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Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Protection of Human Rights for Indigenous Peoples in the Digital Realm

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Abstract. *In the increasingly advanced digital era, protecting the human rights of indigenous peoples is an increasingly urgent issue to be discussed. Customary law communities are vulnerable to various new risks and challenges that arise in the context of information and communication technology. The aim of this research is to discuss the importance of ensuring that human rights, including the rights of indigenous peoples, are recognized, respected and protected in the digital realm. This includes protecting privacy, freedom of expression, and upholding local wisdom and culture. This research method is descriptive analysis, with data collection techniques in writing this article carried out using library research. The results of this research provide the basis for policy recommendations aimed at improving human rights protection for indigenous peoples in the digital realm. We also highlight the importance of education and advocacy in raising awareness of these issues among indigenous peoples and other relevant parties. It is hoped that this research can make a significant contribution in strengthening human rights protection for indigenous peoples in the ever-growing digital era. Thus, protecting the human rights of indigenous peoples in the digital realm becomes an integral part of efforts to create an inclusive, just and civilized digital environment for all parties.*

Keywords: Customary Law; Digital Realm; Human Rights.



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1. Introduction

Indonesia is a country with various tribes, languages, races, religions and cultures. The diversity that exists in Indonesia can be seen, one of the ways in which is the diversity of indigenous communities spread throughout Indonesia. These indigenous communities occupy a certain area spread across Indonesia. The existence of indigenous peoples living in Indonesia cannot be avoided as a result of historical reality. Indigenous communities themselves are groups of people who are autonomous because of their independent living systems. However, the ongoing process of state life means that the lives of indigenous communities are now not completely independent.¹ The Indonesian government, among other things, protects the entire Indonesian nation and all of Indonesia's blood. Thus, indigenous communities must receive legal protection, so that in implementing forest resource management they always pay attention to the rights of local indigenous communities. Because members of indigenous communities often experience neglect and violations of human rights, including terror, intimidation and repressive treatment by elements of company security units.²

In this turbulent digital era, developments in information and communication technology have fundamentally changed the social, economic and legal landscape. Technology has become the main driver of change in various sectors of human life, from the way we communicate, work, to interacting with the surrounding environment. Rapid developments such as the internet, artificial intelligence (AI), automation, and cloud computing have brought significant progress, but have also given rise to a number of complex legal challenges. Technological developments have created unprecedented possibilities, but they have also given rise to new issues that affect individuals, companies, and governments. One of the main challenges is how the law can adapt quickly to meet these technological challenges. In this digital era, law can no longer rely on regulations that have existed for decades, because technology continues to develop at a very high speed.³

Since the New Order, the influx of investment through political investment and transmigration has resulted in customary lands being taken away by the State and given to investors and

¹ Chariesta . " The Urgency of Ratifying the Indigenous Law Communities Bill to Guarantee the Rights of Indigenous Peoples ". Available on the site <https://lk2fhui.law.ui.ac.id/portfolio/urgensi-pengesahan-ruu-community- Hukum-adat-demi-menjamin-hak-hak-community- adat/>. Accessed on April 26 2024.

² Nasarudin Tianotak, Legal Protection of the Human Rights of Indigenous Peoples in the Management of Forest Resources in Maluku Province, Jurnal Sasi Vol. 16 No. 4 October – December 2010, p. 27.

³ Ratna Marselina Rajagukguk, Law and Technology: Facing Legal Challenges in the Digital Era, Legal Study Program, Medan Area University, Indonesia, p. 1.

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transmigrants as cheap labor. After the New Order, with the amendment of the 1945 Constitution to the 1945 NRI Constitution, MHA's rights to land were restored. However, the repressive behavior of the New Order continues to this day. MHA's struggle to restore their agrarian rights was considered an act against the law and was criminalized.⁴

In the legal field, the substance of the discussion does not lie in whether the law is traditional because of the legacy of the past or not but in the meaning of justice contained in the law. Often times when discussing legal issues, we are trapped in understanding law in a procedural sense, not law in a substantive sense that fulfills a sense of justice. So that without realizing it, there is a reduction in the meaning of substantive law (which fulfills a sense of justice) to procedural law. Especially when human life enters the era of globalization which has modern characteristics, and is also full of contemporary challenges and problems.⁵

