

On Human Rights and
Democracy:
State, Violation & Social
Structure Injustice

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Editor:

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Nur Azizah



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FOREWORD

- Nur Azizah -

The book “On Human Rights and Democracy: State, Violation and Social Structure Injustice” is the first book that compiled students’ paper in the topic of human rights and democracy published by the Department of Politics and Government, Faculty of Social and Political Science, Universitas Gadjah Mada (UGM), Indonesia. Since 2010, the Department has been part of the joint collaboration in delivering Master Degree Program on Human Rights and Democracy with the Institute of Human Rights and Peace Studies (IHRP), Mahidol University, Thailand (serve as the main hub since 2016) and some other universities in Asia Pacific (Ateneo University, the Philippine; Kathmandu School of Law, Nepal; and Colombo University, Srilanka). This collaboration has been giving scholarships to human rights and democracy activists in Asia Pacific, as part of the efforts to strengthen human rights protection and democratization in the region.

Therefore, this book is also an integral part of that effort, especially as part of our institutional responsibility in disseminating students’ research on human rights topic in

Asia Pacific. However, in this book, you will also find a paper that examining human rights practice in France, as one of our students is coming from the country. And this actually provides more nuanced pictures on how human rights being practised in another region than Asia Pacific.

Four papers in this book depict problem in human rights from Bangladesh, Indonesia, and France. From Bangladesh, we can see how state, as the principal duty bearer (Ljungman 2004), is not powerful to protect children's rights. Paper on "Child Forced Marriage: A Violation of Human Rights in Bangladesh" by Asma Al Amin, provides a clear picture on how girls right in this country are not well protected through the state legal system. The Bangladesh national law regarding the child forced marriage is still having gaps in protecting children's rights. One of those gaps come from the value of the marriage itself, especially towards women that in the Bangladesh culture, women's marriage is under parents' decision. Further, there is also a diverse law in setting the minimum age in marriage, depends on the religion's based marital law, even though all religions allow someone below 18 to marry. These worsened child forced marriage in the country.

State's inability in protecting its citizen can also be found from two papers on "Self Recognition and Self Redistribution: Lessons From Alur and PAB, 1965 Communities in Batang" written by Rian Adhivira Prabowo; and "Unmuting Voices: Dayak Women's Narratives on Structural and Gendered Injustice in Oil Palm Expansion in West Kalimantan, Indonesia" by Eunha

Kim. Rian Adhivira presents how two local communities in Batang, Central Java have been facing a problem of recognition and redistribution due to a social and political event in 1965. Those communities have been abandoned by the state, as the state labeled them as part of Communist Party, which in the state's narrative was the main actor in great violence's in 1965. This paper describes how those communities develop self-recognition and self-redistribution agendas as an important part of their fighting toward anti-communism propaganda made by the state. In this case, the state is not only having the inability to protect human rights. Further, it explains how the state itself, as the main actor who violates the human rights.

Whereas Eunha Kim is putting more focus on how indigenous community in examining how women's voices are subdued by the socially constructed valued on women in Dayak culture, and worsened by the capital-driven development in the palm oil industry. In this paper, Eunha argues that women labours in Dayak community are the most disadvantaged group in the palm oil regime, in which the state is unable to provide a hand to overcome this situation.

Unfortunately, states in Asia are not alone in term of low capacity in delivering human rights. A similar situation can also be found in France, regarding the political rights of minority group there. Anais Bargallo, through her paper on "The Hmong Community in France: A Situation of Political and Social Exclusion" explains that the French law was unable to guarantee the political right for the Hmong Community, that has been

living in French for more than four decades. This hampered the Hmong community in expressing their interest and identity as they are still considered as “denizen” in the French Law system context.

All papers in this book provide clear examples regarding problems that still in the way of protecting human rights, not only in Asia but also in French. Despite the transformation from an authoritarian to a more democratic regime in some countries in Asia, a violation towards human rights, including social structure injustice are still prevalent. Unfortunately for the victims, the state, who supposedly becoming the principal duty bearer, often plays an important factor in the human rights violation, through weak legal system, low capacity in assuring justice and welfare system, and state’s inability to control state apparatus abuse of power ((Sharom (Ed.) 2016), (Vincent 2017)). However, in some Asian countries, such as Indonesia and Bangladesh, and other countries, wherein there are religious or cultural based dominant groups, the minority groups in those countries are becoming the main victims for human rights defilement from the superior group.

This book, of course, is not meant to solve the human rights problems. However, this should be recognized as part of the efforts to elevate people’s awareness that there are huge obstacles in promoting and protecting human rights. By doing so, we do hope that more and more people be mindful of these problems and willing to take part in human rights activism, to promote and protect human rights. And lastly, as our first

publication, should there are inputs to improve the book, please feel free to contact us. Thank you.

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Child Forced Marriage: A Violation of Human Rights in Bangladesh

Asma Al Amin¹

Abstract

The forced marriage causes diverse forms of exploitation and deprivation of the right of girls. This discursive practice leads to sexual abuse, rape, murder, induced suicide and other forms of exploitation and consequently, violates the human rights of a child. This article asserts the international standards against child forced marriage and justifies the status of Bangladesh in implementing those international norms at the national arena for protecting the child rights against forced marriage. Further, it will concern with the loopholes in the national laws relating to child forced marriage that affects negatively on the child rights rather than providing any protection. Thus the paper finds the current legal system is not effective enough for protecting child rights from forced marriage due to existing inconsistency and loopholes in laws. The research is a qualitative research based on literature reviews of different academic journals, articles, books, national laws and policies on child rights against forced marriage, international conventions against forced marriage, NGO reports, newspapers and case reports.

Keywords: Forced marriage, Child marriage, Human Rights, Loopholes, Bangladesh.

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Introduction

Marriage in Bangladesh is a social institution, based on which a family, society, and the state is formed. Although marriage and children these two words do not coincide together, the occurrence of child marriage is common in Bangladesh society. Until recently, child marriage in Bangladesh indicates alarming rate compared to other neighboring countries. The recent report by the United Nations Children's Agency (UNICEF) reveals that the rate of child marriage in Bangladesh is alarming (UNICEF 2016). Indeed, among the South Asian countries, Bangladesh (52 percent) has the highest rate of child marriage followed by India (47 percent), Nepal (37 percent) and Afghanistan (33 percent). About 52 percent of girls are married before the age of 18, and 18 percent of these girls are married before the age of 15. Much emphasis has been given to the issue of child marriage by researchers, yet, the positive action remains elusive for many girls in Bangladesh. More importantly, the chance of being forced into a child marriage has been ignored by researchers. The gravity of the child marriage as harm has increased more when it turns into a forced marriage. The forcing of a girl for marriage is the denial of her human rights that have been guaranteed in the international human rights norms agreed by many countries. This paper draws specific attention to girls who are a child and forced to marry. They are forced not only because of someone forced, coerced, deceived them but also because of their tender age that could not give them the position to give full and free consent. Thus, the need for greater recognition of child marriage as a variant of forced marriage is necessary

for protecting the rights of the child. This paper claims that a child forced marriage is a violation of human rights of which the Government of Bangladesh (GOB) should take immediate action for protecting the rights of children.

Therefore, firstly, this paper will show interlink between child and forced marriage. Secondly, it will provide the reasons for forced marriage and the impact of such act on girls in Bangladesh. Thirdly, the study will analyze the international protection of child rights from forced marriage and its national implication in the country. It will highlight the national laws are not effectively protecting the child from forced marriage because of the inconsistencies of different laws and lack of implementations.

Definition of Marriage

Although marriage is not the only importance of life, in a country like Bangladesh it is one of the major events of a human life. Traditionally, the term “marriage” is used to describe as a legal union between man and women. The union does not only the union of two human bodies but also union of two families. Thus, marriage is recognized as family union upon which the structure of the society stands. It has been known as the entry ticket of the family as an institution. Therefore, the importance of marriage for a person is undeniable. More importantly, marriage requires certain formality to perform, such as offer and acceptance of the parties. Consequently, the full and free consent of the parties is an essential element of a marriage. Similarly, the age of the parties, mental stability, social

preparation are also important requirements for marriage.

Traditionally, in every society, the practice of marriage has been regulated by religion from time immemorial. Religion is the fundamental source of promoting the practice of marriage. However, and perhaps inevitably, the practice of marriage is not only a contract but also a sacrament in Bangladesh. According to Fyze (2007) marriage in Islamic law has three aspects, associated with legal, social and religious aspects. Legally, marriage is a contract where consent is the essential requirement; whereas socially, Islam offers a high social status to women after marriage and from the religious point of view marriage is recognized as the basis of the society where the high status of women is determined. Consequently, the Mohammadan law defines marriage as an agreement for the legalization of intercourse and the reproduction of children. It is, therefore, obvious that marriage in Islam provides for guarding human beings against all practices of foulness and immodesty. Hence, the position of women in marriage is much higher in Islam as it guarantees the consent of the parties and forcing for marriage is not a legal marriage at all. Similarly, Hindu *Sastriya* Law gives highest emphasizes on the marriage of a man as a religious obligation for the procreation of son necessary for the continuation of the line of paternal ancestors (Rakshit 2005, p. 99). Thus, under *Sastriya* Hindu Law marriage is a holy union for the spiritual benefits of souls. Though a child can be given into marriage by the guardian, any kind of force or fraudulent act of marriage is invalid under Hindu law. Consequently, consent of the parties for a marriage is an essential requirement of which

every religion has specific consideration. Certainly, the element of force that constitutes a forced marriage is fully denied by the all religious personal laws.

Child and Forced Marriage Interlinked

The two words child and forced marriage are intertwined. A child marriage occurs when at least one of the parties to the marriage is a child who is below 18 and not in the position of giving full and free consent to the marriage. Similarly, a forced marriage occurs without the full and free consent of the intended spouses. Forced marriage is also associated with threat, coercion, deception or other psychological means for taking the apparent consent of the parties. In the event of a marriage of a girl child, marriage affects the child not only for her younger age but also for her position, which dispels her from giving any decision regarding her life. A child can be coerced, deceived or threatened more easily for marriage than a woman. Thus, forced marriage is interwoven in most of the child marriages. While child forced marriage can affect both girls and boys, but the consequences are more devastating for girls.

Furthermore, the culture and tradition of the country show that the consent of the female in a marriage is given by her parents. That makes the situation more vulnerable to a young girl as they have no right to express and choice. As a result, in most of the cases, the child marriage is forced as they get married without their consent. Entered upon without the free and full consent of the intended spouses, child marriage constitutes a forced marriage. The importance of consent in

marriage has been pointed by Kopelman (2016, p.174) as the followings.

Consent requires authorization that fulfills three necessary conditions. It must be informed, competent and voluntary. A lack of consent to a marriage includes not only those who do not give consent because they object to the marriage but also those who cannot give consent because they are too young, disabled or otherwise incapable of giving informed, competent and voluntary authorization to a marriage contract. Minors lacking mature appreciation of the salient information or situation cannot authorize such a contract. In addition, consent may be lacking due to coercion, misinformation, deception, fraud or lies.

While the lack of consent to a marriage can occur for the vulnerable position of a girl in the society as well as other factors like young age, coercion, deception, fraud, lies, violence and isolation from the society, social and economic reasons, etc. The possibility of being forced into a marriage for a girl is high in the child marriage. Hence, there is a nexus between child and forced marriage. All child marriages could be forced while all forced marriage is not necessarily a child marriage.

Reasons for Child Forced Marriage in Bangladesh

In a society like Bangladesh, where the girl child is less preferred and considered as a financial burden for the family, the social recognition of child marriage of a girl is a common phenomenon there (Ragsdale & Campbell 1999, p. 181). The

diverse causes of child marriage interwoven with the social, economic, political and cultural context of Bangladesh.

Bangladesh as Muslim majority country follows the conservative views regarding the status of a girl. Girls are dependents of a male counterpart of the family, such as fathers, husbands, and sons. As a result of embedded patriarchy and gender inequality, the practice of child marriage is a common phenomenon in the society. Accordingly, these conservative natures of the social influences the legal system of the country from the very beginning. Therefore, the laws and policies protecting child rights are not effectively redressing the issue of child marriage. Rather contradictorily statutory laws and personal laws blur the structure of the protection system for girls in the society.

The persistent culture of the society perceives marriage as a protective measure for a girl against sexual immorality. The society perceived marriage as a safeguard against premarital sex (Scolaro et al 2015). Therefore, marriage is seen as the provision of social and economic security for women in Bangladesh (Altschuller 2003, p. 203). As a result, girls are often married at an early age to secure their sexual morality, economic and social status.

Furthermore, the underpinning caused called poverty induces the marginalized society of the country to shift the economic burden by giving early marriage of a girl as they are often treated as an economic burden. Similarly, the poverty-stricken areas have poor access to education which is another

crucial cause of child marriage (BNWLA 2014). Again, the tradition of dowry² culturally allows the family to set early marriages for daughters.

More importantly, the cause of persistent child marriage in Bangladesh is the toothless outdated laws which are contradictory in nature. The multiple legal systems of the country complicate the protection of child rights as both statutory and religious laws regulate marriage. Recently, the new law on child marriage restraint has been passed by the Parliament, but the law is challenged by Bangladesh National Women Lawyers Association and Nari Pokkho organization through a joint writ petition before the higher judiciary due to its contradictory and discriminatory provisions (Daily Star 2017). Consequently, there are no effective laws relating to child marriage as they are outdated, ambiguous and lacking enforcement mechanisms to increase girls more vulnerability to child marriage.

Impacts of Child Forced Marriage on Girls

As mentioned earlier, the study is mainly focused on the girl child situation; generally, the practice of child marriage has widespread consequences on the girl child. It affects the health of a girl and the future generation, eventually, the child faced problems in their social relationships and family. At the same time, it places a girl is in a grave situation both economically

² Dowry is the practice of the family of the bride providing the family of the husband with money or property in exchange for the marriage of their daughter.

and psychologically. The child forced marriage has grave consequences on the rights of the child.

First, the consequences on the health of a child due to child marriage are severe. Unintended pregnancy, miscarriage in pregnancy, stillbirth, and abortion are consistently associated with the child marriage that affects the reproductive health of a girl. And, indeed, according to an analysis of Demographic and Health Survey data from Bangladesh, India, Nepal, and Pakistan (as cited in Doskoch 2013 p.105), these associations were weakest in India and strongest in Bangladesh.

Second, the practice of child marriage contributes to a sexual abuse as the girls often are denied bodily integrity and control. It is, therefore, obvious that the chances of marital rape are high in a child forced marriage. Thus, sexual violence is highly associated with a child forced marriage (Ouattara et al. 1998). These factors ultimately cause unwanted pregnancy and other health risks of a girl.

