The Development of Indigenous People Rights to Their Land Through Political Participation and International Norm in Latin America

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Abstract

This paper will explain about how indigenous people as minority group receive their recognition and accommodation by government, especially in implementation of international norm that pertains to indigenous peoples and recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Convention ILO 169. This paper will explore the issue in Latin America region. To achieve the objective of this paper, author will explain in two main themes: First, the development of the political participation indigenous people in Latin American states. Second, the rights of indigenous people to their ancestral land through international norm FPIC (Free, Prior, and Informed Consent) that adopted in Latin America states. I argue that the development of indigenous people rights to their land in Latin America is supported by political participation of indigenous people in the government system in Latin America states.

Keywords: indigenous people rights; international norm; Latin America; political participation.

Background

Indigenous people often faced vulnerable situation like discrimination from government regulation. Violence or abuse is one of the impact for indigenous people. But, international support and recognition for indigenous rights is growing well in 21st century. For instance, various international organization especially United Nations contribute to the development of international standards about indigenous people with Declaration UNDRIP in 2007 and Convention concerning Indigenous and Tribal Peoples in Independent Countries or ILO 169 in 1991.

Nowadays, we can see that the need for accommodation of just demands made by minorities has been widely recognized. There are several approaches appropriate for the accommodation of minorities. One of them can be essentially described as hegemonic control, which refers to as a system. This form of

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accommodation is typically in imperial or authoritarian, however hegemonic model is also possible to be utilized even in formally established democracies which protect such rights as equality and minority freedom (Malloy 2013:147). The function of accommodation become a support for minority that can allowed minority get what a majority group receive. In general, accommodation is supposed to empower the minority communities (Eisenberg 2005:7). In this paper, the minority community in question is indigenous people in Latin America. The minority in general defining as a group that has experienced exclusion or discrimination by State and its citizens because of its ethnic, national, racial, religious or linguistic characteristic or ancestry (Kymlicka 2017). Similarly, the frequent problems with indigenous peoples are discrimination, property rights, and protection of their indigenous cultures or intellectual property.

Discussing about indigenous people in Latin America, Hall (2005:3-8) in his book explained that indigenous people in Latin America grew in 1990s by the increased of political participation. But for indigenous people movement in Latin America states is comparable, like in Guatemala the movement of indigenous people influenced by national policy in 1996. While in Mexico the movement of indigenous people uprising because economic aspect, and in Ecuador the movement initiated by The Confederation of Indigenous Nationalities of Ecuador (CONAIE).

Latin America states also ratified the ILO 169 convention that produced in 1989. There are 13 countries ratified it, such as: Mexico (1990), Bolivia (1991), Costa Rica (1993), Columbia (1991), Peru (1994), Paraguay (1994), Honduras (1995), Guatemala (1996), and Ecuador (1998). While in 2007, the UN adopted the Declaration on The Rights of Indigenous People (UNDRIP), which endorse the rights of native people to their own institutions and traditional land. Although non-binding, it has been widely embraced by Latin American government (O’Toole 2014). Data shown in the Economic Commission for Latin America (www.cepal.org) that by the year of 2010, there are about estimated 45 million indigenous people lived in Latin America, accounting for 8.3% of the region’s population.
This paper will explain about how indigenous people as minority group receive their recognition and accommodation by government, especially in implementation of international norm that pertains to indigenous peoples and is recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Convention ILO 169. This paper will explore the issue in Latin America region. To achieve the objective of this study, author will explain in two main theme: First, the development of the political participation indigenous people in Latin American states. Second, the rights of indigenous people to their ancestral land through international norm FPIC (Free, Prior, and Informed Consent) that adopted in Latin America states.

