legal instrument to achieve the goals and objectives of the SDGs. In addition, the Constitutional Court's decisions need to be used as a reference to harmonize the legislations in Indonesia, particularly the legislations related to protecting the rights of indigenous peoples, as part of the efforts to achieve SDGs.

Keywords: *indigenous peoples' rights, constitutional review, Sustainable Development Goals*

I. INTRODUCTION

One of the crucial *Sustainable Development Goals* (SDGs) is to promote peaceful and inclusive societies for sustainable development, to provide access to justice for all, and to build effective, accountable and inclusive institutions at all levels. At the global level, that particular goal is found in *Goal number 16* which is "Peace, Justice, and Strong Institution" with 10 major targets [1]. In Indonesia, *Goal number 16* of SDGs is developed to be 20 national targets and then is adjusted to the National Medium-term Development Plan of 2015-2019 (RPJMN) as it is written in the President's Regulation Number 59 Year 2017 on the target achievement of The Implementation of the Sustainable Development.

This paper examines the importance of the protection of the indigenous people's rights as part of the fulfilment of the SDGs requirements, and one of the methods is by the constitutional review, evaluation of the constitutionality of the laws onto the Constitution of the Republic of Indonesia of 1945 by the Constitutional Court. It is unfortunate that the regulation of the SDGs in Indonesia has not yet given a clear position to the Constitutional Court through the constitutional review to actively participate in achieving the SDGs. In practice, even though several violations of the rights of the indigenous peoples were resolved through constitutional reviews, obstacles regarding the implementation of the decisions of the Constitutional Court were still found.

On that particular subject, this paper discusses three main problems based on the aforementioned sub-theme. Those three main problems are: first, what is the relevance of constitutional reviews in the efforts to achieve SDGs in Indonesia? Second, what is the dynamics of constitutional reviews in relation to the protection of the indigenous peoples' rights by the Constitutional Court as part of their handling the complaints of human rights violations in SDGs in Indonesia? Third, what are the obstacles and solutions of the existence of the constitutional reviews to optimize the SDGs in Indonesia, particularly in protecting the indigenous peoples' rights? In the end, this paper suggests a constitutional review be a legal instrument and an indicator of the achievement of the objectives and targets of the SDGs. Additionally, each and every decision by the Constitutional Court must be obeyed and made as a reference in harmonizing the legislations and in Indonesia, particularly in protecting the indigenous peoples' rights in efforts to achieve the SDGs in Indonesia.

II. METHODS

This study recites statutory rules therefore the method used in this study is normative/doctrinal with statute and conceptual approaches. Primary legal materials are in the form of regulations, including: UN Resolution 70/1 concerning The 2030 Agenda (SDGs), Law Number 24 Year 2003 concerning the Constitutional Court, President's Regulation Number 59 Year 2017 concerning the Target Achievement of The

Implementation of The Sustainable Development; and some other related regulations which are applicable in Indonesia. Secondary legal materials are more in journals and supporting references. Data analysis is carried out by analysis content on the whole provided legal materials.

III. RESULTS AND DISCUSSION

A. Relevance of Constitutional Review in Efforts to Achieve Sdgs in Indonesia

A constitutional review in this paper is meant as a review of acts and regulations on the constitution (*a constitutional review*) conducted by a legal institution which is also called “*a constitutional judicial review*” [2]. In the Indonesian context, a constitutional review is carried out by a court institution which is the Constitutional Court. This is emphasized in Article 24C verse (1) of the 1945 Constitution of the Republic of Indonesia juncto. Article 10 section a Law Number 24 Year 2003 concerning Constitutional Courts, in which one of the jurisdictions of the Constitutional Court is to review acts on the 1945 Constitution of the Republic of Indonesia. Meanwhile the object of the review is limited to legal products such as acts and government regulations in lieu of acts on the 1945 Constitution of the Republic of Indonesia which has been officially legalized dan published to be a *aposteriori* [3].