Third, child marriage affects the social relations of a child destructively. It causes drop out from the education and isolation from friends. A girl is treated as a mature after marriage that affects their psychological growth of mind. Consequently, they are overburdened with the household works and family responsibility that remove their chance to participate in social activities with friends and families.

Fourth, the implication of child marriage on the economic development and empowerment of a girl is vast. They are in danger of drop out of education, and their opportunity to

employment is less. They are required to domestic works and family responsibility that rarely gives them spare time for personal development. Hence, they become economically marginalized and dependent on the income of husband.

Child Forced Marriage as a Violation of Human Rights in International Law

Child forced marriage is a heinous violation of human rights which has been practiced in many societies of the world from time immemorial. Still today, the high rate of child marriage in Bangladesh specifies the prevalence of forced marriage in the society. Before delving into the loopholes of the existing laws and policies protecting child rights from a forced marriage in Bangladesh the international norms relating to this issue need to discuss first in order to understand the gap of laws between national and international laws. Although there is no specific instrument in the international norms discussed forced marriage but a number of international treaties address the issue indirectly.

However, much protection of free and full consent of the parties in a marriage has been addressed in a number of international Conventions to which Bangladesh is a signatory. Article 16 of the Universal Declaration of Human rights 1948

(UDHR)³ provides for the right to marriage of full age persons with full consent, which protects a child from being married before the age of maturity and without consent. This article indicates two things, firstly, a marriage without the free and full consent of the intended spouses is a forced marriage and secondly, a person cannot give a free and full consent when he or she is not mature to take decision about life partner (IPU& WHO 2016).

Again, the International Covenant on Civil and Political Rights 1966 (ICCPR) in its Article 23 (3) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)⁴ in Article 10(1) guarantee the right of all individuals to enter into marriage with the free and full consent of both parties. Similarly, Article 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)⁵ guarantee the same age for the marriage of man and women with their free consent. Further, sub-clause 2 of the same

3 Article 16 (1) -Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

4 Bangladesh reserved the right to non-discrimination clauses under Article 2 and 3 of the convention on the ground of national laws.

5 Article 16 (1)-States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage, (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent, and (c) The same rights and responsibilities during marriage and at its dissolution.

Article provides specifically the right to protection from child marriage⁶. Bangladesh acceded the CEDAW with reservation to Article 2 regarding the elimination of discrimination against women and to Article 16(1) (c) regarding equality of rights in marriage and upon its dissolution.

Further, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962 (Article 1) states that the legal marriage shall be solemnized when there is a free consent of both the parties. The Convention also prescribes the state responsibility for the compulsory registration of marriage. Again, Bangladesh acceded the Convention with reservations to Article 1 and 2 on the ground of personal laws of the religious community of the country.

Although the Convention on the Rights of the Child 1989 (CRC) does not explicitly address the child marriage, however, the norms and protections applicable to children encompass issues related to child marriage. According to Article 347,

6 Article 16 (2)- The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

7 Article 34- States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall, in particular, take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

the parties to the convention have the obligation to remove traditional practices which are harmful to the health of the child and protect children from all forms of sexual exploitation and sexual abuse. Considering forced marriage as a harmful practice to the health of a child shows that CRC also gives protection from a forced marriage. Bangladesh also ratified the CRC in 1990 and thereby are obliged to combat child marriage. But the implementation of these international standards remains questionable when the states sign those agreements with a reservation clauses

List of International Treaties Ratified by Bangladesh Protecting Children from Forced Marriage

International treaties	Year of Ratification
International Covenant on Economic, Social and Cultural Rights,(1966)	1998(a)
International Covenant on Civil and Political Rights,(1966)	2000 (a)
Convention on the Rights of the Child (1989)	1990
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	2000
Convention on the Elimination of All Forms of Discrimination against Women (1979)	1984 (a)

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)	1998 (a)
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(a)= accession

Taking these international treaties together, it seems clear that, international norms and standard suggests forced marriage as a violation of human rights. Because forced marriage causes diverse forms of exploitation and deprivation of the right of young girls. This practice leads to sexual abuse, rape, murder, induced suicide and other forms of exploitation and consequently, violates the human rights of a child. Scolaro et al. (2015, p.23) notes that

Child marriage is a human rights violation that rob a girl of her childhood, puts her health, growth, and development at risk, disrupts her education, limits her opportunities for empowerment and social development, and increases her risk of exposure to violence and abuse.

Therefore, there are multiple violations of human rights caused by child forced marriage. And, indeed, the scope of violation of human rights of a girl is grave as it centers on marriage, that is, the most private sphere (Ouattara et al. 1998). The violation includes the followings.

1. Right to Health

The child marriage violates the right to health of a

child. The CRC General Comment No. 4 provides that one of the main reasons for the health problem of a child is early marriage and pregnancy (CRC/GC/203/4 2003, p. 5). Early pregnancy not only creates physical vulnerability of a mother but also causes risk of death of a baby.

Bangladesh has the highest rates of adolescent motherhood where one out of three girls starts childbearing before the age of 20 (Bangladesh Demographic and Health Survey 2007). As a result, 41%² of children under five years are moderate to severe underweight (UNICEF 2009) in Bangladesh. This vulnerability to the health condition ultimately violates the right to life of a child as it is the key component of maternal deaths in Bangladesh (Ali 2002, p. 22).

2. Right to Education

An interruption in education is one of the main consequences of child marriage which violates the right to education of a child. The remarkable progress in the primary education in Bangladesh has become blurred in consequence of dropping out of the girl child after marriage. In Bangladesh, 72 percent of the girls drop out from the secondary education only because of the child marriage⁸ (BNWLA 2014). Due to early marriage, a child becomes isolated from the society, forced to leave the education system and thereby deprived of her right to education

⁸ Save the Children Bangladesh, Situation Analysis in Bangladesh, 2010.

(CRC/GC/2003/4 2003, p. 6).

3. Right to Freedom of Choice, Expression, and Movement

As has been discussed earlier that full and free consent to a marriage is an essential element of a marriage and absence of consent make the marriage illegal. However, the culture and tradition of the country show that the consent of the female in a marriage is given by her parents. Most of the cases the child marriage is forced as they get married without their consent which violates the freedom of expression of the girl. Moreover, force marriage violates the freedom of choice in marriage by denying individual dignity and willingness (Enright 2009). Furthermore, the new brides are expected to work in the house of husband whole day where they assume the role of wife, domestic worker, and, eventually, the mother which violates their right to freedom of movement (Nour 2009, p. 53).

4. Right to the Protection from all Forms of Abuse

There is a strong relationship between early marriage and sexual abuse of a child. And, indeed, a girl being forced into a marriage can be forced into sex within that marriage which causes marital rape. Again, the custom of dowry is still prevalent in the society of Bangladesh that often drives a new bride subject to torture if the dowry is not sufficient. The General Comment No.13 of the CRC includes early marriage as a harmful practice against a child (CRC/C/

GC/13 2011, p. 11). The curse of child marriage turns into different forms of torture to a girl which affects her whole life.

5. Right to Participate

The persistent culture of patriarchal society of the country undermines the voice of a child where tradition continues to subordinate a girl and women. Consequently, child marriage limits the power and control of decision-making of a girl in relation to their own life. Moreover, dropping out from the education and isolation from the known family environment seriously hamper their social and educational development. As a result, child marriage marginalized the girls from all social activities which violate their right to participation (CEDAW/C/GC/31-CRC/C/GC/18 2014, p. 7). Due to forced marriage, a young girl being ostracised from the society deprived of her rights to participate in every aspect of her life.

In conclusion, the above-mentioned evidence shows that forced marriage has been identified as a violation of human rights under international law. And, indeed, the scope of being forced into a child marriage is high compared to other marriage.

Bangladesh's Approach to Child Forced Marriage

As a signatory to many international conventions, Bangladesh is under obligation to protect child rights in national level. The international agreements can only apply at the

national level when there is a national legislation incorporating those international laws. The tripartite obligation to respect, protect and fulfill is the benchmark for measuring state's commitment towards child rights. They are as follows:

- a. The obligation to respect the right of a child: The state has the obligation to respect the rights of the child which requires not to make any laws that encourage child marriage.
- b. The obligation to protect the right of a child: The state has an obligation to protect girls from early marriage and address the issue of being forced into a child marriage with an effective legal mechanism. It also includes state obligation to prevent other key factors which cause child marriages.
- c. The obligation to fulfill the right of a child: The obligation to fulfill requires state mechanisms to develop and facilitate child rights by amending existing paradoxical laws, ensuring compulsory birth and marriage registration, increasing educational opportunities and strengthening social securities of the child.

Legal Protection Against Forced Marriage

Now the question is whether Bangladesh fulfilled its obligation to protect the girl child against child forced marriage. The context of Bangladesh relevant to the protection of child marriage is complex. The provisions of personal laws regarding marriage are discriminatory to women and it validates the child marriage. As a result, the scope of being forced into a child

marriage is high in the country. Conversely, the statutory laws provide nominal punishment for child marriage while it is valid in personal laws. This contradictory relation between personal laws and statutory laws raises more challenges to combat against child forced marriage in the country.

In Bangladesh, there is a list of personal laws related to marriage⁹ without any comprehensive law governing the rights of the child against child forced marriage. Moreover, there is an ambiguity regarding the age of the child as diverse law offers different age of a child. The Christian Marriage Act of 1876 provides the age of majority for marriage is 16 years for male and 14 years for female, In case of Hindu marriage minor marriage is taken as a valid marriage. Minors can be married off by their lawful guardian. Under Muslim law, the age of majority for marriage is deemed to be puberty, presumed at the age of fifteen in the absence of evidence to the contrary. According to the Majority Act, 18 years is the age of majority in general. However, the Child Marriage Restraint Act of 2017 says a girl is a child if she is under 18 with a special provision of marriage without giving any specific age and circumstances where a girl can be married before 18.

Furthermore, the issues around child marriage arise in the court for a rape case, abduction or kidnapping case, or dowry cases. Interestingly, for each of this incidence, there are separate

9 The Muslim Family Laws Ordinance (MFLO) 1961, The Muslim Marriages and Divorces Registration Act 1974, The Guardians and Wards Act 1890, The Majority Act, 1875, The Special Marriage Act 1872, The Christian Marriage Act 1876.

laws where different ages for the child are given. For instance, Penal Code considers the age of under thirteen for a “child” and Women and Children Repression Prevention Act (Nari O Shishu Nirjatan Daman Ain 2000) says any person under the age of 16 is a child. Therefore, it becomes a contradictory situation as to which law is applicable or what should be considered to define a “child” when cases filed relating to rape or other criminal offenses relating to child marriage. The Constitution of Bangladesh ensures the right to equality before the law, the right to life and liberty, the right to freedom of movement, right to get protection from cruel, inhuman and degrading treatment or punishment of an individual which is hardly used for the protection of the child against child forced marriage.

Furthermore, the recent law on Child Marriage Restraint Act of 2017 creates the child protection more vulnerable by including a provision for the marriage of a child under the age of 18 with the consent of parents and court in special circumstances. Section 19 of the said Act set special circumstances without giving any explanation when a child marriage will not consider as an offense if it is conducted for the best interest of the child, with the direction of the court and permission of the parents or guardians. Thus, the law provided a lacuna into its child rights protection framework.

Therefore, the law restraining child marriage makes child marriage as a punishable offense concurrently validating child marriage in special circumstances. Interestingly, the old law of CMRA of 1929 has no such provision for special circumstances

of the early marriage. Moreover, the special circumstance in the new law has not specified any age limit under which a minor can be married by the parents. As a result, the minimum age for marriage is uncertain under a special provision in the law which shows a gross drawback in preventing child marriage. The Children Act of 2013¹⁰ is the only law which addresses the child rights without any protection as to child marriage. Thus, in terms of child forced marriage, the state fails to perform its obligation to respect, protect and fulfill the rights of the child.

Conclusion

While the current legal policy of the country has not given any avenue for the protection of the child rights against forced marriage, this article shows a clear drawback in the existing marriage laws that provide different loopholes and contributes to increasing child forced marriage. There is a dearth of legislation around forced marriage and no recognition of this heinous violation of human rights. Child forced marriage is one of the emerging human rights issue mostly faced by the South Asian countries. The recognition of different forms of domestic violence against women is a recent phenomenon in many countries, while most of them are focused on the child marriage as a social and cultural problem. However, less research has been done to identify this issue from a human rights perspective. Consequently, the sexual abuse of a girl within a forced marriage remains less well recognized. Still today, no laws and policies in the country have addressed the

¹⁰ Act No.24 of 2013 is the successor of the Child Act 1974.

issue specifically. Moreover, the contradictory and inconsistent legal provisions make the situation worse. However, and perhaps inevitably, forced marriage has not emerged as a major domestic policy issue in Bangladesh. These outdated and ambiguous laws are the main barriers to the implementation of laws protecting the child from a forced marriage. Accordingly, specific laws addressing child forced marriage, removing reservation on the international treaties protecting the child against early marriage, is clearly needed to combat child forced marriage. This article clearly points out the loopholes in the existing laws and clarifies how these drawbacks increase child forced marriage. The policymakers should take in to account those drawbacks immediately in order to protect girl child from a forced marriage.

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Self Recognition and Self Redistribution: Lessons from Alur and Pab, 1965 Communities In Batang

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Abstract

This article examines two 1965 communities in Batang, Central Java; Aktivitas Layanan Untuk Rakyat (ALUR) and Paguyuban Anak Bangsa (PAB). This paper describes the efforts of the two to cope with the deadlock over national reconciliation agenda. Without truths and justice to be enforced for more than half of century, these two local communities in Batang initiates an act to preserve the victims/survivors narratives while also conducting efforts to elevating their economic conditions, regardless of their limited option and resources. In the context of political theorist such as Honneth and Fraser, the most striking problem on the deprivation of rights is the problem of recognition and redistribution. This paper argues that what ALUR and PAB conducted so far, notwithstanding the limitations they have, resembling the practices of self-recognition and self-redistribution which at the same time signifying a politics of resistance against the state's mantra of anti-communism propaganda.

Keywords: 1965, Communism, Reconciliation, Batang, Syarikat, ALUR, PAB.

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Introduction

The Indonesia 1965 events are considered to be one of the worst gross mass murder in the history of twentieth-century (Scott,1985; 240). The exact numbers of the victims are unknown, yet allegedly, half a million were killed and other hundreds of thousands were detained in several concentration camps such as Buru Island, Moncongloe, etc (Cribb, 2004; 23-4, Komnas HAM, 2012). The event then followed by the rise of the military-backed Soeharto's Orde Baru, a regime that was built through the deliberate depiction of communist as the state main enemy in official history in order to legitimate their extermination. By that means, the mantra of anti-communism propaganda became the state's national identity and ideology that defended through the repressive military regime. The violence was rampant and complex, encompassing wide area and resulted in various effects for the victims (Hearman, 2017; 513). The victims were stigmatized and excluded in various ways within the society. Besides, their families were prohibited to apply for some professions, with the accusation of having "communist bloodline".