**International Norm of FPIC of Indigenous People Rights**

In UN side, there are like a dichotomy of indigenous and minorities, thus make a debating issue. But, the basic distinction between indigenous people and minorities is reiterated throughout the UN’s activities, bet it in the field of human rights, environmental, and another scope. In 1992, two declaration explained about both indigenous and minorities rights. Indigenous people have UNDRIP (United Nations of Declaration of Indigenous People), while minorities have Declaration on The Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities. Both of declarations adopts that integrationist approach for minorities focusing on non-discrimination and civil rights. Then, accommodationist approach for indigenous people focusing on self-government and institutional pluralism (Kymlicka 2017). Recognition of indigenous people as international subjects is applicable on UN processes, called UNDRIP. UNDRIP (United Nations of Declaration of Indigenous People) is an international legal instrument that has been formulated through direct negotiation between states and the beneficiaries of the document (Ahren 2016:112). Clearly, UNDRIP is of potentially huge importance in helping states to create developmental property system for indigenous people. Kurtz (2008) gives a term “structural accommodation” means the preemption and prevention of violent by the accommodation of demands made by minorities and indigenous peoples that are recognized and seen as justified by a state or regional authority before conflict become violent. Not only states but also regional
organizations and the United Nations system take initiative in the field of structural prevention by protecting the right of minorities.

International norm that protect indigenous people rights called as FPIC (Free, Prior, and Informed Consent) established in UN Declaration. Carmen (2010: 124-125) explained that indigenous people must not be subjected to coercion when deciding into agreement of project, FPIC as norms is the basic to implement that purpose:

1. Free means no coercion or pressure when settlement process. There is no threaten action from company and government to indigenous people.

2. Prior means that there must be the special time for sharing information about the project in the land of indigenous people. Also the process to giving the information must concern to the language of indigenous people use. It aimed to make decision-making process easy for indigenous people.

3. Informed means that all relevant information must be available for indigenous people concerned. The information must be balances information, consider impartial as to the potential risk and benefit of the proposal under consideration.

4. Consent means agreement of indigenous people to the projects. The agreement must reach with effective participation from all element of indigenous people, like leaders, representatives. The agreement process must consider the effective mechanism. For instance, using traditional consensus procedure.

FPIC was introduce in Convention ILO 169 and Article 19 of UNDRIP (United Nation Declaration of Indigenous People Rights). UNDRIP took up and implemented FPIC in several more provisions, mainly concerning activities that affect indigenous people land and resources, as well as cultural property (Kuprecht 2013: 161).
The Indigenous People Political Participation in The Region of Latin America

Political participation is the way for doing political system by citizens to achieve their goals, such as: their express demands, vote, and protest (Booth 2014: 124). Indigenous people also have their rights to political participation for achieve their demands. In this section, I will explain about how the process of indigenous people in Latin America to enter political system in government.

In the past 20 years, Latin America faced dynamic mobilization of indigenous people. Some key factors that increasing of indigenous people political participation in the region, such as (UNDP 2013):

a. The number of indigenous movements has increase because the influence of technology and communication, likes internet and social media,

b. The expansion of their rights after countries signed and recognized crucial international conventions,

c. The agencies who gives advocate to indigenous people has increase very widely.

Some states in Latin America with highest percentage of indigenous people and shown the quick progress in political participation are Bolivia, Ecuador, Guatemala, Mexico, Nicaragua, and Peru.

In the history of resurgence indigenous people in Latin America, Indian political movement in Latin American burst into public consciousness with sudden force in the early 1990s. Indians in Ecuador and Bolivia in 1990 began uprising their rights. In 1994, Indians Chiapas rise fearlessly against an authoritarian Mexican government. In economic level analysis, the factor of indigenous resurgence included the growing integration of the world economy, and diminishing resources devoted to subsistence production throughout the world (Cleary 2004: 13).

In Latin America, the expansion of agribusiness added to pressure of population growth on indigenous subsistence farmers, bringing increase food dependency as well as rapid urbanization. For large number of Latin American
Indians, the growing informal sector of the economy become the most likely source of deployment. In the midst in this social and economic dislocation, economic and ideological support shifted away from the modernization paradigm of the indigenous assimilation into national society. As state-funded projects aimed at indigenous incorporation gave way to policies of structural adjustment, decentralization, and privatization, indigenous group increasingly cut off from traditional modes of interest mediation and access to state funding. Peasant organization lost political clout, agriculture subsidies were cut, and market for land transaction were liberalized. Latin American indigenous people found themselves without their traditional forms of political representation precisely to the moment that their traditional means of economic survival were in jeopardy (Cleary 2004: 14).

