Constitutional Review, Volume 11, Number 2, December 2025
P-ISSN: 2460-0016 (print), E-ISSN: 2548-3870 (online)
https://doi.org/10.31078/consrev1122

Cultural Expertise and the Social Justice Defense of Indigenous Peoples Rights in the Indonesian Constitutional Court

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Received: 08 April 2024| Last Revised: 13 October 2025 | Accepted: 3 November 2025

Abstract

This article is about rights to legal defense by using customary justice as part of human rights. Given the context of excessive exploitation over natural resources in Indonesia, indigenous people's livelihood has been constantly deprived. Even, there have been laws and its policies influencing their cultural knowledge, traditions, and its social lives (Bedner and Arizona 2019). In a landmark ruling, Indonesia's Constitutional Court through the verdict Number 35/PUU-X/2012 has invalidated the Indonesian government's claim to millions of hectares of forest land, potentially giving indigenous and local communities the right to manage their customary forests. However, although the court ruling does not automatically change the situation at ground, the cultural expertise has played important role to shape ideas in recognizing progressively their expertise before the court system. This article dissects the role of cultural expertise has been translated into the court rules and influence to the practice, understanding debates and practices of cultural expertise, and assessing constitutional court decisions which contradict to 2013's landmark decision and understanding the meaning for social justice. Using an interdisciplinary study of law, this article found that locals are rarely deemed as expert at court while the cultural expertise has been used to underpin their claims mostly over natural resources conflict

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cases. Really unfortunate that their expertise does not automatically protect rights and social justice due to lack of capacity, political economy driven policies, and various vested interests.

Keywords: Constitutional court; Cultural expertise; Human rights; Indigenous peoples; Social justice

I. INTRODUCTION: CULTURAL EXPERTISE, CONCEPTS AND ITS GAPS

The implementation of human rights has been influenced by the socio-political context. When it comes to protecting human rights, legal systems often discriminate against and even exclude citizen's rights, including the rights of indigenous peoples. Indonesia's social and cultural landscape are marked by the vital role of traditions and indigenous people's laws. These diverse and plural legal system are adopted by Indonesia's constitution since the first enactment.[1] These are called as *adat* or *adat* law in maintaining the legal order of most people. *Adat* includes cultural wisdoms and its dispute resolution through informal justice system.[2] In the demand of 'certainty' and 'centralised' model of governance, the Indonesian government responded to this socio-cultural reality by implementing a policy of unification of the national justice system but not prohibiting the existence of customary courts. Many studies argued the importance of customary justice as the main choice for most Indonesians, especially those who live in rural areas.[3] This is called as '*adat* court'.[4] However,

[1] Herlambang P. Wiratraman and Dian A. H. Shah, "Indonesia's Constitutional Responses to Plurality," in *Pluralist Constitutions in Southeast Asia*, ed. Jaclyn Neo and Bui Ngoc Son (Oxford: Hart Publishing, 2019), 115–142.

[2] J. F. Holleman, *Van Vollenhoven on Indonesian Adat Law (Selections from Het Adatrecht van Nederlandsch-Indië [The Adat Law of the Netherlands Indies])*, Vols. I–II (Leiden: KITLV, 1981).

[3] Rikardo Simarmata, *Pengakuan Hukum terhadap Masyarakat Adat di Indonesia [Legal Recognition of Indigenous Peoples in Indonesia]* (Bangkok: UNDP Regional Initiative on Indigenous Peoples' Rights and Development (RIPP), 2006). See Rikardo Simarmata, "Filosofi dan Prinsip Peradilan Adat [Philosophy and Principles of Adat Justice]" (paper presented at the Workshop on Strengthening Adat Court Capacity through the Making of Adat Court Guidance in Central Kalimantan, SAJI Project UNDP and Bappenas/Ministry of National Development Planning, 2013). Yance Arizona, "Kedudukan Peradilan Adat dalam Sistem Hukum Nasional [The Position of Adat Courts in the National Legal System]" (paper presented at the meeting on Strengthening of Adat Court in Central Kalimantan for Access to Justice Empowerment, June 11, 2013). Erica Harper, *Customary Justice: From Program Design to Impact Evaluation* (Rome: IDLO, 2011).

[4] Abdurrahman, "Peradilan Adat dan Lembaga Adat dalam Sistem Peradilan Indonesia [Adat Courts and Adat Institutions in the Indonesian Judicial System]" (conference paper presented at the Workshop on Adat Court, 2nd Congress of Aliansi Masyarakat Adat Nusantara (AMAN), Mataram, September 20, 2002); Hilman Hadikusuma, *Peradilan Adat di Indonesia [Adat Courts in Indonesia]* (Jakarta: Miswar, 1989).

it has also caused some tensions, since government policies influenced their cultural knowledge and traditions.[5]

Since the customary court has no formal 'legal binding', then the challenges to resolve tensions have been brought to the formal state judiciaries.[6] Many *adat* law cases have been brought to the state justice system, one of the most influential cases is related to the role of the Constitutional Court. Since legal cases have been brought to the justice, their presence is fundamental to promote human rights and justice system beyond the state formal legal system. Hence, their presence has been conceptually coined as cultural expertise. This study refers to the works of Holden,[7] who argued about 'cultural expertise'.

The origin of 'cultural expertise' as a concept actually has been formulated in 2009, when it responds to the need to acknowledge and scrutinise the contribution of socio-anthro-legal scientists, experts in laws and cultures, to the resolution of disputes and the ascertainment of rights. Cultural expertise as an umbrella concept proposes a strengthened ethical framework that enhances the ethical references of socio-anthro-legal scientists appointed as experts in court, as well as acknowledging the variety of tools and methods that fall within the broad domain of cultural expertise. Cultural expertise also refers to the special knowledge that enables socio-legal scholars, mediators, the so-called 'cultural brokers', to locate and describe relevant facts in light of the particular background of the claimants, litigants or the accused person(s), and in some cases of the victim(s). Therefore, the meaning of cultural expertise is closely related to the cultural defense, and so one can say cultural expertise constitutes the nuts and bolts of cultural defense because it provides the defense for the arguments that are likely to influence the legal outcome of a case.

The 'cultural expertise' is equal and supposed to be fairly and equally considered since the growing concerns on the right to access and participate in

[5] Adriaan Bedner and Stijn van Huis, "The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation," *Bijdragen tot de Taal-, Land- en Volkenkunde* 164, no. 2–3 (2008): 165–193. Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?" *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434.

[6] M. B. Hooker, *Adat Law in Modern Indonesia* (Kuala Lumpur: Oxford University Press, 1978).

[7] Livia Holden (ed), Cultural Expertise and Litigation: Patterns, Conflicts, Narratives (London: Routledge, 2011).

science. Science is not merely about scientist, but also applying to those who create knowledge system, included knowledge production.[8]

Cultural expertise and its relation to litigation address the role of local community as well as social scientists as a source of 'expert evidence'. Their experiences and observations of particular cases involved litigants, witnesses, and advocates. Therefore, it is necessary to see how is cultural expertise adopted or successfully considered in the court rulings? How is cultural expertise as source of knowledge understood and or misunderstood in characterizing the patterns, conflicts and narratives that play important role in legal plural settings. Although the inquiry on indigenous people's rights has been often argued to protect their rights, as constitutional rights as studies by Yusa[9] and Jamin et all.[10]

The method of this article applies an interdisciplinary study of law, this study sees the legal gap and combines between exploring rule of law studies and its contextual social-politics, especially dealing with the role of what Holden has coined, as 'cultural expertise'.[11] There are three key research questions, First, to what extent the role of cultural expertise has been translated into the court rules and influence to the practice; Second, how the constitutional court verdict in relation to cultural expertise has been debated, translated and implemented by regulations, bureaucracies, lower courts and other law enforcement. The third, how has been the coherence in relation to other constitutional court decisions which contradict to such landmark decision and what would be the meaning for social justice.