The Indonesia government post-Soeharto era has adopted, ratified, and legislated human rights laws, yet, the legacies of 1965 still be a sensitive issue and remains unsolved. The hesitant and vague transitional justice in the post-Soeharto era does not provide a formal and significant change for 1965. As a result, communism is treated as immortalized in the Museum *Lubang Buaya* as the ghost which haunts and threatens the existence of

the state from their potency of “*bahaya laten*” (latent danger). On the other hand, victims/survivors of 1965 events experiencing a long and bitter suffering from structural marginalization over their identities and economic circumstances. These include, but not limited to, stigma, trauma, social exclusion, and economic injustice that perpetuated by *Orde Baru*’s legacy of *communisophobia*. In short, in the context of Indonesian transitional justice post-Soeharto regime, no reparation ever granted over victims’ disrespectful past. Instead what remains are the discriminatory practices that degrading the victims into second-class citizens. The lack of redress demonstrates the fifty years of injustice that causing harms even more to the victim on their long waiting for reparation and justice.

In contrast to the state’s hesitancy, there are efforts to breaking up the silence by initiating reconciliation in several locations. This paper explores the two 1965 communities in Batang; ALUR and PAB. *Aktivitas Layanan Untuk Rakyat* (ALUR) is part of the network of *Masyarakat Santri untuk Advokasi Rakyat* (Syarikat), an affiliated *Nahdlatul Ulama* (NU) organization that was formed in response to the 1965 issues. The creation of Syarikat itself was inspired from the NU’s key figure of Abdurrahman Wahid’s gesture whose at that time was also the Indonesia president (1999-2001), within the context of a newborn *Reformasi* period when human rights discourse gains its momentum. The formation of ALUR then followed by *Paguyuban Anak Bangsa* (PAB), a victims’ organization consists mostly of the victims/survivors who live in Batang.

This paper is derived from the interviews of the remained active members of ALUR and PAB. The interviews consist of five key figures of ALUR, and three remained active members of PAB. During the research, I also involved in their several activities such as monthly and yearly meetings. The purpose of this research is to show efforts from below as a reaction from the failure of the state's approach, on how such small communities tackling the big and sensitive issues of 1965 in their particular location. Batang is chosen to be examined because such relatively small region has consistently active today compared to the other locations, regardless of the limited resources they have. Another interesting reason is their struggle to create a self-sufficient community through economical experiments that addressed towards the survivors and their families. This paper consists of three different parts; the first part describes theoretical standpoints on recognition and redistribution as mainly developed by Honneth and Fraser. The second part examines the legal politics in Indonesia post-Soeharto era, on the deadlock over legal means to solve the case of 1965. In contrast with the second part, the last part explores the established efforts from experiences in Batang, to cope with the state's inability by initiating their own reconciliation which consists of recognition over the victims' past and identities, and experiments to create a self-sufficient community while breaking the chain of economic injustice as suffered by the victims.

Recognition and Redistribution After Violent Past

Recognition, for Honneth is an intersubjective relation that considers others as “himself as himself in every other individual” (Honneth, 1996; 24) with the main purpose to achieve one’s self-realization (Honneth, 1996; 176-9). This reciprocal relation is needed upon the consciousness of one’s vulnerability on the experience of what Honneth called as “disrespect”, injuries that caused by the imbalance relation from acts of misrecognition (Honneth, 1996; 129). Fraser, on the other hand, argues that subordination is caused more by the institutionalized structures (Fraser, 2000; 114-7). To cope with that problem, what is needed is deinstitutionalizing the value to make able for the harmed to ensure their full participation (Fraser, 2000, 2001, 2003). The participation itself can only be achieved by the redistribution of wealth toward the harmed not only to be as a form of compensation but also to end the structure of subordination (Fraser, 2003; 13). While the distinction between the two is located in the reign of which one comes first and followed by another, the importance of the two is unquestioned (Fraser, 2001; 38., 2003; 23, 63-6, 93., Honneth, 2003; 112). Recognition, as well as redistribution, are two factors that needed to cope with the subordination. In the context of transitional justice or society in the post-violence era, it requires the elements of recognition and redistribution, both in collective and individual levels (Verdeja, 2006; 454). Those two are needed to repair the dignity and identity that should be coupled with the distribution of material basis to ensure the victim’s participation in social, political, and economic life

(Verdeja, 2006; 456).

The attitude of Post-Soeharto Indonesia toward 1965 events nonetheless provides the non-existence of both. First, the victims are squeezed into a position where they do not have legal means to pursue their justice. Second, the strong narration of Orde Baru that depicting the ex-communists as state's main enemy in which the victims are, mostly and to various extent, excluded from the society. In short, they are suffered from economic maldistribution and socially misrecognized. In a broader sense, the non-existent of the two does not only make the victims' life miserable, but also the refusal gesture of the government to admit the guilt and the rejection to include the violent in the past as part of national identity where people could learn from. The creation of ALUR and PAB, as well as Syarikat, were based on that perspective, to learn from the past and repair the harms. Regardless of the outcome, the efforts as conducted by ALUR and PAB signify the efforts to provide the needs of mutual relation and the change of economic structure. In this sense, they create their self-recognition to welcome the victims as brothers and sisters while also doing self-redistribution in their efforts to creates an economic structure to make a self-sustained community. The "self" here is introduced to distinguish the communities themselves from the non-existent of recognition and redistribution either from the state or the perception toward communism within society in general.

1965 in Indonesia Post-Soeharto Era

While the discourse of 1965 was almost totally repressed under Orde Baru, Indonesia Post-Soeharto era provided two mixed pictures of the state's attitudes toward the events. The first one was the promulgation of human rights laws, especially in the early period of transition to the *Reformasi* era.² It was marked by the enactment of General People's Assembly No. XVII/1998 on Human Rights, then followed by Law 39/1999 on Human Rights and Law 26/2000 on Human Rights Court. But perhaps the most remarkable one was the second amendment of the 1945 Constitution through the inclusion of Indonesian Bill of Rights in the Article 28. Other important laws in this context are Law 13/2006 on the Institution of Protection for the Victim and Witness, Law 12/2005 on ICCPR Ratification, Law 5/1998 on CAT Ratification, and Government Regulation Law 3/2002 and 2/2002 on Victims' Reparation. Within this period, there were also several victories through legal means for the 1965 events, nonetheless that victories were partial and not

2 According to Fernida (2014;20-2), *Reformasi* era can be divided into three different stages. The first stage was the momentous change phase in 1998-2000 that was marked by the rise of human rights discourse, the second phase was the compromised mechanism between 2001-2006, marked by the failure of two ad hoc human rights trial on Timor Leste and Tanjung Priok, and one human right trial on Abepura. Within this period, the Law 27/2004 on Truth and Reconciliation Commission was nullified by *ultra petita* decision by Constitutional Court. The third phase was the stalled reform 2007-2011 marked by the refusal of the continuation from the Komnas HAM's Investigation by the general attorney. The shifting paces of human rights agenda in *Reformasi* era was caused by the influence from the previous regime that still has strong power on the political negotiation (Fernida, 2014;24).

resolving the case in a broad sense.³

On the other hand, such legal reform by the acknowledgment of human rights was not coupled by the policy from the state to repair the harmed victims and the admission on the violation of human rights. In general, under *Reformasi*, their rights are somehow and to some extent, “protected” while at the same time their pasts are denied. On the short period of Habibie’s presidency in 1999, he opened a discourse that previously considered as a social taboo and even released the remained 1965 political prisoners (Budiawan, 2000; 38). In this context of the early transitional period, numbers of victims spoke out by forming a victim organisation and publishing their life journey (Budiawan, 2000; 39). The most notable moment for the 1965 event was in the era of Abdurrahman Wahid’s presidency in 1999-2001.

As president and at the same time a key figure of NU, Indonesia’s biggest Moslem organisation that had clashed with the communists in the 60s, Wahid shows his support for reconciliation agenda to solve the past human rights violation as part of the Indonesia transitional justice. He proposed four strategies for the national reconciliation: first, to grant permittance for the political exile to return and regain their citizenship, second, to dissolved Bakorstanas (Badan Koordinasi Strategis Nasional) and the practices of special investigation (*litsus*), third, to address a formal apology toward the victims

3 Indonesia Constitutional Court Decision No. 011-017/PUU-I/2003, Jakarta Administrative Court Decision No.60/G.TUN/2003/PTUN-JKT, Indonesian Supreme Court Decision No. 33P/HUM/2011.

of 1965-66 and reopened the history which he already did the informal one, and last, to revoke the controversial General People's Assembly Decree No. XXV/MPRS/1966 (Budiawan, 2004; 45-6).

Within this period, General People's Assembly No.V/MPR/2000 on National Unity was promulgated, which included reconciliation as part of state agenda. That proposals, nonetheless, ignited public outrages especially from Moslem organisations, including the internal of NU under the banner of "permitting the rebirth of communism and PKI" (Budiawan, 2004; 4). Although he kept promoting the need of the proposal under the human rights banner, perhaps only the first one that has been manifested into policy while the other two were failed, either by the lack of political support or due to his impeachment on the corruption allegation, which has never been proven upon the court (Zoelfa, 2014; 148-9). Regardless of the failed attempts, Wahid has left an inspiring legacy for the young members of NU, that about to be explored in the next chapter.

Meanwhile, in Megawati's presidency of 2001-2004, she took a contrary step in regard to her background as the daughter of first President Soekarno. She had surprisingly ignored Bagir Manan's Supreme Court recommendation on her prerogative rights as mandated in article 14 (1) Constitution 1945 to rehabilitate the victims of 1965, not even when it was supported by Komnas HAM and the Parliament.⁴ This negligence

⁴ Supreme Court Letter No. KMA/403/2003, Komnas HAM Letter 147/TUA/VII/2003 and DPR-RI Letter KS.02.3947/DPR-RI/2003.

was disappointing since most of her father's loyalists were also part of the victims. In Yudhoyono's two periods of presidency 2004-2014, the result of a pro-Justitia investigation by Komnas HAM was rejected by general attorney and as a result, an *ad hoc* human rights court cannot be held, causing a legal deadlock since the nullification of Law 27/2004 on Truth and Reconciliation Commission by the Constitutional Court.⁵ Same with Megawati, he also did not fulfil his promises on public apology and rehabilitation for the victims of Buru Island as he stated during his early presidency period (Birks, 2006; 29-30).

Joko Widodo, a media darling, won the presidency in the 2014 election against the ex-general Prabowo Subianto whose allegedly has a black report on his crime for the military operation in East Timor. Human rights were inserted as part of *Nawacita*, Widodo's program for a presidential campaign. The first-ever national symposium on 1965 events was held. Again, it was then followed by public outrage and another symposium to counter the first one, which talked mainly about the danger of communism and the urgency to block its rebirth (Firdaus, 2016, Artharini, 2016). Widodo himself seems to be ambivalent since after the symposium. He made a statement he would not stating any apology toward the PKI (Presiden RI, 2016, Firdaus, 2015). Furthermore, he also attended the ritualistic ceremony of 1st October commemoration in Lubang Buaya Museum (Akuntono, 2015, Rakhmatulloh, 2016, Amirullah, 2017). His inner circles, like Ryamizard Ryacudu even stated that communism "deserves

5 Constitutional Court Decision No 006/PUU-IV/2006.

to die” (Tribunal 65, 2016).

Legally speaking, as regulated by Law 26/2000, the past gross violation of human rights can be solved into two different ways. First, through *ad hoc* human right court, that should be initiated by a *pro-Justitia* investigation by Komnas HAM. Komnas HAM had already started the investigation and concluded that there is enough evidence for the case to be continued, but it was rejected by the general attorney without a clear reason. Second, through the Truth and Reconciliation Commission that has legal-mandate power from an act (*undang-undang*). This means that the law should be passed by legislative, closing the possibility for the president–similar with Aylwin and Lagos in Chile- to initiates the reconciliation. So far, there is no single significant progress in both.⁶ On the other hand, the effort through torts lawsuit under the article 1365 of Indonesia civil code as performed by Nona Nani Nurani on her seven years of detention was refused under “absolute competency” principle.⁷

6 As comparison, the Declaration for Victims of Crime and Abuse of Power (GA 40/34-1985), and Basic Principles and Guidelines on the Right to Remedy and Reparation (GA 60/174-2005) are defining the victims as the harmed parties that whatever the criminal status over the case is/are, should be redeemed in the first place. In Indonesia legal system, victims of gross violation of human rights is dependent with the court decision as criminal matter, which without being acknowledged in the court decision, no reparation can granted. Yet it should be noted here that LPSK (Victim and Witness Protection Institution) since 2013 uses the two instruments as their consideration to broadening the victim’s definition to grants health insurance for the 1965 victims.

7 Also known as *onrechtmatigedaad* (*Perbuatan Melawan Hukum*), the decision is registered in Central Jakarta Civil Court Decision No.439/Pdt.G/2011/PN.JKT.PST.

Among the society, “communism” and “PKI” are still widely consumed in a negative connotation and the long-lasting fear against it still be the main justification to disband or prohibit events that considered, and accused to be affiliated or leaned towards them. It also commonly used within the period of elections, to launched a black campaign by accusing the opposed groups as communist or at least having a communist bloodline (Allard, Da Costa, 2017). In short, whatever the problems in Indonesia appear, the communists is the one to blame. Moreover, Legal structure plays some contribution to this scapegoating acts. The People General Assembly’s Law XXV/MPRS/1966 remains active without any legal mechanism available to amend it.⁸ It is followed by the existence of Law 27/1999 on Criminal Code amendment on the crime against the security of the state which specifically mentioned the dissemination of communism/marxism-lenninism as a criminal matter. In 2017, Joko Widodo declared the Government Regulation in-lieu of law (Perppu)⁹ No. 2/2017 on Civil Society Organisation that also prohibits the communism/marxism-lenninism as opposed

8 After reformasi period, General People Assembly no longer has the authority to released a decree. The remained active decrees are compiled under General People Assembly decree I/MPR/2003. The position of the decree itself, according to the Law 12/2011 on Indonesian legal system is the second highest right after the 1945 Constitution. In this regard, Constitutional Court doesnot have authority to checked the decree since it’s only has authority to reviewing the law (undang-undang/third highest in Indonesia legal system) to 1945 Constitution.