In his book O’Toole (2014: 228-229) mention four main policy issues of indigenous movement today in Latin America:

1. Self-determination and autonomy;
2. Territorial rights and control over natural resources;
3. Political reform;
4. Military and police relations.

Political reform is the way to open indigenous people to reach their rights, also to implement the international norm. Indigenous organizations have often entered national politics in pursuit of constitutional and legislative reform that address their demands for greater participation. Constitutional reforms in Paraguay, Colombia, and Brazil have the increased the participation of indigenous people in policy question, although their movement have had a mixed record in electoral politics (O’Toole 2014: 229). For instance, in the 1991 Colombia Constitution has reform for indigenous people role in government system which affirms the “multicultural character of Colombian nation”, establish for the first time a quota system with number of two Special senates seat reserved for indigenous representatives, known as “indigenous circumscription”. Candidates for these special seats must evidence proof of recognized authority, either by having
exercised position of traditional authority within their own communities or as leaders of indigenous organization (Rodriguez 2010: 316).

For making possibility to become candidate in Parliament some parts of indigenous people in Latin America has their own political parties. Participation in electoral system can also simply take the form of voting for candidate that indigenous issues on their agenda. But, some indigenous people run as individual candidates in elections (IWGIA 2001:15). The most extraordinary of candidate from indigenous people that attend election is took place in Bolivia in 2005, named Evo Morales from Social Socialism Party won an unprecedented 54% of the vote. He became the president from indigenous representatives. Then in 2010, he won again with 64% of the vote in Bolivia election (Lucero 2013: 288).

<table>
<thead>
<tr>
<th>Political representation of Indigenous peoples</th>
<th>Indigenous population (%)</th>
<th>Total indigenous seats</th>
<th>% of total seats</th>
<th>Representation gap</th>
<th>Affirmative action</th>
<th>LO 169 (year of ratification)</th>
<th>Prior Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>41%</td>
<td>41 out of 100</td>
<td>24.7%</td>
<td>40%</td>
<td>Yes</td>
<td>1991</td>
<td>Yes: Law 222 and Constitution</td>
</tr>
<tr>
<td>Brazil</td>
<td>0.5%</td>
<td>6 out of 994</td>
<td>0%</td>
<td>100%</td>
<td>No</td>
<td>2002</td>
<td>Yes: Art. 231 of Constitution</td>
</tr>
<tr>
<td>Chile</td>
<td>4.6%</td>
<td>6 out of 158</td>
<td>0%</td>
<td>100%</td>
<td>No</td>
<td>2008</td>
<td>Yes: Supreme decree 66</td>
</tr>
<tr>
<td>Colombia</td>
<td>3.3%</td>
<td>3 out of 268</td>
<td>1.12%</td>
<td>66%</td>
<td>Yes</td>
<td>1991</td>
<td>Yes: Jurisprudence</td>
</tr>
<tr>
<td>Ecuador</td>
<td>7%</td>
<td>7 out of 137</td>
<td>5.11%</td>
<td>27%</td>
<td>No</td>
<td>1998</td>
<td>Yes: Executive decree 1247</td>
</tr>
<tr>
<td>Guatemala</td>
<td>41%</td>
<td>20 out of 158</td>
<td>12.6%</td>
<td>69%</td>
<td>No</td>
<td>1996</td>
<td>No</td>
</tr>
<tr>
<td>Mexico</td>
<td>15%</td>
<td>14 out of 900</td>
<td>2.6%</td>
<td>81%</td>
<td>No, but created indigenous districts</td>
<td>1990</td>
<td>No</td>
</tr>
<tr>
<td>Peru</td>
<td>26%</td>
<td>6 out of 130</td>
<td>6.92%</td>
<td>73%</td>
<td>No</td>
<td>1994</td>
<td>Yes: Law 29/85</td>
</tr>
<tr>
<td>Uruguay</td>
<td>4.8%</td>
<td>3 out of 165</td>
<td>0%</td>
<td>100%</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Venezuela</td>
<td>2.8%</td>
<td>3 out of 165</td>
<td>1.62%</td>
<td>35%</td>
<td>Yes</td>
<td>2002</td>
<td>Yes: Constitution and Law 38-244</td>
</tr>
</tbody>
</table>