The implementation of law often impact fundamental human rights issues. First, this study reviews of Constitutional Court decisions by reflecting on the

[8] As part of 'rights to access and participate in science', the cultural expertise has been discussed intensively during The United Nation (UN) Expert Meeting on rights to access and participate in science, carried out by the UN Special Rapporteur on Cultural Rights, Palais de Nations, Geneva, 1 November 2023. See United Nations, Expert Meeting on "Rights to Access and Participate in Science," convened by the UN Special Rapporteur in the Field of Cultural Rights, Palais des Nations, Geneva, November 1, 2023.

[9] I Gede Yusa, "Identification and Analysis of the Rights of Indigenous Peoples in the Study of Constitutional Law," *Constitutional Review* 2, no. 1 (May 2016): 1–28.

[10] Mohamad Jamin, Sapto Hermawan, and Mulyanto, "A Discourse of the Indigenous Peoples' Rights and Their Contributions to Indonesian Development: Lessons Learned from New Zealand," *Padjadjaran Journal of Law* 10, no. 3 (2023).

[11] Livia Holden, "Cultural Expertise and Law: An Historical Overview," *Law and History Review* 38, no. 1 (2020): 29-46.

presence of local community leaders and how the facts and arguments presented can influence the court rulings. Second, this applies interpretation analyses, reflecting on the extent to which judges' interpretations in their decisions are followed or obeyed by government policies or in a just law enforcement for meaningful social justice.

II. ANALYSIS

2.1. Defining 'Cultural', Contesting Framework

It showed that the use of anthropological knowledge in court and various kinds of social and cultural perspectives has been widely adopted by the judges. The progressive development in protecting rights of the indigenous peoples has been inseparable from the role of what Holden has written on cultural expertise in translating and convincing judges in the Constitutional Court.[12] In a landmark ruling, Indonesia's the Constitutional Court's Verdict No. 35/PUU-X/2012 has invalidated the Indonesian government's claim to millions of hectares of forest land, potentially giving indigenous and local communities the right to manage their customary forests.[13] The litigation was prompted by a request for review by National Indigenous Peoples Alliance (AMAN), which represents indigenous people across the sprawling archipelago. AMAN estimates that the ruling affects 30 percent of Indonesia's forest estate or 40 million hectares (154,000 square miles).[14]

However, this achievement should be seen in its implementation at ground, as well as the coherence legal argument at court, including the latest ruling on State Capital City (*Ibukota Nusantara*, or IKN), Constitutional Court verdict Number 54/PUU-XX/2022. This case is a quite controversial since the judges

[12] Livia Holden, ed., *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives* (New York: Routledge, 2011); Livia Holden, *Cultural Expertise: An Emergent Concept and Evolving Practices* (Basel: MDPI, 2019); Livia Holden, ed., *Cultural Expertise, Law and Rights: A Comprehensive Guide* (New York: Routledge, 2023).

[13] Constitutional Court of the Republic of Indonesia, "Decision No. 35/PUU-X/2012," English version, accessed March 4, 2024.

[14] Aliansi Masyarakat Adat Nusantara (AMAN), *Transisi Kekuasaan dan Masa Depan Masyarakat Adat. Catatan Akhir Tahun 2024 [Power Transition and the Future of Indigenous Peoples: 2024 Year-End Report]* (Jakarta: Aliansi Masyarakat Adat Nusantara, 2024).

refused to proceed the case due to formal requirements, which is related to overdue. This case has been widely affecting people at ground, especially the government could remove at least 21 local or indigenous communities in East Kalimantan. This case remains unresolved. There have been many illegalities involved in law and policy making, as well as showed forced eviction to those communities. Nevertheless, there have been several indigenous community leaders, even intellectuals who deeply concerned about the role of cultural expertise, involved in defending rights of the people through various legal or formal forum at court and bureaucracies.

One of the wings of the organization who organized the protection of indigenous peoples' rights is AMAN, or the Alliance of Indigenous Peoples of the Archipelago. Throughout 2022, AMAN had continued to build and strengthen the consolidation of civil society movements to ensure the solidarity of social movements from various spectrums of social movements in Indonesia, including during the pandemic. Several follow-ups of the social movement solidarities have proven to strengthen the relationship between the indigenous people's movement and other social movements. During the pandemic, the indigenous peoples' movement has also proven that a sense of shared destiny between indigenous peoples, peasant or small farmers, fisherfolks and workers can make us survive through the crisis.

At the end of 2022, there was a momentum for more effective consolidation of social movements, this can be seen from the increasing role and participation of civil society organizations in contributing to support the series of organizing the Sixth Congress of Indigenous Peoples of the Archipelago (KMAN VI) which took place in Papua. A total of 35 networks of civil society organizations also provide input on indigenous peoples' agendas in Indonesia. AMAN undertakes litigation efforts, either filing lawsuits against the state, defending indigenous peoples who are criminalized or targeted for human rights violations. Efforts and strategies to recognize the rights of indigenous peoples are continuously carried out. One of the most influential for the protection of indigenous peoples' rights

was the granting of a judicial review request to the Constitutional Court in 2012, due to land title at forestry areas.

However, ten years after such constitutional court decision, there has been a trend to curb democracy and affecting to indigenous communities. These related to policy even seem to have gone backwards with the issuance of the various 'oligarch friendly' law makings, such as Omnibus Law on The Job Creation Law, officially Law Number 11 of 2020 on Job Creation, Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Law Number 3 of 2022 on National Capital, and Law Number 1 of 2023 on Criminal Code.

Meanwhile, until the end of the plenary session of the Representative People Assembly in 2022, the draft law on Indigenous Peoples Law again failed to become law. Until 2022, the government has managed to designate parts of 105 customary areas as customary forests with a total area of 148,488 hectares. Instead of accelerating the recovery of indigenous peoples' rights to indigenous forests as mandated in the Constitutional Court's Verdict No. 35/PUU-X/2012, as many as 2,400 hectares of customary lands were confiscated through social forestry programs. The enactment of Omnibus Law on Job Creation (The Law Number 6 of 2003)[15] has been followed by a National Strategic Project (PSN), which has been detrimental affecting territories of indigenous peoples.

On the other side, law making process for the draft of indigenous people's law has been limited political participation process, and even many political parties rejected the bill draft. The Golkar Party, for example, continues to reject the discussion on the grounds that: the indigenous people's law is not an urgent issue, while the existence of indigenous peoples has been regulated in various laws and regulations. In addition, this is argued that the indigenous people's draft will disrupt 'the stability of the national economy, especially for investment purposes'.[16] In 2022, AMAN and its civil society coalition have

[15] Law No. 6 of 2023 on Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation.
[16] Budiarti Putri, "Golkar Tolak RUU Masyarakat Adat dan RUU Perlindungan PRT di Prolegnas [Golkar Rejects the Indigenous Peoples Bill and the Domestic Workers Protection Bill in the National Legislation Program]," *Tempo*, January 15, 2021.

repeatedly sent official letters of request to the Leaders of Political Parties and Heads of Political Party Fractions in the house of representative, or DPR RI, for hearings. However, there are only the Democratic National (Nasdem) Party and the National Awakening Party (PKB) willing to accept this hearing.