The basic essence of the constitutionalism and democracy is related to the respect, fulfillment, and protection of the Human Rights (HAM) [4]. In a nutshell, the existence of the constitutional review in itself is closely related to the efforts to fulfill Human Rights [5]. If the existence of constitutional reviews is closely related to the efforts to fulfill Human Rights, what is its relevance to the SDGs? If referring to the 17 Goals of the SDGs, it can be confirmed that all the goals are in reality closely related to the efforts to fulfill Human Rights [6]. Specifically, constitutional reviews is closely related to the efforts to fulfill Goal 16 of the global SDGs in conjunction with the efforts to promote inclusive and peaceful societies for sustainable development, to provide legal access for all and to develop effective, accountable, and inclusive institutionalities at all levels, especially in Human Rights [7].

In Indonesia, Goal 16 of the SDGs is developed to be the 20 national targets, adjusted to the RPJMN of 2015 – 2019 and written in the President’s Regulation Number 59 Year 2017 on Implementation of the SDGs. After analyzing the aforementioned legislation, it can be concluded that a constitutional review is not explicitly mentioned as one of the targets of the global SDGs as well as the national SDGs. Nevertheless, implicitly all the goals in Goal 16 of the SDGs are related to Human Rights [8], which in general are also governed in various acts in Indonesia. When the governance violates citizens’ constitutional rights, this calls for a plea of the constitutional review at the Constitutional Court. As a result, a constitutional review is a supporting legal instrument which can be utilized to achieve the targets of the SDGs.

B. Dynamics of Constitutional Review in Relation to Protection of Human Rights of Indigenous Peoples in Indonesia: Handling and Reporting of Human Rights Violations in SDGs

The 169 ILO Convention and the UN Declaration on Indigenous Peoples’ Rights uses the term “*Indigenous Peoples*” as a group that contributes to diversity and cultural, civilization richness as well as cultural heritage of human civilization [9]. Meanwhile in Indonesia, there is a variety of terms for indigenous peoples such as “indigenous peoples, customary law community, traditional community, and indigenous community or ethnic group” [10]. The term “indigenous peoples” is used in this paper as it has a broader meaning (covering “customary law community” and “traditional community” as written in the 1945 Constitution of the Republic of Indonesia) as referred to by the UN “*Indigenous Peoples*” [11].

The term and definition of indigenous peoples varies, and one of the reasons is because of the inavailability of a special and specific act (umbrella act) in Indonesia that governs recognition and respect of the existence of the indigenous peoples and their entitled rights [12]. Furthermore, the 1945 Constitution of the Republic of Indonesia as a source of highest law in Indonesia also uses two terms to define an indigenous people i.e. “a customary law community” and “a traditional community”.

The dynamics of the constitutional reviews regarding the protection of the indigenous people’s rights by the Constitutional Court of the Republic of Indonesia can be seen in several of their decisions in the table below [13]:

TABLE I. SUBSTANCE OF CONSTITUTIONAL COURT’S DECISIONS ON PROTECTION OF PEOPLE’S RIGHTS

Court Decision	Substance of Decision
Constitutional Court Decision Number 31/PUU-V/2007	Recognition of existence of indigenous people as petitioners in a case of constitutional review at Constitutional Court with 3 criteria, which are: 1) as long as they’re alive; 2) in accordance with development of society; and 3) in accordance with principles of Republic of Indonesia.
Constitutional Court Decision Number 003/PUU-VIII/2010	Indigenous people are given rights to exploit coastal areas and small islands with the HP-3 within 20 years, while in fact traditional rights of indigenous people on coastal areas and small islands are valid forever.
Constitutional Court Decision Number 55/PUU-VIII/2010	Importance of protection of indigenous people’s rights regarding their land as part of realization of constitutional values.
Constitutional Court Decision Number 35/PUU-X/2012	Recognition of existence of indigenous forest as part of tenure rights of indigenous people, so that indigenous forest is separated from state forest.

From these various decisions made by the Courts it can be concluded that the Courts has been playing an active role in handling the reports of violations of constitutional rights of the indigenous peoples in Indonesia. Even though the Courts did not firmly mention its decision references in SDGs documents,

the substance of its aforementioned decisions are in accordance with the goals and targets of the SDGs especially Goal 16 as well as point 16.10 target of the global SDGs, which is to guarantee the public access of information and protection of basic freedom, based on the national regulations and laws and international agreement. In the context of the national SDGs, this is in accordance with the point 8.1 target of the national SDGs as written in the attachment of the President's Regulation (Lampiran Peraturan Presiden) Number 59 Year 2017 which is related to the achievement of respect, protection, and fulfillment of Human Rights with the indicator of the increase in the number of handlings of reports of Human Rights violations, especially through the mechanism of constitutional reviews.