Many people believe that customary law is a legacy of the past which is always oriented towards the past, so it is less suited to modern life as it is now, which is entering the era of globalization. This opinion, perhaps, is not wrong but it is also not entirely correct. It is said to be true because it is recognized that customary law is traditional, while life in the era of globalization demands everything that is modern. This is not entirely true, because it turns out that there are several statutory regulations that were introduced from customary law. Apart from that, customary law is also dynamic in accordance with the dynamics of humans who adhere to customary law.⁶ Every customary law community has rights, both human rights and legal rights, which must be protected by the state. Several field notes show that members of customary law communities experienced criminalization by the State when they were fighting for their rights. Customary law communities are hereinafter referred to as MHA.⁷

Data from the Indigenous Peoples Alliance of the Archipelago (AMAN) shows that 125 MHA in 10 traditional areas were criminalized by the police. These 3 MHA are spread across Bengkulu,

⁴ Compare with the National Human Rights Commission. 2018. "Monitoring and Evaluation: Human Rights Training for Police Officers Metro Jaya Region and Central Java Regional Police". National Human Rights Commission. Jakarta.

⁵ Riezka Eka Mayasari, Challenges of Customary Law in the Era of Globalization as Living Law in the National Legal System, p. 95.

⁶ Riezka Eka Mayasari , Challenges of Customary Law in the Era of Globalization as Living Law in the National Legal System, p. 95.

⁷ BPHN. 2017. " Final Report of the Legal Analysis and Evaluation Working Group on Community Development Tolerant". National Center for Legal Analysis and Evaluation, BPHN-Kemenkumham. Jakarta.



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South Sumatra, North Sumatra, South Kalimantan, North Kalimantan, NTB, Central Sulawesi, South Sulawesi, North Maluku and NTT. This criminalization is experienced mainly in the Forestry, Plantation and Mining sectors. Some of the modes of criminalization are the confiscation of MHA customary land through the granting of permits by the Minister of Forestry, Minister of ATR/Head of BPN, Governor/Regent to Companies. Criminalization occurs when the expansion of plantation land exceeds the HGU area by entering the MHA's customary land/ulayat land, which is carried out by corporations when annexing customary land without MHA approval as required by law. In forest areas, the Minister of Forestry includes customary land into the Company's Management Area. This is contrary to Constitutional Court Decision no. 35/PUU-X/2012.⁸

The issue of protecting the human rights of indigenous peoples in the digital realm is a phenomenon that is increasingly relevant along with the development of information and communication technology (ICT). Customary law communities often have a system of values, norms and procedures that are different from the positive law that generally applies in a country. When entering the digital realm, indigenous and tribal peoples can face several significant challenges related to human rights. To overcome this challenge, collaborative efforts are needed between government, civil society organizations, technology stakeholders, and indigenous communities themselves. This includes the development of inclusive policies, training programs to increase digital literacy among indigenous peoples, strong data protection, and the development of digital content that takes into account and respects cultural diversity. Based on the background description above, several problems have been identified that will be studied in this research, namely: how are human rights protected? And How to increase legal protection for the rights of indigenous peoples in the digital realm?

2. Research Methods

The article writing method used by the author in writing this research is descriptive analysis, by analyzing the phenomenon of human rights violations against customary law community groups. In analyzing this problem the author uses a normative juridical approach by providing a general description of the condition of the object being analyzed based on applicable regulations. Meanwhile, the data collection technique in writing this article was carried out using library research, which includes collecting data material; Primary legal materials are statutory regulations, secondary legal materials are books and literature. The tertiary legal

⁸ Dominikus Rato, Protection of Human Rights of Traditional Law Communities with Bhinneka Tunggal Ika in the Digital Era, National Law Magazine Volume 51 Number 2 of 2021, Page. 156.