9 *Perppu* is an abbreviation from *Peraturan Pemerintah Pengganti Undang-Undang*, enacted by the government’s rights to cope with emergency situation without the need to be approved by the parliament.

with Pancasila.¹⁰ Although these laws are ambivalent and potentially be used against the listed rights, it is normatively speaking legitimized by the Art. 29 J(2) of 1945 Constitution. It seems strange and ahistorical that communism/marxism-leninism need to be specifically mentioned in the criminal political *delicts* against the Pancasila, indicating the highlight on the perception of the law-makers toward communism as the main threat against the state, not to mention how problematic to justify which interpretation of Pancasila is the correct one (Kurniawan, 2017;7).

The inability of the state to solve the 1965 and the prevailing paradigm's of communism as a threat leads into at least two major backwards: first, it leaves the victims without personal identity and powerless in social relation. Most of them are now still live under discrimination and suffered harm from economic injustice. Second, without the acknowledgment of the event, it means that there is no guarantee in the future that the same act of violence will never happen again. In addition, the denial of the event also creates cultural blackout by refusing the tragedy to be part of national identity and collective memories.

Besides the non-existent of legal normative approach that coupled with constant terrors either from the state's apparatuses or fellow citizens, there are still efforts launched from below that in some extent been fruitfully contesting the dogma of anti-communism propaganda. While the state is

10 Elucidation part Art. 1 paragraph 2 Perppu 2/1017 Jo art. 59 verse (4)c Law 17/2013 on Civil Mass Organisation

reluctant to recognizing the victim's past and redistributing the wealth to compensate their harmed life, some relatively small communities conducting those both regardless of their limited resources. Nevertheless, PAB and ALUR in Batang provide a mirror that reflecting a contrast image against the denial of the state towards the event.

Contesting State's Inability, Experience from Batang

Context in Batang

Prior to 1965, Central Java was known as one of the strongest bases of PKI, Indonesian Communists Party. PKI was finished fourth in national level and second in central Java at the 1955 national election, either at parliamentary or constituent assembly (*Dewan Konstituante*) election (Feith, 1971; 66). In Pekalongan, where Batang was once administered under since 1936 to 1966, PKI gained third position (Feith, 1971; 85). Then, in 1957 Regional Parliament election, PKI won the first place in Central Java, outnumbering PNI (Indonesia Nationalist Party) compared to the 1955 election (Roosa, 2008; 296). Though Pekalongan was not their main base, PKI steadily grew stronger and gain more sympathy especially after the enactment of Agrarian Law 5/1960, due to the promising programs they campaigned on land distribution and the economic gaps which occur in that period (Ria, 2012; 39, 41).

The situation, however, was changed after the 1965 events. RPKAD, an Army special force led by Sarwo Edhie marched carrying the mission of eliminating PKI until its roots

(*membersihkan hingga ke akar*). In Batang, the killings just happened marked by the arrival of RPKAD, which followed by the amok from the people towards the PKI (Djatismiko, 2016; 78-9).¹¹ According to Syaiful, NU and other civil organisations were allegedly involved in the violence that was not only conducted for the communists but also the leftist-nationalist. The accused communists or its partisan were taken to Pekalongan, either to be detained or executed. Though further investigation is necessary, several numbers of killing fields were identified in Batang,¹² including the well-known Alas Roban (Tim Tempo, 2015). The exact numbers of victims are unknown, yet without mentioning the criteria (killed, detained, etc), Burhan and Herry stated that from their research in early 2000, they found at least 900 victims in Batang. Nowadays, though the treatment has changed, some of the victims within PAB are still under the surveillance either by the army or the police. They are still visited and questioned whenever “communism” reappeared and gained coverage in national news media.

From Syarikat to ALUR and PAB in Batang

As part of the Syarikat’s network, the creation of ALUR which then followed by PAB cannot be separated from the context of the human rights gesture to the transitional justice on the period of Abdurrahman Wahid’s presidency. Despite the resistance from

11 Central Java in fact, gain special attention on the counter movement of 1965, it was the place where Aidit fled and a second most important place after Jakarta on the “G30S” movement,(Dinas Sejarah TNI Angkatan Darat, 2004;266).

12 Interview with Burhan, Arief, and Herry.

some parts of NU, Wahid's plays an important role in changing the image of NU to be more liberal and progressive (Budiawan, 2004;121). That time, they felt that it was necessary to prepare the reconciliation based on the context of particularity. Wahid's bold move on the human rights agenda and his insistence to solve the 1965 issues bring optimism to the reconciliation project. Consists of the young progressive wing of NU, Syarikat was then formed to catch the momentum.

Syarikat's network encompasses twenty-six different regions throughout Java (McGreggor, 2009a;207) with their main aim to "breaking down prejudices at the grass root level and building a new relationship" (Sulistiyanto & Setyadi, 2009; 198). As well as Wahid, the works of Syarikat were also resisted by some parts of NU, especially from the old *kyais* and *banser* who were experiencing the "kill or be killed" situation in the past (Fealy & McGregor, 2010;49). They were afraid that the work of Syarikat will change their position upside down, from hero to villain (Budiawan, 2004;124),¹³ some were even accused that Syarikat is betraying the NU and their parents by defending the PKI (McGreggor, 2009a; 217, 2009b; 226). Nonetheless, for Syarikat, there is no other way for NU and Indonesia to welcome the new era by reopening history and confronting

13 From the meetings between NU and the ex-communists, they found out that the position of NU was not as simple between two categories of hero/villain. Yusuf Hasyim was once mentioned that in central and east java, the army were supplying list of names to both groups to makes them clashed (Fealy & McGregor, 2010;54). The same pattern also occurs in Blitar where NU was taken initiatives to make the first move after given the listed name from the army, which then later on found out that the communists were also given the list from the army (Budiawan, 2004;126-8).

the past (McGregor, 2009b;223). Imam Aziz, the key figure of Syarikat stated that there are four task that needs to be done; to unveil the past (*tabayyun*), to reform the law and policies as a guarantee of non-recurrence (*taubat*), rehabilitates the victims' rights and compensate their harms (*ittiba' bi al ma'ruf*), and lastly, forgiveness, which contains higher values rather than avenging or punishing the enemy (Aziz, 2003;7).

The main works of Syarikat consist of research and advocacy. They are conducting an investigation, collecting stories from the victims, and published several biographies, movie documentaries, and a magazine named *RUAS* that distributed to their networks and *pesantren* (McGregor, 2009a;213, Budiawan, 2004;121, Sulistiyanto & Setyadi, 2009;203-7). Syarikat was also initiating forums as meeting places between NU and the ex-communists/ex-political prisoners (Asrofi, 2016, Budiawan, 2004;125-9, Sulistiyanto & Setyadi, 2009;198-203, Wajidi, 2003; 55-69, McGregor, 2009a;209), where they shared and exchanged the memories of their pasts. In addition, they also provide some economic assistance for the victims/survivors.

ALUR was formed in Batang as part of Syarikat's network. It was started when its future members started questioning on what kind of relationship they want to build to the victims from their encounters in Syarikat's research. Haunted with such question, then it was decided that they want to make a further and more intimate relations with the victims, based from that reasons, ALUR was then formed. Their main challenged was

to “finding the lost world”,¹⁴ the world of the victims that have been discriminated, stigmatized, traumatized, and to some extent, disconnected from the larger part of society.¹⁵

As an early step, they began to approach both NU leaders in Batang and key figures of the victims. They were benefited since most of them are part of NU, and some are having “blue blood” as a descendant of NU’s figures in Batang. For the victims, they used their previous research with Syarikat as an entry point to introduce themselves to the victims. Both were hinted to *Mbah Ngadam* as a key figure in Batang, a former leader of *Sarbupri* (*Serikat Buruh Perkebunan Indonesia*), a worker plantation organisation that affiliated with PKI. Their arrival was surprisingly welcomed by *Mbah Ngadam*. Since then, they asked *Mbah Ngadam* to recommend them for the

14 Interview with Syaiful

15 According to Syaiful, the victims were isolated on their “social prison”, where the victims were excluded even from their closest environment. There was a case when the ex-political prisoners, throughout his life, did not get any invitation from his neighbors each time they have an annual meeting such as *pengajian* or *arisan*. There was also a case when the ex-political prisoner passed away, his neighbor did not want to pray for him. For Moslem, when a person passed away there should be a ritual of praying for the person, yet, since the one who died was “communists”, the local refuse to conduct the ritual. Another case he was mentioned was the story of the ex-political prisoner who is working as meat seller in the local market. There was a rumor that when she slicing the meats, she was imagining slicing the generals’ fleshs. Those kind of cases are categorized as “social prison”, limiting the movement of the ex-political prisoners by excluding them from their social root. Sometimes, the exclusion occurs in the family level of the victims. There was a case of mother who was reluctant to talk about her past as an ex-political prisoner to her children. Later on, after being convinced by ALUR, she was able to pass her story for her children (Djatmiko, 2016;70), yet, such case present on how wide and varied the effect of the exclusion.

next person to meet. Then, when they met another person, they will mention *Mbah* Ngadam as their referral. They named this method as “snowball”, to gain trust from the victims by using a recommendation from victims’ key figures. The NU in Batang was also supporting their ideas, Kamal Yusup, vice leader of NU branch in Batang even stating that what ALUR has been doing is actually in accordance with the spirit of NU, to repair conflict in the past, to heal the wound, and to reintegrates the groups that had conflict in the past.¹⁶

After sometime, people from ALUR proposed to form another organisation that consists mainly of the victims in Batang. The idea was delivered in *Pesantren* Aliyah Subhanah, owned by Burhan’s family whose also respected figures of NU in Batang, member of ALUR and was attended by up to sixty survivors (Djatkiko, 2016;63-4). From that meeting, in December 2003, PAB was formed based from three pillars; a representative from LPR-KROB (Lembaga Perjuangan Rehabilitasi Orde Baru – Victims’ of Orde Baru Organisation), YPKP 65 (Yayasan Penelitian Korban Pembunuhan 65 – Research Institution for the 1965 Killings), and ALUR. The membership is flexible since they are not required to leave their previous organisations. ALUR and PAB are even supportive when the victims, either from LPR-KROB or YPKP 65, got an invitation outside of the city and helps their accommodation expenses.¹⁷ Actually, they were about to form a different organisation for women, yet that

16 Kamal Yusup in MetroTV documentary “*Di Batas Dendam*” aired 15 March 2009.

17 Interview of *Mbah* C

intention was canceled due to the geographical reason since most of the female victims are living in rural Batang.

Members of ALUR are also involved in other sectors of civil activism. They had an NGO named Derap (*Demokrasi Rakyat untuk Perubahan* – People’s Democracy for Change) , and currently having Laskar (Lingkar Studi Sosial dan Advokasi Rakyat – Circle of Social Study and People’s Advocacy), which contributed in the creation of blueprint of bureaucratic economical transparency funded by Transparency International collaborated with the Batang’s government within Yoyok’s period. ALUR’s members also the founder and the backbone of Lapeksdam NU (*Lembaga Kajian dan Pengembangan Sumber Daya Manusia – Research and Human Resource Department*). Some were involved in political field i.e. Hakim, former leader of ALUR –which then replaced by Herry-, whose active in Moslem party of PKB (Partai Kebangkitan Bangsa), and Burhan who was run for the city major of Batang in 2017 election. Herry was once jokingly said that social activism in Batang could be portrayed in the slogan of 4L: “*loe lagi loe lagi*”, Indonesian slang for “you again, same person”. Based on this point plus their blue blood of NU, they have successfully built a social capital through their social work outside 1965 which either directly or indirectly benefiting their 1965 works. Some members of ALUR have their main job outside, like Herry and Hakim who are teachers, Syaiful who work on his own business, and Burhan with his pesantren and other NGOs. In several occasions, they gathered the money

from their main job to subsidize the need of PAB.¹⁸

Recognizing the Past and Redistributing the Wealth in ALUR-PAB Batang

After ALUR and PAB were established, then they set their main agenda of monthly and yearly annual meetings. At these meetings, they are kind of obliged to donate 5000 IDR for their saving, which later on became their capital for their entrepreneurship programs. Inside, they are discussing various issues such as the updates of 1965, political analysis, their daily lives, and sometimes, performing their artwork. Previously, the victims never had such spaces to talk about a political matter as collective. At most, they were only able to visit each other individually, and in general, they are reluctant to talk about political matters. Above all, the main significance of the meetings for the PAB's is that by attending the meetings, they feel happy to see each other and talk with those whose shared a similar status.¹⁹ Moreover, since in the meetings they can speak up their hope and demands, it elevates their consciousness not only as victims but also as citizens.

The PAB meetings encouraged them to regain their voices after being silenced for decades. They are supplied by

18 Sometimes, ALUR's members are funded the yearly meetings or other events such as discussion and other instead of deduce it from the saving of *koperasi*. For some members who having health issues, Syaiful was even supplying the herbal medicine to improve their health. However, of course it has some drawbacks. As admitted by Herry, it is hard for them to do documentation and maintained the archives at the same time they are organizing the events.

19 Interview with *Mbah B.*

information on the progress of 1965 issues mostly from Syaiful and Burhan, who often travel to bigger cities like Jakarta, Semarang, or Yogya, either on the behalf of ALUR or Syarikat. The meetings are benefiting the victims by somehow “trained” them to speak out. *Mbah S*, the leader of PAB, was once cannot deliver speeches in public. Then, supported by ALUR’s, slowly, he got used to speaking out. Another story was from *Mbah A*, who tells his life journey as a political prisoner at the ceremony of independence day in his village. *Mbah A* admits that without attending and training in the meetings, it was impossible for him to be on stage in front of many people. Not only being active among the victims, the meetings are also supporting them to be active in public life. They were joining peasant’s demonstration and attending the hearing process in Batang local parliament. Though the outcomes of either demonstration or hearing were not clear, yet, such involvement is already a big leap for the victims to be able to join public issues, something that perhaps cannot be imagined in their previous years.

