INDIGENOUSNESS AND THE GLOBAL IN THE CONSTRUCTION OF MODERN STATE AND LAW IN THAILAND

HENNING GLASER
DIRECTOR, GERMAN-SOUTHEAST ASIAN CENTER OF EXCELLENCE FOR PUBLIC POLICY AND GOOD GOVERNANCE (CPG), FACULTY OF LAW, THAMMASAT UNIVERSITY

INTERNATIONAL SEMINAR
“LEGAL CONSTRUCTION AND DEVELOPMENT IN COMPARATIVE STUDY: THE ROLE OF INDIGENOUS AND GLOBAL COMMUNITY IN CONSTRUCTING NATIONAL LAW”
29 AUGUST 2018
FACULTY OF LAW, SULTAN AGUNG ISLAMIC UNIVERSITY, SEMARANG

STRUCTURE

I. NOTIONS OF INDIGENOUSNESS IN THE CONTEXT OF LAW & STATE

II. THE STATE & INDIGENOUS COMMUNITIES AS VULNERABLE GROUPS IN THAILAND

III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE ‘GLOBAL COMMUNITY’
I. NOTIONS OF INDIGENOUSNESS

Hegemonic identity claim within the national community and, at the same time, a possibly counter-hegemonic claim within the global community

→ often at least an expression of – at least a posture – of strength + power, namely those derived from + defined within the concept of sovereignty

Counter-hegemonic claim within the state, raised by subaltern actors against the state, often with support of actors defining themselves as representing a global community

→ often a position of weakness + vulnerability

---

Indonesia

“Heiligegeist”

Hegemonic identity claim within the national community and, at the same time, a possibly counter-hegemonic claim within the global community

→ often at least an expression of – at least a posture – of strength + power, namely those derived from + defined within the concept of sovereignty

Counter-hegemonic claim within the state, raised by subaltern actors against the state, often with support of actors defining themselves as representing a global community

→ often a position of weakness + vulnerability

Adat – “Volksrecht”
I. NOTIONS OF INDIGENOUSNESS

Thailand

Indigenousness

“Monarchy”

Hegemonic identity claim within the national community and, at the same time, a possibly counter-hegemonic claim within the global community

conflation of nation, religion, king and construction of the monarchy as subject of sovereignty and ‘volksgeist’

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Definition Indigenous People

“Indigenous communities, [...] are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories [...]. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit of future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions, and legal systems.”

(Jose R. Martinez Cobo, UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1986)
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Protection of indigenous peoples and their rights under international law


---

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY


“Article 1: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.”
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY


“Article 2 (1): Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.”

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY


“Article 12 (1): The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

International environmental law & indigenous communities

Eg.: United Nations Convention on Biological Diversity (1992)

“Article 8: Each Contracting Party shall, as far as possible and as appropriate:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices:”

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Indigenous People in Thailand

Hill tribes
  Akha, Lahu, Karen, Hmong/Miao, Mien/Yao, Lisu, Palaung

Orang Laut (western Thai-Malay peninsula)
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Hill tribes: geographic regions

Indigenous peoples in Thailand: issues

- use of natural resources
- access to public healthcare and education
- citizenship
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Indigenous peoples in Thailand: issues

- use of natural resources

  Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010

  NCPO Order No.64/2014: ‘Return Forest Policy’

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Indigenous peoples in Thailand: issues

- Citizenship: over 100,000 indigenous persons without citizenship due to
  - lack of knowledge and understanding of both indigenous peoples and officials about the registration and verification systems
  - lack of paperwork
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Indigenous peoples in Thailand: issues

- access to public healthcare
  poor access to public health service due to lack of citizenship and limited availability of medical services where indigenous people live

- lack of quality education
  language, cultural and geographic barriers
  monolingual and monoculture system of education in national language
  high rates of dropout and out of school children, particularly from those from non-Thai, stateless, indigenous, and ethno-linguistic minorities
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Islamic minorities in the Southern Border Provinces as indigenous community

Legal Construction and Development in Comparative Study
(The Role of Indigenous and Global Community in Constructing National Law)
II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Central legal norms concerning application of Islamic law and protection of the interests of Islamic minorities

Act on the Application of Islamic Law in Areas of Pattani, Narathiwat, Yala, and Satun Provinces 1946

✓ Islamic law on family and succession

✓ Court of first instance under the provision of section 3 shall be tried by one kadi [Dato Yuthitham] together with judges

✓ decision of kadi final

II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Central legal norms concerning application of Islamic law and protection of the interests of Islamic minorities

Act on the Administration of the Islam Organization 1997

✓ Sheikul Islam leader for Islamic affairs in Thailand, appointed by the King

✓ Central Islamic Council of Thailand
III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE ‘GLOBAL COMMUNITY’

Sukhothai Kingdom (1253-1350)

Major historical reference for the grand narrative on Volksgeist & Volksrecht

King Ramkamhaeng
Stone Inscription (1292):
III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE ‘GLOBAL COMMUNITY’

Prince Dhani Nivat (1885-1974)

“The Old Siamese Conception of the Monarchy” (1946)

III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE ‘GLOBAL COMMUNITY’

Modernization and Nation-Building (with King)

Seni Pramoj (1905-1997, three times Prime Minister)
Kukrit Pramoj (1911-1995, Prime Minister)

“The King of Siam Speaks” (1948)
Failure of previous constitutions due to

“governance rules which are inappropriate to the situation of the country and the times” (Preamble)

Successful implementation of the new constitution

“demands cooperation among the people from all parts and all agencies of the State, in accordance with the direction of the Civil State, pursuant to the rules under the principles of a democratic regime of government and constitutional conventions that are suitable to the situation and the nature of Thai society, the principles of good faith, human rights and good governance.” (Preamble)

Pridi Banomyong (1900-1983, leader of the 1932 revolution, transforming Thailand from absolute monarchy to constitutional monarchy, Thai Prime Minister 1946)

“National Economic Policy” (1932)
III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE ‘GLOBAL COMMUNITY’

Modernization and Nation-Building (‘without King’)

Plaek Phibunsongkhram (1897-1964, military leader of the 1932 revolution, two times Prime Minister)

IV. COMPARATIVE REMARKS

Indonesia

Indigenousness

“Volksgesist”

Hegemonic identity claim within the national community and, at the same time, a possibly counter-hegemonic claim within the global community

often at least an expression of – at least a posture – of strength + power, namely those derived from + defined within the concept of sovereignty

Counter-hegemonic claim within the state, raised by subaltern actors against the state, often with support of actors defining themselves as representing a global community

often a position of weakness + vulnerability

Adat – “Volksrecht”