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research material was obtained by the author from research articles, news and other things that are relevant to the problem being researched.⁹

3. Results and Discussion

3.1. Protection of Human Rights

Legal protection of human rights in Indonesia is an important issue complex and relevant in the context of the country's social, political and legal developments. The legal framework that protects human rights in Indonesia has developed in line with constitutional and legislative changes carried out over the years the last few decades. The Indonesian Constitution, especially after changes in 2002, firmly emphasized the country's commitment to protecting human rights man as the basic principle of the state.¹⁰

This discussion begins with some cases are considered as human rights violations committed by state to its citizens. Previously It is necessary to state the goals of the Indonesian state based on Pancasila as the source of all sources of Indonesian positive law. The goal of the state is based on Pancasila it is taken from Principle V of Pancasila: "Justice Social Affairs for All Indonesian People." The emphasis is on "Social Justice" and "All Indonesian People" including MHA.¹¹ Social justice includes law enforcement without discrimination, calm manage customary land, and enjoy the results without disturbance. Social justice can be achieved if justice has truly been realized. Human rights violations are one of them the cause of social justice is not achieved.¹²

Rights of Indigenous Peoples: (1) authority over the territory of the legal community customs, and ownership rights to the land that originates of customary rights is proven through: (a) by written, land deeds, inheritance letters, maps, reports history, handover documents, (b) oral

⁹ Husni Abdul Azis, Iskandar Iskandar, Khaerul Anwar, Violations of Human Rights in Agrarian Conflict Against Indigenous Community Groups in Indonesia, Definition: Journal of Religion and Social-Humanities ISSN: 2828-7878, Vol 2, No 1, 2022, pp 01-14, matter. 4.

¹⁰ Yuan Keyzia Latuperisa, *Legal Protection of Human Rights in Indonesia*, Faculty of Law, Medan Area University, p. 6.

¹¹Diyan Isnaini and H. Suratman, 2018, *Agrarian Reform: Land Reform and Land Redistribution in Indonesia*. Poor: Intrans Publishing.

¹²Dominikus Rato, *Protection of Human Rights of Traditional Law Communities with Bhinneka Tunggal Ika in the Digital Era*, National Law Magazine Volume 51 Number 2 of 2021, Page. 158.



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evidence (public confession verbally regarding authority over customary areas certain, /customary heads, (c) means of proof physically (cemeteries of ancestors, often former farming businesses, former housing, orchards, exotic plants cultivation, world historical heritage, pottery and inscriptions, etc. (regulated in the Regulations Government Number 24 of 1997 concerning Land Registry). (2) Customary Institutional Authority is exercised with several possibilities: (a) recognition of indigenous communities by the indigenous communities themselves (b) recognition of the existence of customary law communities by judicial institutions based on court decisions (c) recognition of the existence of indigenous communities by a Council of Indigenous Peoples elected by Indigenous Peoples. (3) Authority over management patterns forest resources are based on original knowledge that exists and grows in society with all the norms that regulate boundaries and sanctions.¹³

Law Number 39 of 1999 Regarding Human Rights (HAM), this Law expressly states in Article 6 paragraph (1) that: "In the context of enforcing rights human rights, differences and needs within customary law communities must be taken into account and protected by law, society, and government." Viewed from a human rights perspective and also from the Indonesian constitution, the responsibility of the state represented by the government is to recognize, respect, protect and fulfill the rights of indigenous peoples. The concept that the state recognizes means that there is a statement of acceptance and granting of legal status by the state and state law to the legal existence and rights of citizens both as individuals and as a community unit as a constitutive manifestation of the state to respect, protect and fulfill the human rights of citizens. Draft "respect" means requiring the state not to violate the rights of indigenous peoples, including by enforcing laws that guarantee the rights of indigenous peoples. The concept of "protect" requires the government prevent and take action against violations of the rights of indigenous peoples carried out by non-state parties with enforce applicable laws. Meanwhile, the concept of "fulfilling" requires the government evaluates various policies and regulations as well as planning and implementing policies for the enjoyment of community rights custom.¹⁴ In addition to the four concepts of government responsibility above, the government is also responsible for advancing the rights of indigenous peoples through government programs both to seek legal recognition and so that existing legal recognition can be implemented to advance the rights of indigenous peoples.

¹³Jawahir Thontow i, *Regulation of Customary Law Communities and Implementation of Protection of Their Traditional Rights*, Pandecta Journal, Volume 10. Number 1. June 2015, p. 4.

¹⁴ Yahya Ahmad Zein and Dewi Nurvianti. *Conceptions of Rights Customary Law Communities as Human Rights*. Veritas et Justitia. Volume 3. Number 2. 2017, p. 422-423.

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The legal violations referred to in this article are violations of human rights as stipulated in the 1945 Constitution of the Republic of Indonesia. There are 7 (seven) MHA human rights in the Constitution, namely:

- 1) The right to recognition as a member of society customary law in Article 18B paragraph (2) 1945 Constitution of the Republic of Indonesia. Recognition of rights customary law communities in the field government already exists and is regulated with Law no. 6 of 2014 concerning Village and its implementing regulations. However, in the economic, social, and culture has not been regulated with any law, except Law no. 5 of 1960 concerning UUPA which passed Now there are various problems, as contrary to Law no. 41 Years 1999 concerning Forests even though it has there is a Constitutional Court Decision. No. 35/PUU-X/2012. Even with the Constitutional Court's decision In fact, it was replaced with Law no. 18 of 2013 concerning Prevention and Eradicating Forest Destruction which becomes a state instrument for restrict MHA to take agrarian resources from the forest as a legacy of their ancestors with MHA's reasons for destroying forests.
- 2) The traditional rights of customary law communities in article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are limited by the phrase 'as long as in reality they are still alive and in accordance with the development of society and the principles of the Republic of Indonesia.' Phrase this has limited a qualification existing customary law communities before this country existed. Principles of the Republic of Indonesia is very important, but the phrase 'according to the reality of still being alive' has reduced the existence of the MHA.
- 3) The right to control and enjoy agrarian objects (earth, water and wealth nature contained therein) which given to foreign investors article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹⁴ However, always face to face sectoral laws such as the Forestry Law, Law Plantations, and Laws Minerba. Data that goes to Komnas Human rights during 2020 were the biggest is a matter of agrarian resources which is always the object of dispute between MHA and corporations, police, and Regional Government. The issue of land for MHA is crucial, because land is always related to the right to life,¹⁵such as forests as a living habitat, a place for them to earn a living, raise a family, have a community, and even related to beliefs or beliefs, especially native religions or indigenous religions which consider land as their ancestors. . In customary law, in fact cosmological between ancestors, land, home custom, and women are in one concept, namely fertility or fertility earth.

¹⁵ Dominikus Rato , *Protection of Human Rights of Traditional Law Communities with Bhinneka Tunggal Ika in the Digital Era* , National Law Magazine Volume 51 Number 2 of 2021, Page. 159.

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4) The right to believe in one's beliefs, express thoughts and attitudes, in accordance with one's conscience, which has been tainted by the intolerant majority group in Article 28E paragraph (2) of the 1945 Constitution of the Republic of Indonesia. there is a MK decision. No. 97/PUU-XIV/2016 about Beliefs in the Religion Column, but it is not yet included in the regulations legislation regarding MHA.

5) The right not to have one's property confiscated, his ancestral inheritance arbitrarily in order to improve quality of life in Article 28G paragraph (1) The 1945 Constitution of the Republic of Indonesia. There are many case regarding customary land confiscation This will be discussed below.

6) The right to be free from torture (terror) both physical and mental from torture and degrading treatment human dignity in Article 28G paragraph (2) The 1945 Constitution of the Republic of Indonesia, concurrently with takeover issues land unilaterally accompanied by torture, detention and intimidation by the police.

3.2. Legal Protection of the Rights of Indigenous Peoples in the Digital Realm

In the current digital era, there are at least three perspectives on the transformation of indigenous communities in the Industrial Revolution 4.0. *First*, the speed of information technology displays the position of indigenous peoples vis-à-vis invisible opponents. The existence of culture, tradition and the values of traditional communities becomes a shield against the values of openness which can then eliminate the sacredness or uniqueness of traditional values. *Second*, co-opting the culture, values and assets of traditional law communities does not have a significant impact. In fact, many customary law communities do not benefit at all when corporations are able to market in one destination package. In this condition, it is necessary to share economic value with indigenous communities from shopping and digital transactions. Now the rights of indigenous peoples are no longer just recognition, but justice in receiving the benefits of the transformation of the Industrial Revolution 4.0. *Third*, fair adaptation of the Industrial Revolution 4.0 must be realized as an instrument of gross domestic income. The existence of values, culture and culture is an asset for indigenous peoples which will reduce the dependence of indigenous peoples from destruction of ecosystems and the environment. In this way, the digital transformation of RI 4.0 in customary law communities is still able to ensure the preservation of the ecosystem, resources and

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values that exist in customary law communities so that they remain sustainable in the long term.¹⁶

Protection of human rights for indigenous peoples in the digital realm is an important issue that needs to be taken seriously. In this digital era, customary law communities are vulnerable to various new risks and challenges related to information and communication technology. First of all, it is important to ensure that human rights, including the rights of indigenous peoples, are recognized and respected in the digital context. This includes rights such as the right to privacy, freedom of expression, and the right to maintain cultural identity and local wisdom.

Privacy protection is a very important aspect in the digital realm. Customary law communities often have value systems and traditions that are very sensitive to the disclosure of personal information. Therefore, policies and regulations are needed that ensure that their personal data is not misused or exploited in a digital context. Apart from that, freedom of expression also needs to be properly protected. Indigenous communities often use digital media to maintain and promote their culture. Therefore, it is important for the government and digital platforms not to excessively censor content relating to indigenous peoples, as long as the content does not violate the law or harm other people.

The position of customary law communities is recognized in relation to human rights, forestry, education, water resources, the environment, coastal management, village governance, fisheries and maritime affairs. First, in Article 6 paragraph 2 of Law Number 39 of 1999 concerning Human Rights it is stated that "the cultural identity of traditional law communities, including rights to customary land, is protected, in line with current developments." For this reason, it is important to respect customary law communities at the same level as human rights. Second, their existence and rights are recognized by customary law communities in forest areas and they can collect forest products to meet the daily needs of the indigenous peoples concerned. Carry out forest management activities based on applicable customary law and empowerment. Apart from that, customary law communities are obliged to maintain and protect forest areas from disturbance and destruction, to manage, maintain and protect forest areas. Third, in Law Number 20 of 2003 concerning the National Education System, namely article 5 paragraph 3 which reads: "Citizens in remote or underdeveloped areas and remote indigenous communities have the right to receive special education services." In practice,

¹⁶ Ismudi Muchsin. SINDOnews. 02 October 2018. "Customary Law Communities in the RI 4.0 Era". Available on the site: <https://nasional.sindonews.com/berita/1342796/18/community-Hukum-adat-dalam-era-ri-40>. Accessed April 26, 2024.

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issues regarding the availability of teaching staff, distribution, facilities, quality of facilities, quality and competence of teachers, and accessibility are often limited. This condition means that very few people are willing to make sacrifices to fight for the education of indigenous peoples in remote areas. Fourth, Article 6 paragraph 2 and paragraph 3 of Law Number 7 of 2004 concerning Water Resources explains that in managing water resources, the government continues to recognize and respect the customary rights of customary law communities. However, cooperative practices regarding water resources have recently tended to undermine equitable access to water. Fifth, in the fisheries sector, Law Number 45 of 2009 concerning Fisheries states that customary law communities include communities as poor small fishermen. So the formulation of Article 28 paragraph 4 of the Law applies to customary law communities. Sixth, in environmental protection and management, Law Number 32 of 2009 concerning Environmental Protection and Management establishes policies regarding procedures for recognizing the existence of customary law communities, local wisdom and the rights of customary law communities. Seventh, Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (PWP3K) exempts customary law communities from the obligation to have permission to utilize the space of some coastal waters and some small islands and use natural resources. water resources and waters of small islands. Eighth, in the rural context, Law Number 6 of 2014 concerning Villages, recognizes (Article 6 paragraphs 1 and 2) that traditional villages are the result of structuring of customary law communities, by the government, provincial regional government or district/city regional government. And ninth, in the Plantation Law, the land requirements for plantation businesses are likely to pass through/use land controlled by customary law communities. If this happens, authorized officials are prohibited from issuing plantation business permits, unless an agreement has been reached between customary law communities.¹⁷

¹⁷ Ismudi Muchsin. SINDOnews. 02 October 2018. "Customary Law Communities in the RI 4.0 Era". Available on the site: <https://nasional.sindonews.com/berita/1342796/18/community-Hukum-adat-dalam-era-ri-40>. Accessed April 26, 2024.



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Protection of the rights of Indigenous Peoples (MHA) at the conceptual level is guaranteed by the constitution. Existence articles 18 B paragraph (2) and 28I (3) of the 1945 Constitution as well as sectoral laws (UU No 5 of 1960 concerning Agrarian Principles; Law Number 4 of 2009 concerning Mining, Minerals and Coal; Law Number 7 of 2004 concerning Water Resources; And Other related laws) have attempted to provide recognition and respect for MHA Unity. In das sollen the central government has provided legal guarantees in implementing the government system prosperity, namely by fighting for the fulfillment of rights constitutional and traditional rights. The constitutional rights referred to are the basic rights and basic freedoms of every citizen, related to education, employment, equality before the law, socio-economic rights, freedom of opinion, and the right to live and reside which are guaranteed by the Constitution. Meanwhile, traditional rights are special or special rights that are inherent and owned by a community of people based on their common origins (genealogy), common territory and other customary objects, rights to customary land, rivers, forests and are practiced in his society.¹⁸

Apart from Article 18B paragraph (2), recognition and respect for customary law communities is also regulated in Article 28I paragraph (3) of the 1945 Constitution which states, "Cultural identity and the rights of traditional communities are respected in line with developments over time and civilization." When referring to the legal theoretical framework, it is clear that the formulation of Article 18B paragraph (2) and Article 28I paragraph (3) will never be binding. On the one hand, Article 18B paragraph (2) and Article 28I paragraph (3) are legal norms that impose onerous conditions. On the other hand, this article also contains a half-hearted political spirit related to the struggle between perpetuating a centralized government system and emasculating the rights of indigenous peoples.¹⁹

The facts show that Article 18B paragraph (2) cannot be implemented. This is proven by the fact that so far the Constitutional Court has never been able to grant the MHA's proposal to the Constitutional Court, because the MHA does not yet have reliable legal standing. The four conditions, namely, as long as they are still alive, in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, and regulated in law, are very tough requirements for MHA to obtain legal standing status, including obtaining their traditional rights. On the other hand, for the authorities or businessmen as powerful

¹⁸Jawahir Thontow i, *Regulation of Customary Law Communities and Implementation of Protection of Their Traditional Rights*, Pandecta Journal, Volume 10. Number 1. June 2015, p. 2.

¹⁹ Jawahir Thontow i, *Regulation of Customary Law Communities and Implementation of Protection of Their Traditional Rights*, Pandecta Journal, Volume 10. Number 1. June 2015, p. 9.

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parties, these four conditions are used as arguments to close the door tightly so that MHA cannot easily obtain their customary rights.²⁰

4. Conclusion

Protection of human rights for indigenous peoples in the digital realm means that the protection of these rights is very important and requires serious attention. In the digital era, customary law communities face various new risks and challenges that can threaten their rights. For this reason, joint efforts are needed from the government, non-governmental organizations, digital platforms and customary law communities themselves to ensure that human rights, including the rights of customary law communities, are recognized, respected and protected in the digital context. Protection of privacy, freedom of expression, and upholding local wisdom and culture are things that must be taken seriously. Good collaboration between various parties will help identify the risks and challenges faced, as well as formulate effective solutions to protect the rights of indigenous peoples in the digital realm. Thus, protecting the human rights of indigenous peoples in the digital realm is an important part of efforts to create an inclusive, just and civilized digital environment for all parties.

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²⁰ Jawahir Thontow i, *Regulation of Customary Law Communities and Implementation of Protection of Their Traditional Rights*, Pandecta Journal, Volume 10. Number 1. June 2015, p. 10.

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