In regards to memory preservation, ALUR has started on collecting the life stories of PAB members. They record those stories from their visitation to the victim’s house or sometimes within the annual meetings. Some data were collected from their previous research with Syarikat. Sadly, most of their documents were gone due to Hakim’s house being burned, and the rest are scattered elsewhere. Yet, some were already been published in RUAS, Syarikat’s magazine. Besides, ALUR has encouraged the PAB members to write down their life journey. It was, however, no easy task since Indonesia does not have a

strong culture of writing, and more importantly, some are still traumatic to reopen their Pandora box; retelling, is not always relieving. However, there are some exceptions, *Mbah Ngadam* wrote his own which then published in RUAS. *Mbah A*, not only write his life journey but also composed a series of songs that represent phases of his life. As stated by him:

“We got information supplied by Syaiful et al. We are ‘limited man’, we only have a limited network, limited knowledge, and reluctant (to speak out). After accompanied by ALUR, then we become more and more advanced and free to speak out, we feel confidence and firm, fear no longer [...] (that time,) It (was) hard to speak out because we were muted, never talked about anything since it was prohibited by the government. We were (set to) became orang goblok (stupid). Those scholars, professors, who were sent there (Buru Island) cannot talk about anything and even me who only possessed elementary school education. When (I was) released, (I was) still afraid to talk until I met with those youngsters from NU, they clean and free, not like us”

For PAB's, they are touched by the personal approach conducted by ALUR's. They appreciate how ALUR's listened to their stories, and how they are altogether struggling for their communities. The close relation between the ALUR and PAB were not only built from the organisational terms, but also on the more personal level. The ALUR's considering the PAB's as their own parents that should be taken care of, as well as PAB's acknowledged them as their own sons/daughters. According to

Mbah A, at first, the PAB's were suspected that such good and kind attitudes were due to the ALUR's having their relatives as the victims of 1965, yet it turned out that it was not true, and ever since, adding the admiration from the PAB's on the quality of NU's young generation.²⁰ For ALUR themselves, that act is based on the philosophy of "*nguwongke wong*", a Javanese term which means "to treat others as human being". The personal approach resembled how each PAB's has a social event like a wedding, circumcision, or others they will invite ALUR's, and *vice-versa*. Besides, since PAB's are mostly aged, ALUR's annually visiting the PAB's houses to conduct *silaturahmi*. The visitations are usually prioritized to those whose sick or too old go to the annual meetings. This kinds of relations, instead of a programmatic-organisational agenda, is perhaps the foundation of the trust from PAB and ALUR, beyond the status of the helper and the helped.

Since PAB's are aged and have limited accesses, there are some degrees of dependency between PAB to ALUR's. Commonly, they relied on ALUR to supply the information, and to manage the events. According to *Mbah C*, PAB's are fully trusting the ALUR's, because it is hard for them to do it on their own due to their physical limitation. However, it was not only the victims who gained benefit from their activities. For ALUR's, befriended with PAB's contains priceless live lesson to learn to live in peace and harmony, as stated by Hakim:

"I feel thankful, I was part of it. Now it becomes my

²⁰ Interview with *Mbah A*.

*notes, and my children's, I remind them to be more tolerant, since it was impossible to understand if we never hanging out with them (the victims). Those whose powerless but remained seen as a threat. If you see their condition, they already like that (old and sick), sometimes it is even difficult for them to feed their own. But they still perceived that they will rebel against the country. I feel thankful since I got life lessons from it."*²¹

For PAB's, ALUR's young energy and knowledge reopened their minds and awakened their spirit. On the other side, ALUR's perceived that the existence of PAB's broadened their views on good living. This mutual-reciprocal relation is a life changer, either for PAB or ALUR.

In 2005, based on the donation collected from their annual meeting combined by the collaboration program with a human rights NGO in Jakarta, ELSAM, ALUR has proposed to form a *koperasi* as an economic unit. At first, there was a debate on the need to create such *koperasi*. For victims with the strong ideological background, the economic unit will distort their main agenda and weakened the communities (Djatkiko, 2016;65). However, the main intention of *koperasi* is more social rather than economic, to creates a bond, a reason to meet, while economic is the side effect of it.²² After some persuasions, then the *Koperasi Setia Kawan* is established.

The formula is simple, *koperasi Setia Kawan* provides

21 Interview with Hakim

22 Interview with Syaiful

soft loans for those who need it. So if a debtor borrows the money, his/her obligation was to return the money in eleven annual payment, ten for the debt and one for “administration” fee.²³ On their early time, the max amount of money could be borrowed was 250.000 IDR, then it was increased to 750.000 IDR (Djatkiko, 2016;65). The increased amount of PAB’s saving is derived from the circulation of money on their organisation. Regularly, the PAB’s are using the money for their daily needs, i.e. to buy gifts, to pay for their grandchildren’s education, in short, to prove that they are able to give present for their relatives. Sometimes, ALUR’s and PAB’s were kind of “forced” to use the money, just to makes the money circulated. So some of them were borrowed the money just to return it without even using it. As their capital increased, they start to open a soft loan program for entrepreneurship. The maximum amount of money that can be borrowed is 5.000.000 IDR (Djatkiko, 2016;65). *Mbah C*, for example, benefited from the scheme to develop his cow farm business.

Since it was formed in the spirit of *kekeluargaan* (family values), *Koperasi Setia Kawan* is not an ordinary economic unit. Whenever the debtors stating that they are unable to pay, the debt then erased. The same thing also if the debtor is passed away, the amount of money he/she borrowed is erased. Regardless of the debt-erasure policy, ALUR’s and PAB’s are

23 During the interview, *Mbah A*, *B*, and *C* insisted that there should not be an interest on the payment since it is considered to be haram for moslem to make money from *riba*. In that sense, they call the 10% of the eleventh payment as administration fee rather than interest.

mostly disciplines and in fact, they considerably have low default (failed payment) number on their *koperasi*.

After *koperasi*, they began to think on how to solve the chain of poverty, since when they were released from detention, most of PAB's have no stable income. They rely solely on their wife or children to support them financially. Realizing that circumstances, they began to launch some experiments based on the *koperasi's* saving as their capital aided by some addition from other sources. The first one was rabbit farming. They held a one-day training for PAB, then distributes several pairs of young rabbit for the PAB's. However, it was failed due to the lack of experience to herd rabbits. The second attempt was the Merang Mushroom plantation that was also failed due to the Batang's climate that is not suitable for the mushroom to grow. The last one was the acupuncture clinic and training performed by three members of PAB's who have a practice certificate. The clinic named *Margo Waras*, and open for those who are interested to learn acupuncture (Djatkiko, 2016;66). Again, it was failed. According to *Mbah A*, learning acupuncture needs time and practice, yet, it was difficult for the participants at that time to follow the training regularly. With three designated plan failed, currently, they are now focused on the entrepreneurship loan from *koperasi* that addressed not only to the victims but also to their families. Another reason why those were failed beside their physical limitation, according to *Mbah C*, was due to the age of the PAB's which makes them difficult to learn something new.

With an increasing number of savings from *koperasi* which reached tens of millions rupiah, there was an intention from Syaiful and others to develop the *koperasi*. However, that plan seems to be postponed since what they are facing now is the shrinking number of PAB's. On the other hand, the next generation of PAB which consist of the victims' families is still reluctant to join and continue the communities. The reasons are varied, either they are trauma, or just simply busy with their work to feed their families.²⁴ Currently, without the next generation joining up, the PAB has only three or five active members remained.²⁵

The shrinking numbers of attendance at their meetings was due to the unavoidable progress of aging. Some members are already passed away, and those who are still alive are either too ill or too weak to attend the meetings. *Mbah S*, leader of PAB, is now currently having stroke attack. Even the healthiest among others are already difficult to be mobile. As a comparison, at least five years ago, the monthly meetings were usually attended by up to twenty members, in July 2017, there were only four people left, and in August, no one was showed up due to their illness.

24 According Syaiful, there is member of PAB who kept his life journey as secret, even to his own family. When he passed away, all the memories are gone altogether and the narration is disconnected to be inherited to the next generation. Another case was presented from the sons and daughter of *Mbah A*, whose fully occupied by their job which makes them difficult to join in the regular meetings like his father.

25 Interview with *Mbah B*

Conclusion

Lessons Learned and the Future of PAB in Batang

PAB and ALUR have outperformed the state on the reparation over the tragedy of the past. While the state is hesitant to move forward by looking at its past, both PAB and ALUR, regardless of the outcomes, already show that it is possible to build a reciprocal-equal relation toward the two groups that had conflict in the past. The deadlock over legal means in regards with national agenda does not stop the struggle to make their silenced voices to be heard. Furthermore, their “*rekonsiliasi swasta*” (private reconciliation) has successfully manifested the urgent need of recognition for the victims to re-finding themselves which then coupled by the efforts to redistributing the wealth that intended to assists the PAB’s in terms of economics.

Their meetings are capitalizing the victims’ ability to appear and speak out in public, something that cannot be imagined before. The presence of *koperasi* and several other attempts in economics shows the least ways to creates a structure to end their economic injustice while at the same time providing a common reason to gather among the PAB’s, and to makes them active within the community. However, what they are facing now is perhaps beyond their reach.

As previously mentioned, the initiative of their grass-roots reconciliation occurred within the context of fresh and new *Reformasi* era under Abdurrahman Wahid, when the ideas of

transitional justice, reconciliation, and human rights agenda gained their momentum. Now, after more than fifteen years, space and efforts that were intended to be the preparation for welcoming the upcoming national reconciliation agenda are working solely without accompanied by national agenda. The promising period of human rights has gone, forcing the PAB as emancipatory space morphed into more to be a survival contest, where it's members are racing with the inescapable progress of time. Even in Batang, as a city with the least threat toward the "ex-communists" due to the strong network of ALUR, cannot escape from the nature of aging.

What is at stake here is the continuation of the inherited memories. If in the early 2000s Budiawan put his bet on the breaking legacies of the Orde Baru (*mematahkan pewarisan ingatan*), in the nowadays context and perhaps in the long run, it is the memories of those who suffered that will be faded. On the other hand, the long waited for legal reforms and the victims' reparation seems not to happen in the near future. In return, what appears over and over is the ritualistic attitude of scapegoating the communists without revisiting other perspectives of history. Now, for PAB, whether or not it will last relies on the shoulders of their next generation, however, the next question will be, what is the meaning of recognition and redistribution when those who needed it the most are gone already? The answers are, perhaps, too bitter to be heard.

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The Hmong Community in France: A Situation of Political and Social Exclusion

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Abstract

This thesis sets up as context the French Republican model – lauding a universal and difference-blind conception of citizenship – in contradiction with the universal principle stated in the Human Rights Treaties. Considering that the Hmong has been living in France for more than 40 years and still not enjoying equal rights as the French citizens, this thesis questions the essence of the French republican model. One of the visible consequences is the perpetuation of the political exclusion of minority groups, including the Hmong community in France, preventing them from representing and defending their interests in the political sphere. This political exclusion leads them to be socially excluded and to express the particularity of their identity. To justify the inferior position of the Hmong in the French society, this study collected data through a set of qualitative methods of data analysis. In consequence, the study argues that the French republican model needs some revisions and thus calls for a new concept of citizenship that would bring more inclusion to the Hmong and equal rights. In conclusion, this study finds that the French republican system with its values tends to discriminate the minority groups in France, including the Hmong people.

Keywords: Citizenship, French republican model, Universalist principle, social and political exclusion, inclusion.

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Introduction

The Hmong as a community is being defined as a substantial group of people sharing significant cultural characteristics, a common belief system, language, traditions, rituals, and routines. The Hmong is originally an ethnic group from China who moved to Indochina following persecutions by a French colony at that time, to settle in the mountains of Laos. Several years later, the Hmong were forced to take part in the Indochina Wars alongside with the French (1946-1954), and the American (1950-1975) to respectively fight against the Japanese imperialism and the communism (Grall, 2006). Their motivation to engage in these Wars proved to be more cultural than political in the sense that both imperialism and communism represented a direct threat to the Hmong culture inherent to their identity (Grall, 2006).

At present, the Hmong community is struggling to gain recognition from their compatriots, more freedom and equality, and consequently a political representation that would allow them to see integration and enjoy their cultural right to a complete freedom, without fear of repercussions. While the Human Rights situation for the Hmong in Laos or Vietnam regarding the freedom of expression has proved to be violated with the United Nation Report (2010), this article will focus on the current Hmong situation in France.

Although no real census exists, as to the 90's period, Lemoine (2005) estimates a number of 16,500 Hmong living in France, including 1,500 in French Guyana. There is a fairly extensive literature pertaining to the Hmong community and

the Hmong Studies Journal remains the most authoritative and widely cited scholarly journal devoted to academic studies related to the Hmong diaspora and Hmong culture and history since 1996. However, the publication mainly discusses the Hmong experience in the US. Therefore, this article aims at contributing to a better understanding of the Hmong community in France and the struggle they face in terms of political and social exclusion.

With the Universal Declaration of Human Rights (UDHR, 1948) in the centre of the French Republic and emphasized with the French motto “liberty, equality, fraternity”, it seems that France has a universal duty of protection. However, while the Hmong has been living in France for more than 40 years now and called to settle permanently, the recognition of the Hmong as a different cultural entity has never been successfully achieved. The Hmong community still represents a politically and socially excluded group in France that remains largely ignored and its history and its culture misunderstood. Therefore, what are the contradictions in the French republican model that would allow understanding the inferior position of the Hmong within the French society? In view of the elements outlined above, the main objective of the article is to analyze and understand the French republican model.

French political philosopher and historian Ernest Renan, best theorized the French Republic as the “desire to live together” (in Latour, 2016) that strives to distinguish race and nation, arguing that, unlike races, nations were formed on the

basis of a voluntary association of individuals with a common past. To him, what constitutes a nation is not speaking the same language, nor belonging to a common ethnographic group but “having done great things together, wanting to do more in the future” (in Latour, 2016). Therefore the French Republic must be understood as a social contract signed between the residents of France and the French Republic, in addition to the acceptance of a set of values — the principle of secularism and republican equality (Latour, 2016).

The French republican model is also being defined as the followings (Bessone et al., 2013):

“The French republican model has long promoted an individualist, universal, and difference-blind conception of citizenship (Spitz 2005; Laborde 2009). This conception is associated with a perfectionist view of justice according to which the state provides moral unity and a common ethos for society. Opposed to this view is the liberal conception of state neutrality regarding comprehensive sets of moral beliefs (Rawls, 1971). French republicanism sees liberal neutrality as a false regime of toleration that, in reality, ensures only social conformism and the reproduction of social fragmentation and domination effects. When viewed as such, toleration is better found in the respect due to each citizen as a member of the sovereign. And yet the sociological and historical reality of decolonization and immigration has strained the coherence of this conception and helped to reveal the tension between the universalism and particularism inherent in

republicanism or, more precisely, between the universalism of republican principles and the particularistic application of such principles to a specific nation, defined in political and territorial terms (Reynaud-Paligot, 2006; Weil, 2005; De Rudder, Poiret, & Vourc'h, 2000; Wiewiorka, 1992)."