Such political position reflects the failure to recognize and to adopt the protection of indigenous people's law, and this also reflects the state based economic paradigm which is more dominant and far from human rights-based paradigm. Although under the Indonesian Constitution, art 18B section (2)[17]and/or article 28I section (3) says recognition customary law communities (hereinafter referred to as *masyarakat hukum adat*) and traditional communities, along with their traditional rights, but these do not automatically correspond to strengthen rules to protect them. Conceptually, under such constitutional definition of 'customary law community' and 'traditional community', these can be further referred by looking at two words, namely between 'community law' and/or 'customary law'.

This terminology turns out to be little indigenous peoples themselves because in fact they are not only 'legal communities,' but also cultural communities, political communities, and social communities that are part of indigenous peoples at large. Thus, the essence of the term 'customary law community' and 'traditional community' is part of what we call indigenous peoples. Indigenous peoples, indeed reflects diversity. Through the motto *Bhinneka Tunggal Ika,* Indonesia's communities have a diversity of cultures, religions, languages and laws that govern their lives in their respective customary territories.[18] In addition to the state law, Indonesia also has laws that live in society - laws that exist, recognized and applied, but not all of them are written down.[19]

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[17] Article 18B(2) of the Second Amendment to the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia]): "The State shall recognize and respect entities of the adat law societies along with their traditional rights to the extent they still exist and are in accordance with the development of the society and the principle of the Unitary State of the Republic of Indonesia, which shall be regulated by laws."

[18] Jan Michiel Otto, "Unity in Diversity: The Topicality of Professor C. Van Vollenhoven" (Dies lecture delivered at the 442nd *dies natalis* of Leiden University, Pieterskerk, Leiden, the Netherlands, February 8, 2017).

[19] Jimly Asshiddiqie et al., *Pergulatan Tafsir Negara Integralistik: Biografi Intelektual, Pemikiran Hukum Adat dan Konstitusionalisme [Struggles over the Interpretation of the Integralistic State: Intellectual Biography, Adat Law Thought, and Constitutionalism]* (Jakarta: Pustokum-Yakins-Thafa Foundation, 2015).

Customary law is legally adopted. There is a legal process that is taken when indigenous peoples make a mistake, the sanction can be resolved amicably or through litigation in accordance with their own rules in each customary territory. The legal litigation route will take the judicial process. Uniquely, Indonesia does not only have a state justice system, but also has a customary justice system that adapts to the way of life of many indigenous peoples in their respective customary territories. Of course, this needs to fulfill the principles of legal certainty, the principle of justice, and the principle of benefit, which are not standardized by the state legal system. The state judiciary has four pillars of law enforcement which elaborate the roles of each other. They are judges, prosecutors, police and advocates. The court is established under centralized system of the Supreme Court, which of course asserts complexities for protecting local communities.[20]

The four pillars will work according to their respective roles. What about customary justice? According to art. 51 paragraph (1) of Law Number 21 of 2001 concerning Special Autonomy for Papua, customary justice is a peace court within indigenous peoples who has the authority to examine and adjudicate customary civil disputes and criminal cases among indigenous peoples. Through this article, the customary court has its own system for enforcing the law in accordance with its own environment or customary territory. Papua, which already has its own customary court, takes the path of the state court to fight for what should be their right.[21]

The judges argued that there were no rules governing sanctions for revoking permits directly. The verdict only considers the formal-administrative aspects without looking at the facts and the significance of the threat of social and environmental impacts that occur. It did not stop there, the Regent of Sorong

[20] Sebastiaan Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (Ithaca, NY: Cornell Southeast Asia Program, 2005).

[21] The Jayapura State Administrative Court Verdict Number 32/G/2021/PTUN.JPR (PT Papua Lestari Abadi) and Jayapura Administrative Court Verdict Number 32/G/2021/PTUN.JPR (PT Sorong Agro Sawitindo). The Jayapura Administrative Court stated that they reject all lawsuits from oil palm plantation companies, namely PT Inti Kebun Lestari, PT Sorong Agro Sawitindo, and PT Papua Lestari Abadi who challenged the Sorong Regent's Decree for revoking location permits, environmental permits, and plantation business permits. Then, it was sad when the palm oil company filed an appeal at The Higher Administrative Court of Makassar with the results of an appeal decision that overturned the PTUN Jayapura decision.

- representing the Indigenous People - made an appeal to the Supreme Court (MA). However, once again the Panel of Judges upheld the judge's decision at the appeal level of administrative court in Makassar by using legalistic logic in examining the case. In the end, the victory did not side with the indigenous peoples. In the discussion facilitated by the *Pusaka Bentala Rakyat* Foundation, the Makassar Administrative Court panel of judges' decision and the Supreme Court's Panel of judges' decision should look at and consider broader aspects, not only the formal-administrative aspects.

There is an environment that will be affected and there are Indigenous Peoples as legal subjects who will directly feel the impact of the environmental damage that has occurred. Decisions that are impartial to the interests of the people, especially Indigenous Peoples, are nothing new. The oligarchs and companies work hand in hand to seize the rights of Indigenous Peoples under various pretexts. We often see officials proudly wearing traditional clothing for political purposes, but fail to ensure the recognition and protection of Indigenous Peoples' rights within the framework of the legal umbrella that Indigenous Peoples truly desire.

There are several legal consequences of the Constitutional Court's Verdict No. 35/PUU-X/2012 regarding Reviewing the Forestry Law, the perspective of forest areas, indigenous peoples as rights holders, forest utilization permits and the use of forest areas remain valid until customary forests are returned to indigenous peoples and community forests. [22]

The existence of this conflict reflects that the arrangements contained in the Forestry Law do not take into account the existence and rights of indigenous peoples, especially deals with the Constitutional Court's verdict No. 35/PUU-X/2012. As we have known such decision has brought significant changes to the status of customary forests. Customary forest which was originally included as a state forest, is now defined as a forest that exists within the indigenous

[22] Yance Arizona, Siti Rakhma Mary Herwati, and Erasmus Cahyadi, *Kembalikan Hutan Adat kepada Masyarakat Hukum Adat: Anotasi Putusan Mahkamah Konstitusi Perkara No. 35/PUU-X/2012 mengenai Pengujian Undang-Undang Kehutanan [Return Customary Forests to Indigenous Law Communities: An Annotation of Constitutional Court Decision No. 35/PUU-X/2012 on the Judicial Review of the Forestry Law]* (Jakarta: Perkumpulan HuMa Indonesia, Epistema Institute, and Aliansi Masyarakat Adat Nusantara, 2014).

community area. The change in the status of customary forest as private forest and interpreted as a forest that is within the scope of the indigenous community has strengthened the status of existing forest as well as strengthened the rights of indigenous peoples over their customary forest. The Constitutional Court's verdict has had a major influence shifting the status of customary forests to private forests and not state forests, changing the status of customary forests should have good implications for indigenous community in the management system and utilization of their customary forests. The Constitutional Court's verdict is a correct

The issuance of the Constitutional Court's verdict No. 35/PUU-X/2012 should have had positive implications for indigenous community's rights to their customary forests. Strengthening the rights of indigenous community over customary forests must also be clarified so that problems do not occur in the future, by making regulations that protect them. Saafroedin Bahar as an expert on the petitioner, argued that the legal issues are not merely about the problem of the relationship between customary forest and state forest, but also indirectly the discussion in the application of the law which affect to to the existence of indigenous community and its constitutional rights protection. One of the provisions in the Constitutional Court Verdict states that in order to recognize the rights of indigenous community units over their customary forests, regional regulations that regulate indigenous peoples are needed. The drafting of regional regulations as a continuation of the Constitutional Court's verdict No. 35/PUU-X/2012 was also carried out as an effort to fill the legal vacuum because the law draft on Recognition and Protection of the Rights of Indigenous Peoples had not yet been ratified, even constantly rejected by politicians at the parliament. Therefore, in order to protect the rights of the people, law and social movement approaches are more relevant to see the political strategies and its dynamics, including to promote and defend the idea of culture expertise under Indonesia's legal tradition.

2.2. Cultural Expertise and Strategic Litigation

This part will continue arguing how cultural expertise in using strategic litigation, especially to bring the message for challenging predatory system through constitutional law politics. There are several strategic litigations in relation to indigenous peoples, and this article will focus on how the cultural expertise can be meaningfully considered to see the substantive legal arguments based on indigenous people's statements. One of significant debates was in 2013's court ruling related to the Forestry Law.

On May 16, 2013, the Constitutional Court decided on the application for judicial review submitted by the Alliance Indigenous Peoples of the Archipelago (AMAN) regarding reviewing a number of provisions in Law Number 41 of 1999 concerning Forestry. The provisions requested are: Article 1 number 6, Article 4 paragraph (3), Article 5 paragraph (1), paragraph (2), paragraph (3), paragraph (4), Article 67 paragraph (1), paragraph (2), paragraph (3).

Applicant and subject of application This application was submitted by AMAN et all, in March 2012. The applicants consist of: (1) Indigenous Peoples Alliance Archipelago (AMAN); (2) Kanagarian Customary Law Community Unity Kuntu, Kampar Regency, Riau Province; and (3) Kasepuhan Cisitu Traditional Law Community Unity, Lebak Regency, Banten Province. The application essentially concerns two constitutional issues, namely regarding the existence of customary forests and conditional recognition of the existence of indigenous peoples.

The applicants argued that with the enactment of the Forestry Law which places customary forests as part of state forests and their existence provisions regarding 'conditional recognition' of existence customary law communities have caused 'constitutional harm' to the applicant. The postulated constitutional loss refers to the loss of access to the rights of customary law communities. Loss of customary rights to forests, loss of access to the use and manage of their own customary forest areas. Even, those who are in holding 'certificate of land' or 'concessions', often targeting indigenous peoples for criminalization due to entering forest 'illegally'.

Hence, based on its verdict, No. 35/PUU-X/2012, the Constitutional Court confirmed that 'customary forests' are forests located in indigenous territories, and should no longer be considered as 'state forests'. Indigenous peoples throughout Indonesia welcomed the Constitutional Court's decision by simultaneously placing signposts throughout indigenous territories, which now read, "Customary forests are no longer State forests. Indigenous peoples are implementing the Constitutional Court's Verdict No. 35/PUU-X/2012". Since the Forestry Law is contradictory to the 1945 Constitution principles, indigenous peoples have also started rehabilitating their territories by own initiatives which have been damaged by the activities of companies and many extractives industries. The State involved to this situation due to provide permits for mining, concessions, and large-scale deforestation.

In this case, the lawsuit was filed by AMAN et al as strategic litigation. The experts presented reflect those from the campus, have academic degrees, and are widely recognized for their commitments doing advocacy in public spheres. In this case, Saafroedin Bahar, Noer Fauzi Rachman, Hariadi Kartodihardjo, I Nyoman Nurjaya, and another former Constitutional Court judge, namely Maruarar Siahaan, were present.

However, those who are not seen as 'experts', in the sense of having local knowledge and maintaining it within their community, are the indigenous people themselves. Expert and expertise, in this legal context, must be redefined. This legal definition is unconnected to the need for protecting rights of the victims, or it has no strong or even critical engagement to the public interests. The development such expertise in narrative, for the most part has been predicated on the assumption that certain peoples and societies are less developed than others, and that those who are more developed, i.e. more modern, have the expertise/knowledge to help the less developed (or developing) achieve modernity.[23] Hence, this article argues the need of decolonizing expert or expertise, turn to more adjusting the context of Indonesia's legal tradition.

[23] s Jane L. Parpart, "Deconstructing the Development 'Expert': Gender, Development and the 'Vulnerable Groups,'" in *Feminism/Postmodernism/Development* (London: Routledge, 1995).

The discourse has been influenced by the gap between the "developed" North and a "developing" South, and the assumption that development should follow a simple linear progression towards Western definitions of modernity, provided the rationale for the development business which has continued to expand since its inception in the 1940s. Then, it has become increasingly professionalized. Universities have departments of development studies, and aspiring development experts can take courses in development policy, planning and practice. Some even receive diplomas attesting to their expert status.[24] Hence, it refers to their special knowledge of the modern schools. How about *Sedhulur Sikep* communities in Kendeng, since they have no formal schools, even they do not wat to join with such modern schools, although they have own learning process which make constantly preserving local wisdom and its knowledge education.

While on the other side, the local community, or indigenous people and their leaders could contribute in providing not merely facts, but also local knowledge, local wisdom, and even discussing the basis of local philosophy, and all forms of science before the court, which are often not considered equally by the judiciary, and perhaps by the parties as 'true or real experts' in the particular context, cases and its legal struggle. This article deconstructs scientific mindsets, rather than preserving dominant values of modern schools.

The involvement of locals or indigenous people in strategic litigation, also known as impact litigation, has significant contribution in convincing the court judges. This strategic litigation involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. Those who engage in strategic litigations aim to use the law to leave a lasting mark beyond merely winning the specific case at hand.

In Indonesia's legal history, the role of strategic litigation has been developed by Indonesian Legal Aid Foundation (YLBHI) and many legal aid bureaus at provincial levels throughout Indonesia. For YLBHI, strategic litigation is a

[24] Parpart, "Deconstructing the Development."

key strategy for implementing Structural Legal Assistance (*Bantuan Hukum Struktural*/BHS). BHS is a legal assistant that is oriented towards social changes in legal substance, legal culture, or practices carried out by government officials, especially by law enforcers. It argues there is no poverty in society as such, but it is more impoverishment intended situation due to structural injustices. It is more system causing the problems structurally, instead of individual or sectoral issues. In the context of defending indigenous peoples' rights, strategic litigation plays a very crucial role. The core issues are not only providing space for voicing or expressing their rights, but also empowering their capacity at legal-political spheres.

Specifically, there have been ideas, strategies and topics for increasing and or developing strategic litigation in defending indigenous people. Across the globe, indigenous people and their leaders are increasingly turning to litigation as a means to seek remedies for violations of their fundamental human rights.

Why strategic litigation has been increasingly applied to promote and protect indigenous peoples? Based on preliminary findings in referring studies on indigenous peoples, ate least there are several factors. First, lack of political will, since there is often a lack of political will to address the specific challenges faced by indigenous peoples. Unsurprisingly, there have been many attacks, criminalization, and also lawsuits against them. Second, there is no serious protection and lack of recognition. As we have known that customary land, customary forest, or access to natural resources, often lack adequate protection and recognition at the national level. Even, lack of recognition on indigenous people as a legal and respected subject. Third, there have been many excessive exploitations and grabbing, either land or ocean/coastal grabbing. Many of indigenous people inhabit territories with the last remaining non-exploited natural resources, making them vulnerable to land and ocean/coastal grabbing, from time to time massively. Therefore, a lot of evidence from historical records, that indigenous peoples have historically suffered forced displacement, land

loss, marginalization, discrimination, and violence. In that regard, no choices for them, they need to find alternative strategy to protect and fulfill their rights, and hence litigation becomes a last resort for seeking justice and remedies.

One example was related to the *Sedhulur Sikep* or Samin indigenous community's lawsuit at administrative court against Governor of Central Java, Ganjar Pranowo, in 2014. The administrative lawsuit on behalf of a Rembang inhabitant (Joko Prianto) and Indonesian Environmental Forum (Walhi), against Governor of Central Java and Semen Indonesia Inc. In the first instance and appeal level, their lawsuit was lost. Nevertheless, when they made a cassation to the Supreme Court, finally the Supreme Court granted their appeal. The court asked the Governor to repeal the license for Semen Indonesia Inc. This was considered the people success, especially as lesson learned for local community who do not have access to fight through legal means, but it can overturn lower decisions. However, although winning at the highest level, Supreme Court, the Central Java Governor, Ganjar Pranowo, did not follow the court ruling. Ironically, he enacted new decree to provide new permit for Semen Indonesia Inc. to exploit Kendeng karst mountain.

Indeed, this example reflects complicated arena to use legal mechanism, especially dealing with the judiciary. The role of strategic litigation is used to promote or campaign local knowledge, wisdom and history, and connecting these local expertise as legal empowerment strategies. Court has been used to express human rights issues at ground, and engage their experiences by applying international human rights law, such as using international norms, including the United Nations Declaration on the Rights of Indigenous Peoples. Hence, the process of litigation itself can contribute not merely to provide expertise and experiences as facts before the judges, but also to indigenous peoples' legal empowerment and the broader fight for social justice. And, at this point,

they are fully aware, despite challenges and the fact that not all court decisions lead to effective implementation, strategic litigation remains a powerful tool for defending indigenous rights. Strategic litigation is not only about winning individual cases but it is addressed to create broader societal change and empowering marginalized communities. In addition, this is also a formal forum or constitutionally accepted as an arena to reflect critically in defending rights of the indigenous people.

2.3. The Cultural Voices at the Court: Legal Narrative and Its Scientific Evidences

There have been numbers of people required to provide testimonies and expertise statements before the Constitutional Court. Their testimonies, including expert statements, are needed to be part of supporting the legal claims, providing empirical evidences as well as arguing the existence of local practices. Their legal presence, and arguments have been conceptually coined as cultural expertise.

They build scientific evidence to promote and protect indigenous people's rights, and try to resolve legal disputes, conflicts and any restrictions or discriminations against them. As explained previously, this concept offers new or alternative framework and methods to enhance ethical perspectives for claiming rights.

This part will overview as well as examine all parties involved in bringing the message of social justice in building knowledge production system in order to convince the constitutional court judges to consider their presence, testimonies, evidences and expertise. In order to do such overview, this article offers a table which could be used to compare and identify their narratives. This table, of course, is unavoidable more reflected from own selected statements in providing examples.

Table 1:

Cultural Expertise and Its Key Legal Narratives at Constitutional Court: Brief

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
1	Abdon Nababan	Secretary General of AMAN, the Alliance Indigenous Peoples of the Archipelago, Applicant 1.	Formal petition, (1) Deleting 'state' in Article 1 paragraph (6), Article 5 paragraph (1) of the Forestry Law: "Forest customary law is a state forest that is within the territory of a customary law community." (2) Remove conditional recognition as contained in Article 4 paragraph (3), Article 5 paragraph (3, 4), Article 67 paragraph (1, 2, 3) of the Forestry Law, such as the phrase "as long as in fact it still exists and its existence is recognized, and does not conflict with national interests", "determined through Regional Regulations", and/ or "determined through Government Regulations".	The urgency of recognizing customary forests and removing recognition conditional existence of indigenous people
2.	H Bustamir	Leader of Indigenous Community of Kenegerian Kuntu, Riau, Applicant 2.		
3.	Moch Okri or H. Okri	Leader of Indigenous Community of Kasepuhan Cisitu, Lebak Banten, Applicant 3.		

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
4.	Saafroendin Bahar	Expert 1 (researcher)	The construction of the State's authority to control over the land (Hak Menguasai Negara, HMN), violates the original rights of indigenous communities, and theoretically three constitutional violations occurred, namely: 1) against the original the intent of the State's founding fathers; 2) against government duties as stated in the fourth paragraph of the Preamble to the 1945 Indonesian Constitution; and 3) contradicts to Article 33 paragraph (3) of the 1945 Indonesian Constitution.	State's authorities (HMN) against the Constitution

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
5.	Noer Fauzi Rachman	Expert 2 (researcher)	There is a need to rectify the 'stateization' of customary lands and restore routes to citizenship for customary law communities. Political forest designation causes victims. Therefore, it is necessary to review the concept of political forest and replace it with an ecological approach, where forests are defined as a function that links nutrients, non-nutrient elements, living elements of flora and fauna, and humans.	'Stateization' suffered citizen, and the shift from political forest to ecological approach.
6.	Hariadi Kartodihardjo	Expert 3 (university professor)	Certainty of the rights of indigenous peoples in management Customary forests are not only social capital for realization sustainable management of customary forests, but can also reduce conflict and reduce open access to all forests in Indonesia.	Conflict management over forest

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
7.	I Nyoman Nurjaya	Expert 4 (university professor)	Indigenous law communities are obliged to obtain proper essential recognition, genuine constitutional and legal recognition. Natural resources contain two important principles. First, precautionary principle, namely the forest as an ecological system and living systems, and second, free, prior, and informed consent (FPIC).	State's recognition and two principles: precautionary principles and FPIC.
8.	Maruarar Siahaan	Expert 5 (Former Constitutional Court judge)	The need for reinterpretation of the protection function, respecting, promoting, enforcing and fulfilling it is the responsibility of the state, as stipulated in Article 28I paragraph (4) of the 1945 Constitution. According to the Expert, this reinterpretation is related to: 1) the existence of traditional government institutions; 2) its existence is recognized based on law (political	Reinterpretation of state obligation

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
			law and international juridical recognition, ILO Convention Number 169 of 1989), as a very urgent matter.	
9.	Lirik Colen Dingit	Community leader, the Bentian Indigenous Community, Kutai Barat Regency, East Kalimantan Province	Having suffered losses due to forestry conflicts between companies and communities since the Soeharto regime, the Presidential Decree of 1989 (permit for Industrial Plantation Forest), PT Hutan Mahligai, had evicted them approximately 72 heads of families, from the forest.	Forced eviction due to state's policy over forest
10.	Yoseph Danur	Community leader, Biting Village, Ulu Wae Village, Poco Ranaka District, East Manggarai Regency	Manggarai philosophy (gendang one, lingko pe'ang) is the basis of existence indigenous peoples and control of customary territories. That is, there is no society without garden or land, and vice versa. Since Dutch colonialism, until now, there has been confiscation and eviction of land rights. In fact, destroying residents' plantations, criminalization, etc.	Forced eviction due to state's policy over forest, and violence

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
			March 10, 2004, shooting that killed 6 (six) members of the Colol indigenous community.	
11.	Jilung	Community leader, the Talang Mamak community, Jambi	Communities have local wisdom in managing forests, land and other natural resources. However, the Talang Mamak Community began to be disturbed and destroyed by the presence of HPH/ Forest Concession Rights, transmigration settlements, clearing the forest is owned by companies and the rest is controlled by migrants. Government legislation Village Number 5 of 1979, resulting in structural changes centralized village government and eliminating traditional leadership.	Forced eviction due to state's policy over forest, centralized authority to eliminate local leaders.