Source: theglobalamericans.org

From the report of Global American (2017), we can see that Bolivia has a larger number of indigenous representation in parliament compared to other countries in the region, the number is still substantially with 41 seats of indigenous representatives from 166 seats. But from indigenous population in Bolivia about 41%, the number of seats representatives is still low.
Indigenous people movement of Latin America in politics also uses global actor support, like International Labor Organization (ILO) 169, it has important implication for national state sovereignty. International actors have become an indigenous people’s strategy for pressure national government. It also gave impact to the process of democratization in Latin America (O’Toole 2014: 234). These facts are reasonable because International Labor Organization No.169 is the most significant convention for provides and bringing up all indigenous people issues, and it also affects for their livelihoods. This can occur because Latin America states have ratified directly.

**The Rights of Indigenous People to Their Ancestral Land Through International Norm in Latin America**

As I said before, international document that fill about the land and other rights indigenous people contain in ILO Convention 169. This convention is a brave framework of international law in this regard. Convention 169 has influenced almost all constitutional reforms that deal of the rights indigenous people in Latin America. According in the vision of indigenous people, land could not be conceived as a commodity that can be traded on the market, contrary to norms prevailing across Latin America. Thus, ILO Convention 169 stipulates that indigenous people’s land are spaces within which property rights are exercised, their territory are spaces that, in the absence of recognized internal legal regulation, maintain their ancestral forms of use. In Latin America countries, it is possible to recognize different group of constitutions according to the degree and type of consideration given to indigenous populations. Under the constitution of the most progressive countries there is even recognition of the ancestral nature of indigenous communities. This recognition implies the establishment of cultural, territorial, and autonomy rights. For instance, prior consultation (one of process in FPIC norm), before undertaking any major development on their land, is an establish right in all Latin America constitutions. Yet most countries lack implementing legislation to ensure the application to this fundamental principle. In Ecuador for example, Indigenous and Afro-Ecuadorean federations have opposed 15 major mining and oil exploitation projects in recent years, arguing that they were not adequately
consulted in the outset. Yet only one case has been adjudicated in favor of these indigenous and Afro-Ecuador people organizations (Baranyi 2004:53).

Bolivia, Brazil, Colombia, Ecuador, and Peru all have strong commitment to title many millions of hectares in the name of indigenous communities. In practice, rather little has happened to render this indigenous land ownership effective, and to sort out conflicting claim of land ownership and possessions between indigenous people and third-party colonist. Bolivia appears furthest down the road in doing this, since a mayor program to title over 10 million hectares of indigenous land got under way in 1998. Peru has had an effective program in some region, indigenous organization such as the Ashaninka often taking the lead in titling their own land area with external support. Colombia titling programs look good on paper; though indigenous land security has been completely undermined by the civil conflict in parts of Amazon. (Sieder 2002: 217).

A feature of past decade has been the willingness of government to enter into direct negotiation with indigenous people organizations, concerning land rights and territorial among other issues. Some of the major titling initiatives in the tropical lowlands have come in response to demonstration and protest by indigenous organizations, as in the case of Bolivia and Ecuador in the early 1990s. More recently indigenous land rights have been part of the agenda of peace processes in the countries that have been affected to some degree by armed conflict. There have been few mayor programs to title and demarcate the land claimed by indigenous people. Under the ILO Convention Number 169, government are obliged to take the necessary steps not only to identify the lands which indigenous people traditionally occupy, but also to guarantee effective protection of their rights of ownership and possession. Moreover, government shall take measures to prevent the unauthorized intrusion upon, or use of, the lands of indigenous people. (Sieder 2002: 218-219).