In order to understand the operationalization of the French republican model, it is then necessary to look closer at the concept of democracy. As stated by Pinkney (2014), democracy is being defined as a broad concept that implies different interpretations from one country to another according to its culture, its history, and other external elements. In France, the republican values are what characterize the French democracy. Therefore, democracy can be interpreted under different angles, but considering the focus of this article on the Hmong community, the definition provided by Dahl (1989) will be looked at closely:

"Democracy is a system of procedures by which majorities tend to have their way: the majority rules. Liberal democracies require mechanisms of aggregating citizen preferences within majoritarian institutions and this is perhaps the essence of the concept of democracy. But democracy is also a system in which institutionalized respect for the rights of political minorities to try to become a majority must exist. In particular, political minorities in a liberal democracy must be given the means of contestations – the right to try to convince others of the rightness of their positions. Setting up institutions of majority rule turns out to be a comparatively simple task,

ensuring the right of unpopular political minorities to compete for political power turns out to be far more difficult”.

The definition provided by Dahl (1989) is interesting to analyse the concept of the contradiction of the system when considering the point he raises about the relationship of majority-minority. This definition applies to this article when considering the underprivileged position of the Hmong in the system. This article will also consider Forst’s statement (2007) that “minorities live in “a precarious position of second-class citizens dependent upon the goodwill of the authorities” (Forst, 2007).

While the republican model does not recognize minority groups in France, the concept of democracy acknowledges the existence of an asymmetric power (majority-minority). Therefore, France’s democracy proves the contradiction of the republican model within the French democracy. This idea is being justly defined in Guimond’s work (2016) in which he mentions that “the Republican state is blind to cultural and ethnic differences.”

In a nutshell, the French system with its universal principle and the republican values justify the tone of this article to consider citizenship as an ambiguous concept that contributes to the discrimination, the unequal treatment and the unequal distribution of rights between the minority in France and the French citizens. The principle of universalism creates an endless system in which political and therefore social exclusions are

unavoidable if one is not a French citizen. Therefore, while this article recognizes that the republican model turns out to be contradictory and recognizes that there is an asymmetry of power that perpetuates the exclusion of minority groups. This article admits that there are cases of “social exclusion” (Mathema, 2015) in which people are denied access to their rights due to their gender, ethnicity, religious beliefs, sex, sexual orientations, geographical locations, or economic status. This article understands social exclusion as “the outcome of multiple deprivations which prevent individuals or groups from participating fully in the economic, social and political life of the society in which they are located” (Giddens 2001).

The concept of democracy is as complex as the concept of citizenship and need to be explored in order to understand the interrelation between both notions. In “Conceptualizing the Popular Politics of Citizenship”, Stokke (2013) emphasizes the increasingly complex and political nature of citizenship and the challenges of providing a singular and uniform definition of this concept. The article underlines the complexity of citizenship because of the different dimensions of citizenship that exist, as described below.

Citizenship as membership is the first dimension, considering a distinction between insiders and outsiders in a community (Stokke, 2013). However, “the meaning of community and the criteria for inclusion have changed over time and show contextual variations across space” (Stokke, 2013). Applying this definition to the French context where

nationality is essential, outsiders are all the residents of France who does not possess the French nationality and therefore the French citizenship. As stated in Stokke's article (2013) "the modern meaning of citizenship that has dominated since the French Revolution rests on membership within a nation that is assumed to be bounded, homogenous and stable" (Beckman & Erman, 2012; Brubaker, 1992). However, the definition of a nation as homogenous and stable are questionable when taking into account the increased attention to cultural diversity and identity politics. From here, there is a notable distinction between "citizenship" and "nationhood". French discourses define nationhood as people living under common law and the same legislative assembly. Therefore, the Hmong in France are members of the French nation with their status of "residents of France" but they are not citizens' members.

Citizenship as legal status is the second dimension, based on membership of a political community which means that there is a contractual relationship between an individual and the state that carries with it both rights and responsibilities (Stokke, 2013). In France for example, citizens are bound to the Republican Pact. However, there are also different forms of partial citizenship between non-citizens and full citizens, stratified according to the rights and possibilities for political participation that exist for different groups of citizens. Heater (1999, in Stokke, 2013) thus identifies a hierarchy of four partial forms of citizenship in addition to the ideal of full citizenship. When referring to the definitions provided, the Hmong in France seem to belong to the fifth category: these are persons who are

not nationals of the state in which they live; they are therefore not legal citizens and have no political rights, but nevertheless enjoy many civil, social and economic rights associated with citizenship (Heater, 1999, p. 87, italics added, in Stokke, 2013). Accepting this definition, the Hmong in France is considered as “denizen”. When looking at their situation in France, the political rights of the Hmong are not being acknowledged (the right to vote and the right to be eligible). The French system, however, compensates this gap by providing them with social and economic rights: health insurance, workers’ compensation, maternity leave for women, etc. (Vie Publique, 2013).

The third component of citizenship is the set of institutionalized rights that follow from legal status as citizens. Citizenship rights may be categorized in different ways (Roche, 2002) referring to the individual entitlements that guarantee civil, political and social rights.

“Civil rights are rights that protect individual security and privacy; rights to access to justice and legal representation; and, rights to freedom of conscience and choice, including free speech and press, freedom of religion etc. Political rights are rights to participate in the public arena and political process, including rights to vote and stand for office, form political organisations and parties, express opposition and protest etc. Social rights include enabling welfare rights such as health care and pensions; opportunity rights especially in education; redistributive and compensation rights such as low income, unemployment and work injury

compensation (Janoski & Gran, 2002, in Stokke, 2013)”.

When referring to the situation of the Hmong in France, these different categories of rights reveal a contradiction in the distribution of rights, questioning the principles of equality, closely related to the last dimension of citizenship.

Citizenship as participation is the fourth and last dimension that states the responsibilities as an active citizen, coming in the form of obligatory taxes or military service (Stokke, 2013). The foremost meaning of participation, however, is about involvement in the public governance of affairs that are common concerns to the community of citizens. Participation is an especially prominent theme within the civic republican approach to citizenship. The Hmong as residents of France have indeed the duty to pay taxes, but their status of “denizen” impede them from obtaining the right to vote. As mentioned in *Vie Publique* (2013) Foreigners can, however, be elected to posts that do not commit national sovereignty like be an employee or parent representatives. Nor they are eligible as mayors or deputies, because it would allow them to participate in the appointment of senators, thus a body depository of national sovereignty. The Hmong, a non-member State of the European Union, can not access to the civil service to core work, supervisory positions, and jobs in the public service, in addition to jobs related to the sovereignty (e.g. diplomacy, defense). Only the jobs of researchers from research institutions, professors of higher education and doctors of hospitals are open to them

under certain conditions. As stated in Stokke (2013):

“However, commonly observed that the substance of popular control is challenged in both old and new democracies and at all levels in the democratic chain: public affairs are often narrowly defined and governed in a less than democratic manner; the channels of representation are poorly developed and susceptible to non-democratic practices, and political communities are often defined and represented in such a way that some groups are excluded from both juridical and political citizenship” (Harriss, Stokke, & Törnquist, 2004; Törnquist, Webster, & Stokke, 2009, in Stokke, 2013).

Therefore, when considering the context of France, whereas the participatory model revolves around people’s direct involvement in decision-making and monitoring of public affairs, the Hmong are in the margin of the society and suffer from discrimination in terms of a fair rights distribution. In this context of inequality, the Hmong opted for an indirect participation through the organization of the Hmong Festival. This alternative refers to the “third policy decision-making” mentioned in Stokke (2013), contrasting the more common forms of representative democracy based on interest aggregation, emphasizing on the coming together of the public in discussions that aim at consensual policy-making.

To sum up, this section presented the general picture of the article providing the necessary information and definitions to set up a common understanding of the purpose of this article.

The notions presented in this section – republican model, universalist principle, democracy, citizenship – are complex and could be defined under different dimension. However, when considering the definition provided of the concepts mentioned above, it could be noted that they are all interrelated and lead to the same situation of social exclusion for the Hmong community in France. The next section will analyze the contradiction of the French republican model.

The Contradiction of the French Republican Model: An Endless Cycle of Exclusions

This article sets up as a context of the French republican model based on the republican values of liberty, equality, and fraternity, which constitute the French national motto. These values, in addition to the statement that “men are born and remain free and equal rights” (UDHR, 1948), are pillars of the French Republic and at the centre of the French constitution. The French republic – defined as one and indivisible with the revival of the third republic – is a political construct of a community of citizens who are tied to the Republican Pact. The Republican Pact is based on the universal values of freedom, equality, and fraternity; values that all citizens are equally endowed with regardless of their social, religious or ethnic backgrounds (Latour, 2016). To be a French citizen under the republican model then means to sign the Republican Pact, implying to accept a set of values and principles: (i) the republican citizenship or republican equality. It is the idea that there are no groups, ethnic minorities or communities in France, but only citizens,

all equal before the law. Therefore, France does not recognize separate communities (Latour, 2016); and (ii) The secularism, which values the separation of the Church and the State but also supports the prohibition of the wearing of ostensible religious signs in public spaces and public institutions.

The French Republic, under the Universalist model, is naturally refusing community monitoring. The only acceptable dichotomy that prevails in France is between nationals and non-nationals, thus leaving aside non-citizens (Latour, 2016). The French nation is therefore not based on ethnic divisions, and for this particular reason, the Hmong diaspora in France remains mainly unknown.

If each State is free to choose its political model, it seems that the motivation of France to prefer a republican model over a multicultural model because minority groups are believed to represent a threat to democracy.

Political scientists and other observers of contemporary politics conceptualize race, ethnicity, and religion as problems and are considered to threaten the survival of democratic political institutions and the fabric of national society. As a result, it is commonly believed that minority groups are the ones who threaten the French democracy because an ethnic group like the Hmong, constitute new political actors that may threaten old actors and challenge the political discourses, the republican values and principles, and the whole system (Jung, 2008). By accepting such discourses, people commonly think “democratic breakdown is allegedly caused by ethnic

outbidding” (Rabushka and Shepsle 1972; Horowitz 1985, in Jung, 2008). Indeed, taking into account the French political environment, a politic of race, ethnicity, and religion have emerged as central features and these categories are used by politicians to perpetuate exclusion or inclusion of groups in the system. These categories supposedly create incentives for party leaders to attract support by developing extremist positions that polarize the political spectrum (Rabushka and Shepsle 1972; Horowitz 1985, in Jung, 2008). However, the reality that lay behind this belief is way different.

Ethnic groups in France do not represent a threat to democracy, but the French democracy itself represents a threat to minority groups. The exclusion of minority groups in France practiced by the State diminishes the groups’ capacity to exercise genuinely free choice and prevent them from participating in the political sphere (Kymlicka, 1995 in Jung, 2008). Beyond exclusion, the denial of the community to freely interact within the French society could be interpreted as a way of oppression when considering that the right to vote is being denied (Taylor, 1994 in Jung, 2008).

In other words, by controlling the meaning of, race, ethnicity, and religion, France threatens to erase the minority culture, diminishing their voice within the society (Jung, 2008). Another justification for France to prefer a universal model of integration can be explained by the heritage of the Revolution (1789-1799) but also the Nazi occupation and the Vichy Regime (1940-1944) (Latour, 2016). This discourse has often been

interpreted as the rejection of racial nationalism of the German type – Aryan race – in favor of a pledged model of the nation. However, this universalism of the nation is being challenged by some authors who believe that Renan’s conception of the nation as a spiritual principle is not exempt from a racial dimension and that his claim for an everyday plebiscite “only concerns those who have a common past, that is to say, those with the same roots” (Latour, 2016). As a result, the French model, by nature, is reluctant to any kind of community monitoring. The only acceptable dichotomy that prevails in France is between nationals and non-nationals, rejecting the multicultural model that asserts the “right to difference.”

While France pretends to be the country of Human Rights and to be an exemplary model of democracy, questions remain when analysing deeper the reasons behind the adoption of the republican model and the universalism principle in a way that it aims at differentiating French nationals from the non-nationals. The next section will examine deeper the ambiguities of the French model and the republican principles and underlie the difficulty to negotiate the Hmong values and principles within the French republican system, that by definition does not recognize minority groups.

While the International Treaties define universalism as applicable to every human being regardless of any type of distinction, France seems to interpret “universalism” differently. Although France, as a member state of the United Nations has to comply with the Bills of Rights and its duty to “promote

universal respect for, and observance of, Human Rights and freedom”, including the Universal Declaration of Human Rights (UDHR, 1948) that guarantees by definition, that the Hmong, as Human beings, are free to enjoy the same rights as the French nationals without fear of discrimination, the reality is different. This article notes the difference of interpretation of the notion of “universalism” as used in the French Pact and the International Treaties. By “republican universalism”, the French state implies a cultural standardization, which is perceived as a tendency to attenuate differences between populations among one nation in terms of culture, lifestyle, norms, values, etc. Therefore, the French use of the notion of “universalism” is seen as a potential threat towards a group with a specific identity, such as the Hmong, to preserve and practices their culture and traditions.

According to elements stated by Rocard (1991) who served as the French Prime Minister under the presidency of François Mitterrand from 1988 to 1991 on the French policy of integration, equality is on the basis of the French social contract, and it is the responsibility of the State to ensure that everyone stands equal without discrimination. In theory, there should be an equal distribution of the opportunities among the French populations, but in reality, minority groups are not being seen as a priority in France. Therefore, there is a conflict between the two logics with each one having its legitimacy. On the one hand, the French Republic is claiming universalism as a principle of the republic to deny minority monitoring, but on the other hand, minority groups like the Hmong are claiming the recognition of their individual rights to be politically and

socially included within the French society.

In a nutshell, the understanding of the French republican model and the principle of universalism are ambiguous notions. In a context in which France has the freedom to choose the model of its choice and has the legitimacy to adopt the republican model, France has yet to comply with the International Bill of Rights and therefore has to consider the political and social interests of the Hmong, among other minority groups. The next section will then examine the meaning of citizenship in France and its relation to the right to vote to justify the Hmong political exclusion.

The Hmong in France: Deprived of Political Right

The end of the Vietnamese War forced the Hmong into exile to escape the reprisals of the newly elected communist government in Laos. However, while most Hmong have been granted refugee status under the 1951 Geneva Convention, quotas set by the French state prevent other Hmong from receiving naturalization (Morillon, 2001). These ones obtained a ten-year resident card after a tough bargain - representing an authorization to live permanently in France. The Hmong have now been living on the French soil for more than 40 years and have called to settle permanently. However, although the Hmong manifested a real affection to obtain the French citizenship, most of them still live in France under an authorization of stay of 10 years, impeding them from being granted from the political right.

While the Hmong are proud of their identity and try to preserve it, acquiring French nationality and breaking up with their Lao nationality – dual nationality is not possible – is not emotional but political and ideological (Dewitte, 2001). For the Hmong, the demand for French naturalization is, first of all, a need for security: ensuring their permanent presence on the French soil, as well as a guarantee for returning to France freely without risk of denial of entry when visiting Laos for example (Dewitte, 2001). Secondly, acquiring the French nationality means accessing some rights reserved for nationals only: obtaining a travel document, a final residence permit, a possible protection abroad.

Among these rights, the political right is predominant for the Hmong to acquire the right to vote and to represent their interests within the French territory. Acquiring French nationality is, therefore, significant to belong to France, to adhere to the republican and democratic values and principles and, eventually, to settle permanently in France or to extend the possibilities for professional integration in France. In other words, for a population who has been forced to exile into France, obtaining the French nationality represents the uptime symbol of integration not to feel stateless.

There are several ways of obtaining French nationality: by the law of the soil, by marriage, by the administrative application for naturalization. The latter is the most common, but its obtaining is difficult. The requirements are numerous and strict, especially with today's current situation in France.

If the conditions required are “simple” in theory, (such as: at least being eighteen years old, having been habitually resident in France for five years, being “assimilated to the French community” and having “good life and manners”), in practice the requirements follow strict conditions that fell into the national interest (Dewitte, 2001). For example, the requirements demand family, material and professional stability; the condition of assimilation to a sufficient command of the French language and a minimum degree of conformity with the cultural behaviors and practices of a hypothetical “average Frenchman”; the condition of “good life and morals” to the absence of criminal convictions pronounced in France and, in general, behaviors that contravene life in society (Dewitte, 2001). In other words, for the French administration, the candidate must prove his firm intention of establishing its existence in France in the long term.

Some indications of the “naturalization” are holding a job that is predominantly stable and sufficiently familiar with the French language to be able to carry out the processes of everyday life. Therefore, for the Hmong who do not speak or understand the French language properly, they face even bigger difficulty in acquiring French citizenship by naturalization. Behind these requirements lay a meritocratic dimension of naturalization, which rests on a gratitude expressed for what France has done for them (Dewitte, 2001). In other words, France practices discrimination by setting up a number of requirements to obtain citizenship for foreigners in France, forcing them to make a number of efforts to “deserve” being French. Moreover,

naturalization also responds to a “state-candidate domination relationship” that encourages the expression of certain cultural or alleged traits such as “Asians” would be respectful and deserving, explain why the Hmong are more likely than other groups to acquire naturalization (Dewitte, 2001). These remarks, therefore, justify the discriminatory nature of France in granting naturalization, based on racial stereotypes.

Although France does not explicitly refuse the naturalization, the conditions to obtain it remains difficult, impeding the Hmong to enjoy the benefice of Articles 1 and 3 of the ICESCR (1966) that ensures people’s “right of self-determination” to pursue their economic, social and cultural development.

Therefore, denying or even creating obstacles in obtaining French citizenship, France impedes the Hmong from enjoying civil rights free from discrimination such as (iii) the right to a nationality (Article 5 of ICERD, 1960). By “discrimination”, this article consider “any distinction, exclusion, restriction or preference based on (...) national or ethnic origin which has the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of Human rights and fundamental freedom in the political, economic, social, cultural or any other field of public life” (Article 1 of ICERD, 1965).

The case of the Hmong in France proves that France recognizes distinctions between citizens and non-citizens (Article 1 Paragraph 2 of the ICESCR, 1966). At the same time, France has the duty under Article 5 of the ICERD (1965) – ratified in 1983 – to guarantee equality between citizens and non-

citizens in the enjoyment of these rights. However, the reality that lay behind the Universalist principle is discriminatory and aims at protecting the French interests.

Considering the elements stated above, impeding the Hmong from benefiting from the French citizenship although they respond to the criteria established under the domestic laws, is in contradiction with the General recommendations XXX on discrimination against non-citizens (2002). On Chapter IV on “access to citizenship”, it is stated that non-citizens should not be discriminated with regard to access to citizenship or naturalization, and attention should be paid to possible barriers to naturalization that may exist for long-term or permanent residents (Article 13). The deprivation of citizenship for long-term or permanent residents could result in creating a disadvantage for them of any sorts and result in a violation of the Convention’s anti-discrimination principles (Article 15). Therefore these articles aim at protecting the Hmong as non-citizens because it is the State’s responsibility to ensure that citizenship is not being denied in order to avoid creating disadvantages. Denying the access to citizenship to the Hmong, including delaying its obtaining, goes against their dignity as Human beings to enjoy the right to a nationality. The non-respect to these articles is a direct violation to ICERD (1965) and in the preamble of ICCPR (1966) recognizing “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”.

However, the Hmong are considered as second-class citizens in France and see their right to vote and to be elected denied (Article 25 (b), ICCPR, 1966). Therefore, France practices profiling by preventing some people from accessing French citizenship and therefore political right. This criterion of citizenship prevents the Hmong from their right of self-determination to “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1.1, ICCPR, 1966). Therefore, while France under Article 2.1 undertook “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status”, the Hmong in France still suffer from inequality of treatment.

The discriminatory requirement of the nationality to obtain the political right to vote and therefore the right to defend and represent the Hmong political interests tend to lead further to social exclusion. This article recognizes that social exclusion is against the values and principles of democracy because it discriminates certain individual or groups and prevents them from having equal access to rights, power, resources, and dignity (Mathema, 2015). Giddens (2001) defines social exclusions as “The outcome of multiple deprivations which prevent individuals or groups from participating fully in the economic, social and political life of the society in which they are located.” Therefore, when considering the above definition of exclusion, this article acknowledges the social exclusion of the Hmong as a

predictable consequence of the republican model.

In France, since the French nationality is the mandatory requirement to obtain the right to vote, France's denial to provide the right to vote to foreigners who fit the criteria can be interpreted as discriminatory under the International Laws in the sense that particular groups, like the Hmong, are not being entitled with the capacity to express their demands and to defend their interests within the French nation. The political right is a mere core value that France protects preciously. It is, then, difficult for non-citizens in France to take part in the political sphere although ICCPR (1966) ensure political and civil rights to every human being. Taking into account the elements stated above, it seems that the traditional figure of the citizen in France is blurred, reflecting a profound change in the relationship between the state and the society (Pinkney, 2014). As Lipet (n.d), the situation in France reflects the possibility of a legitimacy crisis where "rising social groups (are) denied political access or if new class divisions reinforced older divisions based on ethnic or religious affiliations but the general implication was that economic development was the main driving force for democracy, albeit a rather narrowly conceived democracy in which opportunities for constitutional changes of government were given greater prominence than political participation or social equality" (Pinkney, 2014).

Indeed, applying Lipet's statement (n.d) to the French situation, the right to vote in local elections to foreigners is a long-standing promise that has repeatedly been rejected since

1981. At the time, François Mitterrand was president and the right to vote for foreigners was among its 110 propositions (Perrault, 2012). Since 2012, the French President François Hollande, who had announced the right to vote for non-EU foreigners as a pioneer during his term of office, has repeatedly rejected this reform. The President never ruled that the necessary conditions for amending the Constitution were met and over time the political context has become less and less favourable.

It seems that the French are more reticent about the right to vote for foreigners (Samson, 2015). Seventeen countries of the EU have already introduced the right to vote for foreigners in full or in part, whereas the decline in the percentage of French people who are in favour of it is worrying (M'Bodje, 2016). This drop in percentage is the reflection of the current discourse on foreigners and the confusion between migrants and refugees, with the ideas of the extreme right, which have penetrated a certain number of people's consciences (Kaci, 2016).

While France as a State Party should ensure the dignity of its individuals, in refusing the naturalization of the Hmong, France creates "obstacle to friendly and peaceful relations" (ICERD, 1966) among the nation between French nationals and the Hmong. These obstacles might be capable of "disturbing peace and security among people and the harmony of persons living side by side even within one and the same State" (ICERD, 1966). Therefore, in a democratic country such as France, since the right to vote for foreigners seems to be a long-dated

promise, the government should be held accountable to adjust this situation. Schmitter and Terry Lynn (1991) admit that Presidents might not “follow the course of action” he first proposed, but “they must ultimately be held accountable for their actions through regular and fair processes.” In other words, postponing the passing of the law for the foreigners to access to the right to vote is the result of a social discomfort where France does not respect its integration policy by leaving foreigners on the margins of the French society. This attitude reflects an incoherent France that has difficulty positioning itself as to the fate of foreigners, resulting from an economic crisis that has largely affected and impacted social relations in France (Kaci, 2016).

To conclude, this paragraph justifies the tone of this article to consider the republican model as a vicious circle that, under the name of the Universalist principle, perpetuates discrimination in terms of citizenship preventing minority groups to be equally represented in politics. This section proves that the contradiction of the model leads not only to the political exclusion of the Hmong but also to their social exclusion within the French society. Such democracy often creates a society that practices political and social exclusion: it is dangerous to the democracy because it leaves some people aside and therefore contradicts the values and principles of democracy, based on the value of equality.

Conclusion

Although the Hmong community has been living on the

French soil for more than 40 years now, they are still not able to enjoy equals rights as the French citizens, resulting in this community identity to be ignored and misunderstood. The French republican model intentionally has excluded cultural minorities from the integration policies, thinking that once economic prosperity and the benefits of political, legal and commercial integration would be experienced, social integration would automatically follow. Therefore, the current system gives little concern to cultural communities such as the Hmong. While France pretends to be the country of Human Rights and is a member state of the United Nation, a signatory of the UDHR (1948), and of the ICESCR and ICCRP (1966), the reality of facts falls far behind. However, although there is a legal obligation of France under the International Bill of Rights as well as the Treaty on the European Union (1992), to guarantee its people's rights regardless of their origins, citizenship or nationality, there are contradictions within the French republican model that set the Hmong at the inferior position within the French society. In France, the exercise of citizenship can only be accessed through the French naturalization, which can itself only be obtained through specific conditions. As a result, the Hmong remain "denizen".

They are members of France, recognized as residents with some rights and duties, but their participation in the political space and the Hmong capacities and strategies for participation remain restricted. The non-recognition of minority groups in France justifies the differences in treatment that exists between the citizens and non-citizens under the name of the "republican

citizenship". Besides not recognizing minority groups, obtaining the French citizenship and the right to vote are a real struggle for non-citizens in France. The elements presented in the article has proved that the right to vote is in principle closely linked to the nationality, which remains the legal bond giving an individual the status of a citizen of France. Therefore, France proceeds to formal restrictions that prevent non-nationals in France to access the right to vote. In a society that is focused solely on the citizenship instead of other sociocultural components, the French republican principles of universalism could prove to be unfair to minority groups. Therefore, the French democratic system, which was supposed to mainstream these marginalized communities including the Hmong, could not take place in meaningful ways. Such democracy often creates a society that practices social exclusion, dangerous to the democracy because it leaves some people aside and contradicts the values of democracy based on the principle of equality. This political exclusion of the Hmong is the reflection of France's democracy that has not been able to effectively address the Hmong demands whose interests are superficially represented.

In a context where France is currently facing an identity crisis and lack of unification among its inhabitants, a solution needs to be found to reconcile the Republican values with other collective identities, mainly coming from immigration background, such as the Hmong. Indeed, because of the current political, economic and social context, France lacks of a common French identity resulting in significant challenges for France as it poses a threat to its legitimacy, credibility, and authority as an

institution that claims to be the country of Human Rights.

In this context, the Hmong identity must be recognized equally as a factor that contributes to the legitimacy of the French identity. Therefore, in this unstable context, it is imperative to promote the values of diversity as a unifying force, in which the events aim at encouraging a sense of belonging to the same “French community”, highlighting the richness and diversity of the Hmong culture. Indeed, the presence of the Hmong in France is the result of the French history, and awareness should be raised about that community in order to understand France from another perspective.

The Hmong should not be interpreted as differences in skin colour, cultural practice, and spiritual commitment but as a political entity on its own. Applying the legal obligations under the International Human Rights Treaties that France is bound to, it is necessary to switch the government’s perception of the minority groups, including the Hmong, as a threat to democracy. It is a necessity to find solutions to the problems caused by social heterogeneity. One of the solutions consists on offering the right to vote to non-citizens in France in order to include them in the political negotiations for their interests to be represented equally as the other French citizens. Offering the right to vote is a necessary condition for the survival and the consolidation of the democracy as it helps minority groups to feel included and their rights respected. France indeed, as a liberal democracy and the country of Human Rights, must not settle for invoking democratic principles but must find solutions

to adequately represent all its citizens (Jung, 2008).

Therefore, for this movement of integration to work, the adoption of social policies in favor of those who might be marginalized and stay out of the progress is necessary. That way, the Hmong would find their place in the society, allowing them to gain confidence in themselves, a desire to live and work together with the French and to learn from each other differences.

However, the republican principles set up a strong sense of loyalty and duty to the nation above allegiance to any collective identity. Therefore, the presence of the Hmong as a collective identity based on shared beliefs, values, and practices that derive from the larger French community, the identity of France is constantly being contested and negotiated. As a result, the protection of the Republican values results, in its most destructive form, in radical political movements such as Marine Le Pen and the Front National (FN). Therefore, taking into account the increasing popularity of Marine Le Pen in the presidential election of May 2017, the rights of the Hmong and their identities are being, one more time, threaten. Indeed, the Front National political claims for a policy of assimilation, neglecting any relations with the country of origin. In that context, the Hmong would need to redouble their efforts to preserve their identities.

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Unmuting Voices: Dayak Women's Narratives on Structural and Gendered Injustice in Oil Palm Expansion in West Kalimantan, Indonesia

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Abstract

This paper explores how the oil palm expansion process, driven by the capitalisation of nature and labour, renders structural injustice to the Dayak indigenous people in West Kalimantan, Indonesia. Using feminist political ecology as a conceptual framework, it examines gender as a critical variable in analysing structural injustice as well as gendered injustice in the palm oil sector by scrutinising women's particular struggles and their gender-differentiated experiences.

As palm oil production shares a huge portion of income in Indonesia, it has created an environment where efficiency outweighs workers' rights in and around the plantations. Moreover, despite women labourers' significant roles in the palm oil industry in Indonesia, their status has been undervalued and their rights ignored.

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The cash economy brought by the oil palm industry has disturbed subsistence farming community structures, with male labourers earning more and gaining a higher place in the social hierarchy than female labourers, who face increased social insecurity. This study finds that most women also have limited access to information and resources, leading to restricted choices and exclusion in decision-making processes. The lack of alternative livelihoods further informs women's risky situations, as they are customarily responsible for food security and household management in the context of Kalimantan.

Using a qualitative method and narrative approach, this paper highlights women's voices that have often been 'muted' in the palm oil sector. It argues that the patterns of structural injustice found in the oil palm industry are intertwined around the socially constructed idea of womanhood in Indonesia and fuelled by capitalistic ideals of economic growth and national development.