C. Obstacles and Solutions to Existence of Constitutional Reviews to Achieve SDGs: Optimization of Protection of Indigenous Peoples' Rights

The research in this paper reveals that the existence of the constitutional reviews has not yet been properly considered in the SDGs. Nevertheless, of all the targets of the SDGs, constitutional reviews are closely correlated to the achievement of the target of Pillar 16 point 16.10 of the global SDGs, which is related to the guarantee for public access of information and protection of the basic freedom as stated by the national regulation and international pact. In the context of the national SDGs, constitutional reviews are closely related to the target of point 8.1. of the Attachment of the President's Regulation (Lampiran Peraturan Presiden) Number 59 Year 2017, that is the achievement of protection, and fulfillment of Human Rights, shown by the increase in the number of handlings of the reports of Human rights violations. To guarantee the existence of constitutional reviews as one of the key legal instruments to achieve SDGs in Indonesia, in the future constitutional reviews should be made as one of the indicators of the target of Point 8.1. of the Attachment of the President's Regulation (Lampiran Peraturan Presiden) Number 59 Year 2017.

Furthermore, the existence of the constitutional reviews to support the achievement of the SDGs in Indonesia heavily depends on how far the Court's decisions are consistently followed up in various legal policies as well as government actions [14]. This means that the Court's decisions heavily depend on the compliance of concerned parties with the constitution as the highest source of law [15]. Meanwhile the authority of the Constitutional Court in making their decisions, especially in reviewing acts on the 1945 Constitution of the Republic of Indonesia is a constitutional authority that must be upheld in all practices of the maintenance of state and governance. When a state institution or government institution does not abide by the Court's decision, it means that they disobey and disrespect the 1945 Constitution of the Republic of Indonesia and it is considered as a constitutional violation.

Based on the explanation above, it can be concluded that all the decisions made by the Court, especially those related to the protection of the indigenous peoples' rights must be followed up by making improvement to acts that have been examined, as well as the legislations that follow [16]. This clearly influences government actions related to the indigenous peoples' rights

that must be adjusted to changes in the aforementioned legislations, in harmony with the decisions made by the Court. If this is not done, constitutional reviews will not be effective and efficient to help achieve the targets of the SDGs, especially in the efforts to achieve protection, fulfillment of Human Rights, shown by the increase in the number of report handlings of Human Rights violations. It can also be considered as a serious violation of the enforcement of constitutionalism in Indonesia.

IV. CONCLUSION

Based on the explanation in the sub-discussion parts above, it can be concluded that the relevance of constitutional reviews in relation to the achievement of point 8 in the targets of the 16 global SDGs, related to the guarantee of public access of information and the protection of people's freedom, is in accordance with the national regulations and the international agreement. In the context of the national SDGs, constitutional reviews are closely related to the efforts to achieve the point 8.1 target as stated in the President's Regulation number 59 Year 2017, which is to achieve protection, and fulfillment of Human Rights, shown by the increase handlings of reports of human rights violations. For that purpose, constitutional reviews can be made as one of the juridical supporting instruments to optimize the achievement of the targets of the aforementioned SDGs, especially in the protection of the rights of the indigenous people.

In its practice at the Constitutional Court, the report handlings of the human rights violations through constitutional reviews related to the protection of the rights of the indigenous people have been carried out at the Constitutional Court in its various decisions. Some of them are in Court Decision Number 31/PUU-V/2007, Court Decision Number 003/PUU-VIII/2010, Court Decision Number 55/PUU-VIII/2010, and Court Decision Number 35/PUU-X/2012.

Nevertheless, the existence of the constitutional reviews to support the achievement of the SDGs in Indonesia depends heavily on how far they are acknowledged in the policies of the SDGs in Indonesia. It also depends on how far the decisions made by the Constitutional Court are consistently followed though in both legal policies and government actions. To deal with the obstacles and solve the problems in regards to this, constitutional reviews should be made as one of the key indicators in developing policies of SDGs in Indonesia in the future. In addition, all decisions made by the Constitutional Court must be consistently obeyed and made as references in harmonizing the rules and regulations in Indonesia, especially those related to the protection of the rights of the indigenous people, as part of the efforts to optimize the achievement of the SDGs in Indonesia.

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