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
12.	Jamaludin	Community leader, the Iban Dayak, Semunying Jaya, Bengkayang Regency	Indigenous communities are facing companies and Perhutani (state), their leaders are being criminalized, their customary land is being evicted by palm oil companies (PT. Ledo Lestari) with government permission. In fact, the conflict resulted in the eviction of customary forests, cemeteries and cultural sites, water crises, local food crises, eliminating sources of traditional medicine.	Forced eviction due to state's policy over forest
13.	Kaharudin	Punan community, Gunung Jolok, Sekatak District, Bulungan Regency, East Kalimantan	Customary forest management traditions were removed, and forests confiscated. Residents who refused were imprisoned. In fact, residents never know or encounter what and how companies can enter their customary land or forest.	Forced eviction due to state's policy over forest

No.	Actors on Cultural Expertise	Background/ Position	Statements/ Arguments	Key Legal Narratives
14	Jailani	Pagaruyung, Jambi	Ancestors for generations lived on Bukit Duabelas, surrounded by many villages. Suddenly Bukit Duabelas was designated as a National Park area. Residents never obtain an explanation regarding the status of the national park designation. No consent.	Forced eviction due to state's policy over forest

Besides those applicants, experts and community leaders, the role of lawyers is also essential to bring the message of 'cultural expertise', since they have been also intensively compiling and arguing through various formal steps at the court mechanism. They call themselves as the Advocates Team of Masyarakat Adat Nusantara, consist of numbers of young lawyers, include Sulistiono, Iki Dulagin, Susilaningtyas, Andi Muttaqien, Abdul Haris, Judianto Simanjuntak, and Erasmus Cahyadi. They represent from various civil society groups, non-governmental organizations activists.

Meanwhile during court session, the Ministry of Forestry presented two legal experts whose statements are heard under oath hearings on June 5 2012 and June 14 2012. They are both from law schools, Nurhasan Ismail (university professor from UGM/Universitas Gadjah Mada) and Satya Arinanto (university professor from UI/Universitas Indonesia). The government rejected the applicant's arguments and stated that the articles being tested for their constitutionality were articles that did not conflict with constitution. Nurhasan Ismail, argued that the applicant's understand the articles of the Forestry Law is inaccurate. The

substance of law was reviewed only partially and textually, resulting in inaccurate conclusions. Another expert, Satya Arinanto, explained similar arguments. From Constitutional Law perspective, articles and verses of the Forestry Law being reviewed is actually in accordance with spirit of changes to the articles and verses of the 1945 Constitution, especially in accordance to the Regional Government, that regulate customary law communities.

The absence of these expert arguments is, humanity perspectives. Their legal arguments are very normative, reflecting 'selected legal formalism', not enriched by the development of international human rights law doctrines. In addition, what is worse is the absence of serious consideration that a *quo* case, especially the Forestry Law, has had a negative impact on citizens, especially indigenous peoples, either in the form of forced eviction, deprivation of the right to life and livelihood, resulting in a food crisis, water crisis, ecological damage, and loss of social and natural relations, including traditional medicine that has been passed down from generation to generation as local knowledge and social wisdom at the village level. The arguments of the two professors actually show that the process of scientification of empirical evidence has been neglected, although the social realities are still occurring in the society. On the contrary, the opinions of these two experts affect dehumanization and the perpetuation of social injustices, especially for those communities at ground.

What can be learnt from these legal narratives, especially from applicants, experts, and community leader statements? At least three key significant legal narratives. First, constitutionally, they would like to challenge fundamental issue on sovereignty, especially deals with the relation between state and its citizen. The narrative on 'indigenous sovereignty' does not have fixed definitions. Different scholars have attributed different meaning to the concept of 'indigenous sovereignty'. Siegfried Wiessner, refers to the idea of 'authentic indigenous sovereignty', by which he means the power to create a 'safe space' for indigenous peoples; enabling them to live a life with the difference; ensuring their right of free, prior, informed consent; the right to have self-governance; the right to

enter into treaties and other agreement; and casting a legal duty on the State to respect, protect and promote indigenous languages and culture.[25] Barker has coined about 'indigenous sovereignty', which is closely to these narrative debates at the constitutional court. He stated that 'indigenous sovereignty' has varied meanings, ranging from formulation of rights to reverse continuing experiences of colonialism as well as to carry local efforts at the redemption of ancestral lands, resources, self-governance and preservation of cultural knowledge and practices.[26] This narrative is similarly coined by Shrinkhal. He stated that sovereignty exhibits temporal relativism in terms of its meaning and scope. What it used to symbolize and what it presently stands for depends upon the political subjects who have unfold its ambit and continue to do so in defining relationships with one another; setting their political agendas; and their plans for attaining and sustaining autonomy and social justice.[27] He argued that indigenous sovereignty is linked with identity and right to self-determination. Self-determination should be understood as power of 'peoples' to control their own destiny. Therefore, for indigenous peoples, right to self-determination is instrumental in the protection of their human rights and struggle for self-governance.[28]

Second, when I Nyoman Nurjaya and Maruaraar Siahaan argued about the recognition, on the basis of international law, this is also important basis for arguing the rise of global or international recognition over indigenous people's rights, including the use of legal politics at domestic level.[29] Indigenous communities, clearly has been recognized as 'peoples' in international law. The legal narrative of indigenous population turning into indigenous peoples is reflection of their struggle from being object to subject of international law.[30]

[25] S. Wiessner, "Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples," *Vanderbilt Journal of Transnational Law* 41 (2008): 1141–1176.

[26] J. Barker, "For Whom Sovereignty Matters," in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*, ed. J. Barker (Lincoln: University of Nebraska Press, 2005), 1–31.

[27] R. Shrinkhal, "'Indigenous Sovereignty' and the Right to Self-Determination in International Law: A Critical Appraisal," *AlterNative: An International Journal of Indigenous Peoples* 17, no. 1 (2021): 71–82.

[28] Shrinkhal, "'Indigenous Sovereignty."

[29] James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (New York: Oxford University Press, 2004). Ian Brownlie, "The Rights of Peoples in Modern International Law," *Bulletin of the Australian Society of Legal Philosophy* 9, no. 2 (1985): 104–119.

[30] Russell L. Barsh, "Indigenous Peoples in the 1990s: From Object to Subject of International Law," *Harvard Human Rights Journal* 7 (1994): 33–86.

Even, they asserted themselves as 'peoples' under the United Nations Charter, and the narrative of 'indigenous peoples' have had been grappling for the emphatic recognition of their unmitigated right to self-determination.[31]

Third, deconstruction narrative on colonial legacies of State's authority to control over the land (*Hak Menguasai Negara*). Dutch colonial state came to local communities by enacting laws which is of course based on racism and ignorance. Therefore, if the constitutional court has no significant argument to protect indigenous sovereignty, it means failed to challenge the colonial nature of the modern State. The court has been asked to end the State's policies to perpetuate its dominance over indigenous communities. Interestingly, the vehement debates before the court have reflected attempts to decolonize the conceptual and methodological outlook adopted to examine and investigate indigenous histories, culture and their interests in present day world as a part of 'intellectual colonialism'. This article argued that, what have been articulated by indigenous people leaders before the court, underpinned by scholars as experts, all are reflecting 'intellectual sovereignty' against state sovereignty. Amanda Cobb argues similarly by saying, "...the term is intended to empower Native Scholars to make us [indigenous scholars] consider the possibility that we spend too much time 'writing back' to colonizer rather than 'writing forward', charting our own course and not looking from outside approval".[32] Hence, 'intellectual sovereignty' presupposes those indigenous peoples world existed even prior to the conception of modern nation-state system.

2.4. Cultural Expertise, Law and Social Movement

Is cultural expertise only articulated in the context of court trials, then to be called an expert? Or, the meaning of cultural expertise is limited to formal political mechanisms in determining policies, or the formation of laws and regulations, so that this expertise becomes relevant in finding a place for its recognition? These questions are addressed to begin a critic against Holden's

[31] Russell L. Barsh, "Indigenous Peoples: An Emerging Object of International Law," *American Journal of International Law* 80 (1996): 369–385.

[32] Amanda J. Cobb, "Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations," *American Studies* 46, no. 3-4 (2005): 128.

perspective which seems to suggest formal space as more institutional politics. Meanwhile, in the Indonesian historical context, and perhaps also in a context where problems with the rule of law and democracy are disrupted, the role of strategic roles outside official state institutions actually shows a significant role in influencing the strategy of articulating cultural expertise to involve itself in strategic public interests.

In the case of the karst mining rejection movement in the North Kendeng Mountains (Central Java), the Network Kendeng Mountains Care Community (JMPPK) which involves farmers and the indigenous community (*Sedulur Sikep* Community), academics and environmental activists, mobilized campaigning strategy support via multiple platforms of social medias such as Facebook, Twitter (X) and YouTube. Their movement presenting figures of farmers as victims of excessive mining exploitation. They have carried out 'political safaris', especially the role of women indigenous community who visited numerous universities in Jakarta, Semarang, Yogyakarta and Surabaya. The main idea on this strategy is related to building stronger alliances, connecting expertise and its strategic networks.

Although many actors involved in mining resistance networks are very diverse, however they were really opposing the arbitrariness of regional government collaboration and mining entrepreneurs who unilaterally determine mining plans and removing local communities. Interestingly they have been also challenging intellectually to learn scientific evidences from university experts, and even making collaborations with academics and various environmental organizations to broaden insight into mountain conditions, agriculture, and social economic impacts to the society.

For example, on June 16-19 2008, Center for Disaster Management Studies (PSMB) UPN Veteran Yogyakarta, they carried out capacity strengthening activities for local communities in order provide a complete understanding of karst conditions and their function in agriculture.[33] Hence, JMPPK members are

[33] Citra Dewi, "Analisis Gerakan Sosial di Kecamatan Sukolilo, Kabupaten Pati, Jawa Tengah [Analysis of Social Movements in Sukolilo District, Pati Regency, Central Java]" (undergraduate thesis, Departemen Sains Komunikasi dan Pengembangan Masyarakat, Fakultas Ekologi Manusia, Institut Pertanian Bogor, Bogor, 2015).

increasingly aware of the importance to protect the karts mountain area for the agriculture sustainability, water management, and other ecological preservations which are clearly threatened with damage by cement industry and its karst mining exploitations.

Besides that, in collaboration with academics, non-governmental organizations, journalist associations, university students, the local communities had initiated numbers of academic activities, such as seminars, public lecture, and public discussions on various campuses, such as at IPB (Institute of Bogor Agriculture), UI (Universitas Indonesia), UGM (Universitas Gadjah Mada), UNAIR (Universitas Airlangga), by presenting farmer representatives as guest lecturers or speakers. This is part of KBR (Lecturing together with the people, or *Kuliah Bersama Rakyat*), starts in 2017. Education and exchange intellectual ideas are part of social movement in convincing public narratives at very contested situations.[34]

Another strategy is also built by openly protesting campuses, especially dealing with those academics who manipulated narratives. Once, at least 70 members of JMPPK, especially women indigenous community held a demonstration at the UGM Chancellor Office, on March 20, 2015. The protest was addressed to two UGM professors who became expert witnesses at Semarang Administrative Court and supporting Semen Indonesia Inc. The protest was supported by university students and civil society groups.[35] Indigenous people's protest at campus to challenges intellectual dishonesty was a really powerful message for university, that they could not do manipulation against local communities, since they have scientific local knowledge and its wisdom. UGM authority has accommodated the protest, by declaring administrative sanctions to these two university professors, due to manipulation in providing 'expert testimonies' before the administrative

[34] Syiqqil Arofat, "Kontestasi Kuasa: Diskursus Sengketa Pembangunan Pabrik PT Semen Indonesia (Persero) Tbk di Rembang [Contestation of Power: The Discourse of Disputes over the Construction of PT Semen Indonesia (Persero) Tbk's Factory in Rembang]" (master's thesis, Program Pascasarjana Sosiologi, Universitas Indonesia, Depok, 2016).

[35] Syamsul Anwar Khoemaeni, "Ratusan Petani & Mahasiswa Geruduk Rektorat UGM [Hundreds of Farmers and Students Storm the UGM Rectorate]," *Okezone*, March 20, 2015. Hamim Thohari, "Protes Pabrik Semen, Warga Gunung Kendeng Geruduk UGM [Protesting the Cement Plant, Residents of Mount Kendeng Storm UGM]," *Tribun Jogja*, March 20, 2015.

court, April 15, 2015 (Rowiyan 2015).[36]

Social movement in Samin's strategy has taught into at least three models of struggle, which are first, as explained previously, they build stronger alliances, connecting expertise and its strategic networks; second, education in convincing public narratives; and third, protesting campuses and challenging its scientific claims.

Such social movements also apply when struggling for the cancellation of 'state forest' under Forestry Law's claims and efforts to remove 'conditional recognition' for indigenous peoples when conducting judicial reviews at the Constitutional Court. In fact, when a victory occurs in the Constitutional Court's Verdict No. 35/PUU-X/2012 (16 May 2013), it does not automatically change the repressive situation that occurs in the field. A year later after Constitutional Court verdict given, four members of the Semende Banding Agung indigenous community, Midi, Rahmad, Suraji and Heri were stunned to hear the decision of the Panel of Judges at the Bintuhan District Court, on Thursday, 24 April 2014. They were sentenced to a maximum of three years and a fine of IDR 1.5 billion. The judge convicted them as forest illegal loggers. Even though they have lived for generations, settled, earned a living by gardening on their traditional land, they were accused of illegally entering a national park. What's worse, their location was unilaterally designated by the government as 'a national park', without their consent.[37]

Conflicts occurred everywhere. Criminalization of communities demanding forest rights, easily arrested by the police when doing daily activities in forest areas. While community land has been deprived by mining and palm oil investors, and hence the conflicts become ongoing occurrences in North Maluku. Masri Anwar, AMAN North Maluku's Advocacy Bureau, also the field coordinator of the mass strike, said that the solidarity social movement was an accumulation

[36] Hazairin Rowiyan, "UGM Beri Sanksi Eko Haryono dan Heru Hendrayana [UGM Sanctions Eko Haryono and Heru Hendrayana]," *Literasi*, April 15, 2015.