The Parliament of Bolivia, is currently debating a bill on FPIC drafted in consultation with 36 indigenous groups and other relevant organizations. The FPIC provisions in the cases in which FPIC is already legally embedded include the right to redress when FPIC is violated. Peru’s parliament reports that a 2011 law gives
indigenous communities the right to request the opening of a consultation process for issues affecting their lands. The consultation process begins with the government entity that has promoted the legislative or administrative measure at issue. If that entity rejects the petition, the indigenous community may appeal to a Specialized Technical Entity on Indigenous Affairs. Once the administrative instance has been exhausted, the case may be taken before the courts (Survey Report of Inter-parliamentary Union 2014:10).

Discussion

By political participation, indigenous people as citizens in Latin America can influence and take actions for their rights in government system. They are not only voting in electoral processes, but the important is freedom to speak out, indigenous people have a part to decision-making, also have opportunity become a candidate. Indigenous people do their campaign through formal politics, to be elected and making the progress on rule of system in government.

We can see the activities of indigenous people of Latin America since 1990s, more and less can give influencing to the government action, like in Bolivia parliament, which discussing about FPIC draft. Colombia has its reformation that giving the “indigenous circumscription” as the quota for indigenous people seat in parliament. But the quota for seats may be a good reform for indigenous people representation in politics. But I think this policy is not likely can solve the big issue, like the implementation of FPIC in indigenous people land by government of company. Because still many land rights of indigenous people in Latin America not legally gotten by the company for economic interest.

This concern is not applicable among indigenous people in Latin America because international legislation (UNDRIP and ILO 169) that have been ratified by most Latin America states not including the protection to property rights. This also important to make sure the duty of states in every level government to obtain indigenous people free, prior, informed consent before entering the commercial agreement with some company. This duty also become the approval of investment and economic in indigenous people land.
The development between government and the rights of indigenous people in Latin America are the modified by the political system, like Mexico which develop new public law offices to protect indigenous people rights. The good result that we can see form 1990s until now that the development of indigenous people rights in Latin America to a new form specifically giving some creation. Although in the process of creation, there are some debating processes that indigenous people face. But, almost Latin America states reform is substantially consistent with national objective. The aim of national objective in each state of Latin America is support to the indigenous people interest.

In another way, the participation indigenous people in politics, should give support democracy among indigenous people in Latin America. Political participation helped to reduce inequality and discrimination, political agenda in parliament should be representative of indigenous people voice.

Although the significant of political participation from indigenous people have successful in some states in Latin America, like Ecuador and Bolivia. But generally, indigenous people participation among countries in Latin America are at the forefront struggle against their rights, especially for their land. Also, indigenous people mobilization in 1990s plays much-needed role in pushing to formal politics.

Conclusion

Political reform in Latin America in 1990s is the way to open indigenous people to reach their rights, also to implement the international norm. Indigenous people movement of Latin America in politics also uses global actor support as framework, like: ILO 169 and UNDRIP. Most Latin American States ratified ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. The participation indigenous people in politics, should give support to the democracy process among indigenous people in Latin America. The action from some states in Latin America by reserved seats, it may be a good starting point to increase indigenous political representation, but again I think this policy is not likely to solve the big issue, like the implementation of FPIC in indigenous people land by government and company. Most of states in Latin America increased political representation resulted from pressures from social movements and national political
reforms, which is pushing the resurgence of indigenous people to achieve their rights.

But for now, I argue whether for indigenous opportunity reason, the reform of constitutional or international recognition reason, the demands of indigenous people can be institutionalized and birthing of new political power. This political awakening of Latin America's indigenous people is having a decisive impact on politics and culture to their existence.
REFERENCES

Book:

Online:
