



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

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**“LEGAL CONSTRUCTION AND DEVELOPMENT IN COMPARATIVE STUDY: THE  
ROLE OF INDIGENOUS AND GLOBAL COMMUNITY IN CONSTRUCTING  
NATIONAL LAW”  
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### **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

Indigenusness

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



## I. NOTIONS OF INDIGENOUSNESS

Indonesia

**“Volksggeist”**

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

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**Adat – “Volksrecht”**

Indigenusness



## I. NOTIONS OF INDIGENOUSNESS

Thailand

“Monarchy”

Indigenusness

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

- *United Nations International Covenant on Economic, Social and Cultural Rights (1966)*
- *International Labor Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989)*
- *United Nations Declaration on the Rights of Indigenous Peoples (2007)*



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

*United Nations Declaration on the Rights of Indigenous Peoples  
(2007)*

"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<sup>4</sup> and international human rights law.



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

### *International Labor Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989)*

“Article 2 (I): 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

### *United Nations International Covenant on Economic, Social and Cultural Rights (1966)*

“Article 12 (I): 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



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

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



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

### Indigenous peoples in Thailand: issues

- lack of quality education

language, cultural and geographic barriers

monolingual and monoculture system of education in national language

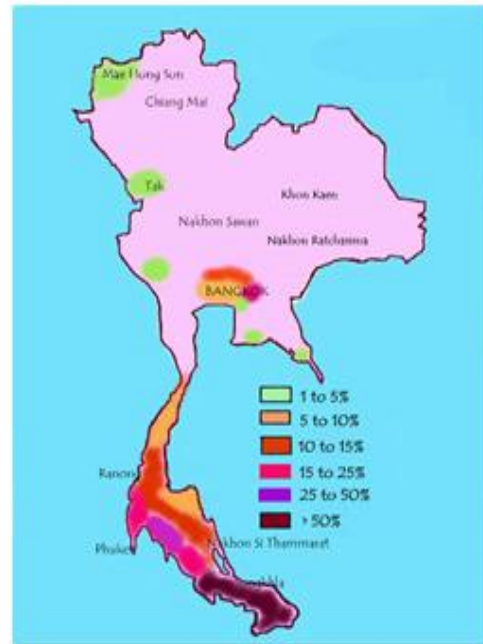
high rates of dropout and out of school children, particularly from those from non-Thai, stateless, indigenous, and ethno-linguistic minorities



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Islamic minorities in the Southern Border Provinces as indigenous community

Muslim Population in Thailand



## II. INDIGENOUS COMMUNITIES AS MINORITIES WITHIN THE NATIONAL COMMUNITY

Islamic minorities in the Southern Border Provinces as indigenous community



## 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**

- ✓ Sheikhu'l 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'

Sukothai Kingdom (1253-1350)

Major historical reference for the grand narrative on Volksgeist & Volksrecht



### III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE 'GLOBAL COMMUNITY'

Sukothai Kingdom (1253-1350)

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)*



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### 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)*



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### III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE 'GLOBAL COMMUNITY'

#### Thai Constitution 2017

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)



### III. INDIGENOUSNESS, THE CONSTRUCTION OF NATIONAL IDENTITY AND THE 'GLOBAL COMMUNITY'

**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

**"Volkgeist"**

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

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