[37] Sapariah Saturi et al., "Setahun Putusan MK 35, Pengakuan Hutan Adat Masih di Awang-awang [A Year after Constitutional Court Decision 35, Recognition of Customary Forests Is Still Up in the Air]," *Mongabay Indonesia*, May 16, 2014.

of various problems in indigenous communities. In the North Maluku, there are 345 mining business permits for mining exploration and exploitation, and two National Park Area blocks, namely Aketajawe and Lolobata. According to Masri, North Maluku has 48 traditional communities that are members of the Indigenous Peoples Alliance of the Archipelago (AMAN North Maluku). Their conditions are relatively the same, vulnerable to the threat of eviction and criminalization. They also have difficulty accessing the forests where they depend for their livelihood. In Ternate, hundreds of residents from a number of representatives of traditional communities and activists who are members of the North Maluku Traditional Forest Support Coalition also demonstrated at a number of points in Ternate, demanding the dissolution of the Ministry of Forestry and urging the government to immediately implement Constitutional Court Verdict No. 35/PUU-X/2012.[38]

After a decade of the Constitutional Court's verdict regarding customary forests, AMAN assesses that the implementation of its decision is still far from expectations. The rights and protection of indigenous peoples have been indeed widely discussed by central and regional governments, but in the field, they are still not recognized. In fact, violence and criminalization against indigenous peoples still continues to occur in various parts of the archipelago. The chairman of the Penunggu Gawah Tunak Indigenous Community, Mahdan, stated how useless the such constitutional court decision was. He and his community always held a traditional ritual in the Gawah Tunak traditional forest. He explained that the Gawah Tunak traditional forest used to be a customary forest, but today, it has become the Gunung Tunak Nature Tourism Park.[39]

The main message from this part of the discussion shows that, even though good and progressive decisions regarding the recognition of customary forests occurred in the Constitutional Court decision, the facts do not necessarily have

[38] Wahyu Chandra and Taufik Wijaya, "Pemerintah Dinilai Tak Serius Urus Pengakuan Hutan Adat [Government Seen as Not Serious about Managing Recognition of Customary Forests]," *Mongabay Indonesia*, March 20, 2014.

[39] Mohamad Hajazi and Sepriandi, "Satu Dekade Putusan MK 35: Implementasi di Lapangan Masih Jauh [A Decade of Constitutional Court Decision 35: Implementation on the Ground Still Far Off]," *AMAN*, May 16, 2023.

an impact on the situation at ground. The situation has not changed. Apart from that, even though the idea of recognizing the rights of indigenous peoples over customary forests has been revolutionary in restructuring the relationship between the authorities and their citizens, it has not changed the character of the law which often oppresses and excludes indigenous peoples and their rights. Indeed, this cannot be simplified as something that failed, but rather a strategic effort related to the political, legal and democratic context, the extent to which reading the battle between intellectual ideas regarding culture, tradition, local wisdom, is articulated more systematically, not least consolidating it in the public sphere and its social movement.

During the colonial period, Cornelis van Vollenhoven bravely wrote a pamphlet to prevent the legal unification policy, due to impact on the rights of indigenous people. While currently, legal mobilization carried out actively using the courts and pushing for regulatory changes at the level national and regional to give place to the rights of indigenous peoples. 'Adat' in this regard, is a narrative and strategies of resistance to the denial of rights carried out by the government and the private sector in agrarian conflict situations.[40] This is called a social resistance to defense pluralities at ground.[41]

Learning from Indonesian legal tradition context, the efforts of social movement mean, to organize cultural expertise is a challenge in itself, not only hoping for its ability to fill narrative in the public space, but also pressing for it as part of a force for political and legal change that is more effectively organized and meaningful in society. As is the slogan of their movement on the field, they can no longer beg with their hands up, hoping for grace, but instead seize it and make it happen.

[40] Yance Arizona, "Adat Sebagai Strategi Perjuangan dan Mobilisasi Hukum [Adat as a Strategy of Struggle and Legal Mobilisation]," *The Indonesian Journal of Socio-Legal Studies* 2, no. 2 (2023).

[41] Herlambang P. Wiratraman and Steny B., "Pluralisme Hukum dalam Konteks Gerakan Sosial [Legal Pluralism in the Context of Social Movements]," in *Pluralisme Hukum: Sebuah Pendekatan Interdisiplin [Legal Pluralism: An Interdisciplinary Approach]*, 2nd ed., ed. Rikardo Simarmata (Jakarta: HuMa, 2013).

III. CONCLUSION

Back to the research questions, this article concludes into three points. First, in relation to the Constitutional Court Verdict No. 35/PUU-X/2012, ideas from many views, especially applicants, experts, and statements from community leaders have had a huge impact in producing new knowledge that accommodate the legal political interests of recognizing the rights of indigenous peoples, including rights to customary forests. The ideas of sovereignty, the use of international law, and breaking the colonial legacies, became important legal narratives in the arguments pushing for this decision. Even so, the impact is limited in the field, even up to a decade later of such decision, indigenous people rights had been easily taken away or dispossessed, indigenous people are often evicted forcedly from their own places where they garden or use forest access. Not a few are easily imprisoned, subjected to violence and even killed due to attacks by authorities, companies and the state. The case of forced eviction due to National Strategic Projects, as part of implementation the Law of Job Creation, has been occurring in many sectors, not merely industries, but also deal with infrastructure projects. Capital accumulation through massive investment has been prioritized instead of protecting indigenous peoples' rights and social welfare, as mandated under art 33 (3) of the constitution.

Second, the Constitutional Court's decision which revolutionized and restructured the relationship between authorities and citizens by utilizing cultural expertise arguments, unfortunately did not become an important part of the other and lower court's legal cases. This is proven by the continuation of number legal cases attacking indigenous peoples through court decisions and brought them into the jail. Hence, it goes to the question about judicial independence and its accountability,[42] which rarely considered as part of consistency and even the

[42] Simon Butt, "Constitutional Court Decisions on the Judicial Independence of Other Indonesian Courts," *Constitutional Review* 9, no. 2 (2023); Rifqi Assegaf, "The Supreme Court Reformasi, Independence and the Failure to Ensure Legal Certainty," in *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, ed. Melissa Crouch (Cambridge: Cambridge University Press, 2019), 31–58.

way to strengthen constitutional rights protection.[43] However, this phenomena becomes common or 'business as usual' due to authoritarian context of judiciary.[44] Meanwhile, state political policies do not have much influence on government bureaucracy, so they do not have much impact on efforts to advance legal protection in law enforcement.

The third, therefore, one criticism of Holden's main argument is rather the absence of the debate on the role of cultural expertise, which is not merely a matter of equality in discussions of 'expert' deconstruction, which is often in fact considered unequal and difficult to change as a result of an embedded legal system that attaches itself to certain positions in litigation. Therefore, indigenous peoples cannot be deemed as an 'expert'. This article shows the opposite how the community is making scientific efforts to the point of openly protesting against experts. Experts in the context of cultural expertise, of course, do not limit those who go to school or university, but rather are in line with the development of the UN doctrine, as part of 'rights to access and participate in science' (2023) which places cultural expertise as part of the recognition of scholarship and knowledge that can be adopted from communities' insights for their lives and livelihoods in a sustainable manner. This latest debate emphasizes how important the position of cultural expertise is for progressive efforts to realize meaningful social justice.

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[44] Melissa Crouch, "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia," *Constitutional Review* 7, no. 1 (2021).

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