Keywords: feminist political ecology, gender, Indonesia, labour, palm oil.

Introduction

Under the banner of economic growth and national development, land, and natural resources have been extracted, commoditised, and privatised in many countries in the Global South. Through this process, often dubbed 'land grabbing', the local and indigenous peoples who were the customary owners of the land have encountered numerous challenges that reach beyond land dispossession, including loss of nature, subsistence living, and indigenous culture. As such, local and indigenous peoples have to sell their labour at the cheapest rate to cope with the loss of their livelihood means. Land dispossession and its consequent challenges drive people to fit themselves into a capitalistic system that puts them in a vicious cycle of structural

injustice. However, not everyone loses equally from this game; different degrees of struggle is experienced across gender, class, ethnicity, and age, among other categories. In this study, I draw cases from Dayak indigenous communities that are coping with palm oil plantation schemes in West Kalimantan, Indonesia.

Indonesia is the world's largest palm oil producer and exporter (Indonesia-Investments 2016). As a key industry in Indonesia's economy, palm oil is an important source of foreign exchange and has created job opportunities for more than three million Indonesian rural poor (Dewi 2013, p. 164). However, as palm oil production represents a huge source of income in Indonesia, it has created an environment where efficiency outweighs workers' rights in and around the plantation. In the drive to maximise profits and improve production levels, compliance with laws and regulations is secondary and human rights principles are readily overlooked. Those in more vulnerable positions perform precarious work, i.e. non-standard forms of employment including temporary, casual, contract, outsourced, and daily labour. They thus suffer low wages, insecure employment, and a lack of benefits and job protection (Rainforest Action Network 2016, p. 20). Women tend to comprise a disproportionately high percentage of non-standard labour, rarely being employed on a permanent basis.

Highlighting the transformations of relations in indigenous communities under the oil palm regime, this study analyses Dayak indigenous women labourers' experiences and struggles, who I argue in this paper are among the most socially

disadvantaged members of the palm oil regime. The first aim of this paper is, thus, to explore Dayak women labourers' particular struggles in the palm oil regime by highlighting gender-differentiated aspects. The second aim is to, in doing so, present women's own narratives defining their status and challenging current practices. Lastly, I link these findings to indicate how palm oil plantations become fields of structural and gendered injustice owing to their capitalistic development imperative.

This study mainly employs a qualitative methodology and follows a narrative design to record Dayak indigenous women labourers' voices and lived experience in palm oil plantations. Using Rouchelleau's feminist political ecology as an analytical framework, the research places gender as a critical variable in shaping resource access and control, interacting with class, caste, race, culture, and ethnicity to shape processes of ecological change, the struggles of men and women to sustain ecologically viable livelihoods, and community prospects for "sustainable development" (Rouchelleau et al. 1996). Feminist political ecology also directs attention towards gendered processes within the politics of environmental degradation and conservation, the neo-liberalisation of nature, and the ongoing rounds of accumulation, enclosure, and dispossession associated with these (Elmhirst 2015, p. 519). Exploring the gendered relations of ecologies, economies, and politics in communities from industrial to agrarian societies, feminist political ecology focuses on three key themes: a. gendered knowledge, b. gendered rights and responsibilities, c. gendered

politics and grassroots activism (Roucheleau et al. 1996). To discover patterns of gender injustice around palm oil plantations, a few key elements of gender injustice have been selected from the analytical framework (i.e. discrimination, violence/intimidation, exploitation, access to information, access to resources, etc.) and used as signposts to describe and assess women's experiences.

Fieldwork was carried out for three weeks in March 2017 in two regencies of West Kalimantan, namely, Kapuas Hulu and Sanggau. Respondents were excluded from the Dayak indigenous community, mostly from Dayak sub-ethnic groups. In-depth interviews were conducted with 13 women working under non-standard forms of labour in the palm oil concession followed by participatory observation and informal conversation with male labourers and key informant interview with village heads.

Women's Status in Indonesia and the Gaps Found in Palm Oil Literature

The New Order policies which date back to the 1960s reduced women to the 3 I's (*Istri*: wife, *Ibu*: mother, *Istri rumah tangga*: home-maker); this is assumed to influence the roles and positions of women in palm oil plantations (Surambo et al. 2010). Legally, discriminatory practices based on gender roles are legitimised by Marriage Law No. 1/1974, which positioned men as 'heads of the family' (*Kepala keluarga*), responsible for financially providing for the household, while defining women as 'homemakers' (*isteri ibu rumah tengah*) and thereby positioning women's marital role

as subordinate to men (O’Shaughnessy 2009, p. 10). Despite the increased participation of women in the labour force, the Marriage Law has continued limiting women’s roles in the public sphere,² and women experience a dual workload at the workplace and at home. A study by United Nations Research Institute for Social Development (2016) describes in detail the process through which Indonesian women organisations’ have fought to amend the discriminatory clause in the Marriage Law and challenge the patriarchal gender roles it stipulates. The transition to democratisation and decentralisation in the 1990s offered some victories for women’s movements, especially in relation to sexual violence against women; however, a number of challenges have remained.

The Marriage Law is also linked to male household heads’ privilege in gaining control of land. In a palm oil plantation context, when communities register their land for their plot in a smallholder scheme, ownership is under males’ name almost in default. Julia and White (2011) describe how the issue of land ownership has further marginalised women’s claim to resources that were once shared under customary law. The reduced roles of women through the institutionalised Marriage Law and ideological definition of

² For example, Articles 31 and 34 of the Marriage Law state that the role of women is innate and limited to work within the house.

women through ‘ibuism’³ have resulted in injustice, putting women as secondary citizens.

In the palm oil industry in Indonesia and, more generally, in Southeast Asia, female labourers are targets of greater exploitation and discrimination than their male counterpart. Women are positioned as a lower class, making them easily exploited with even cheaper labour. However, most existing studies on the palm oil sector have used gender-neutral language. Along with the Indonesian state’s widespread tendency to view “indigeneity” and “community” as homogenous (Siscawati & Mahaningtyas 2012), this neutrality in language often leads to more gendered injustice against indigenous women.

Land Dispossession by Oil Palm as A Backdrop

“We are the land owners and we let the company develop the land but what we get is an unequal treatment.” (Mrs. Tresia, Tajau Mada Village, Kapuas Hulu Regency, March 2017)

Indonesia has a long history of direct state intervention in forest ownership, management, and regulation, from the colonial period to the present. The state usually gives ‘licenses’ to utilise state forests (including indigenous peoples’ customary

3 The term ‘ibuism’, articulated by Suryakusuma (2011), illustrates the concept of women’s sacrificial role as mothers who exist not in their own right, but for something or somebody. Finding similarities between the Indonesian construction of womanhood and Mies’ concept of the housewifisation of women, Suryakusuma notes that this process of constructing women’s roles relegated women to dependency on the household head, with the state ‘domesticating’ them through taming, segregation and de-politicisation to uphold national economic development efforts.

land) to private companies and state-owned enterprises, thereby allowing the conversion of large-scale concession. Further trouble appears when land is 'licensed' by companies without informing the indigenous communities affected and without fair compensation. For example, companies often acquire permission to temporarily borrow land for oil palm cultivation. However, the process largely lacks the 'free, prior and informed consent' (FPIC) of indigenous and local peoples, whom companies convince to surrender their land by promising such benefits as new infrastructure, education for children, and other economic benefits among others. Companies commonly neither fulfil their promises nor arrange for compensation (distinct from the above-mentioned 'benefits') for acquired land. Moreover, farmers frequently complain about the unreasonable benefit sharing between smallholders and the oil palm companies.

According to the business utilisation rights (HGU, *hak guna usaha*) of the Indonesian national land agency (BPN), companies should set aside 20 percent of the concession area for smallholders. In other words, when the indigenous community permits the company to use land, the company is required to give back at least 20 percent of the land area to the landowners. Community members almost always decide to plant oil palm trees to gain income and benefit, as it is considered logical and efficient. However, as indigenous people lack the necessary collateral to start their own small-scale palm oil plantation and cultivate it, often the company plants the crops and the farmers must pay back their debts to company's operational input. This

debt is usually deducted (Elmhirst et al. 2016, p. 304) from what farmers should be earning for themselves over an average period of five to six years. After calculating the debt for initial set-up costs, farmers earn close to nothing in the first few years.

Unfortunately, Chong (as cited in Rist et al. 1999, p.1017) states this is often the case throughout rural villages in Indonesia where oil palm companies claim stakes to land. While land dispossession jeopardises Dayak people as a whole - as the land is a fundamental issue for many indigenous and forest-dependent peoples - the land registration system based on “Family Heads” has gendered impacts. Mrs. Siana shared her deeply felt concerns and resentment toward the lack of transparency on land transfer issue.

“The land ownership is in my husband’s name, so it was my husband who dealt with the plasma issue from the beginning until now. I told him to be careful...[t]he debt letter really scares me. It has a stamp on it and if we sign it, it will become official that we agreed to all of these. The company never told us about the debt. They said they will pay for all the operational cost, no tax involved but not a single mention of the debt.” (Mrs. Siana, Tajau Mada Village, Kapuas Hulu Regency, March 2017)

As the family head is generally considered male in practice, the ownership is placed on men and associated property rights favouring men. This leaves women disempowered as pointed out by Julia & White (2011) for they are dispossessed by the

smallholder registration system and further robs women from the access to resources and control, which I will discuss further in this paper.

Oversupply of Women in Non-Standard Forms of Labour

A significant number of NGOs have reported that women are predominantly employed under casual daily labour arrangements in the company-owned palm oil concession (Amnesty International 2016; Rainforest Action Network 2016;). From the fieldwork, it was verified that most of the women labourers were casual daily labourers. In principle, both casual and permanent workers are entitled to social security including health insurance, rice allowance, pension among others. However, these are only applicable for the permanent workers in Indonesian palm oil context. Those working under non-standard forms of labour such as casual daily labourers or sub-contract workers are either not provided in most cases or at the minimum level. From the plantation companies' point of view, it would be efficient to hire non-standard forms of labour as it reduces the 'cost' of their operation and administration while the amount of the daily assignment applies the same with those of the permanent workers. While both men and women are found in the casual labour pool, women predominantly represent the workforce with highly unstable nature. On the other hand, men are primarily assigned to the harvesting unit. As shown in the interviews carried out in the villages of Kapuas Hulu, Mrs Tresia shared her experience with discrimination,

which occurred despite her having worked on the plantation for years longer than her husband.

“I started working for the plantation in 2009, three years before my husband joined. But my husband became a permanent worker four years ago, while I just received permanent status nine months ago. The company usually chooses husbands for promotion because they are the harvesters.” (Mrs. Tresia, Tajau Mada Village, Kapuas Hulu Regency, March 2017)

Field interviews suggested that, when estate managers transition casual labourers to permanent ones, husbands get a significantly higher promotion than their wives. The broad assumption that males are the sole breadwinners of their families plays a role in the promotion of more men over women, thereby undermining women’s work as supplementary to the husband’s main income (Blackburn 2004, p.168).

Regarding remunerations, both plantations in Sanggau and Kapuas Hulu paid an equal wage to Dayak men and Dayak women, depending on their work hours and achievement of the daily quota. However, my fieldwork revealed that males are likely to earn more, as they have greater opportunity to gain *premi* (bonuses) from their harvesting tasks. Moreover, plantation managers place different values on the tasks done by men and women. As the company views harvesting as the most important task in crude palm oil production, males receive more opportunities to become permanent workers, while women’s task of maintenance is treated as a side-job that needs to be done to ‘support’ males’ work. This view is in-line with men’s work in

the public sphere being valued as more important, with the label of productive work, while women's works in the private sphere are valued less and termed reproductive work in the capitalist division (Mies 1986, p. 31). The below responses reflect some women's views on the matter of side-lining maintenance work.

"But for you to have fruit, you need to take good care of it [the plant], fertilise it, and then only it can bear a fruit and [you can] finally harvest!" (Mrs. Siana, Tajau Mada Village, Kapuas Hulu Regency, March 2017)

"Harvesting is done solely by men, and the only job left for us is the spraying and fertilizing. We are helping nurture the oil palms; if there is nobody doing the nursing, the company will not be able to harvest the fruit." (Mrs. Sabin, Entapang Village, Sanggau Regency, March 2017)

Neglecting Daily Labourers' Safety Exposes Women to a Higher Risk

The provision of safety equipment also differs depending on the labourers' employment arrangement. Companies usually provide safety equipment for labourers with permanent positions, while casual daily labourers must equip themselves. Although some companies provide safety gear for all workers regardless of their employment status, it is common practice for casual workers to be expected to handle their own safety. As such, occupational safety is frequently the responsibility of each individual labourer. Labourers are also required to sanitise

equipment themselves after exposure to toxic substances. However, owing to the vast expanse of the plantations and lack of soap and water, it is nearly impossible to sanitise promptly if harmful substances directly affect workers' eyes or hands. Such negligence could potentially cause detrimental effects, especially related to health. Taking into account that most casual daily labourers are women and that they are often associated with tasks that expose them to chemicals and toxic substances, long-term health hazards for women are inevitable. Women labourers tasked with spraying are in an especially worrisome position. Numerous NGOs and researchers have problematised the use of paraquat, a pesticide whose use is prohibited by the World Health Organization in many parts of the world. Although at this stage evidence is mostly anecdotal, concerns are high on the pesticide's impact on respiratory and reproductive health (Amnesty International 2016; Li 2014; Surambo et al. 2010). As casual daily labourers are responsible for their own gear, their health is their own risk, and regular medical check-ups are not affordable for many Dayak women labourers.

Lack of Access to Information as Gendered Injustice

In both field locations in Sanggau and Kapuas Hulu, Dayak women's lack of access to information and resources was obvious. In the case of Entapang village in Sanggau, villagers had all given up their lands to the plantation company. In the process of acquiring the land, the company promised infrastructures such as concrete roads, electricity, a water system, and high schools for children, which has remained an empty promise

even twenty years later. While land conflicts have been ongoing for almost two decades, information regarding the land was not widely shared among the communities, especially women labourers. When asked about their awareness of land issues related to the palm oil company, some women interviewees responded that they had not heard of any conflicts. In fact, the community routinely discussed land dispute through meetings where most participants were men. There was an imbalance in access to information within the village.

The company's creation of an environment that made the community dependent entirely on oil palm plantation while land ownership remained at stake has affected Dayak women's lives, for they are burdened with taking care of their family's needs as one of many layers of labour. Once a company takes land ownership—often without free, prior, informed consent as mentioned earlier—there is no guarantee that villagers might be able to reclaim their land or even their own houses. Women's lack of access to information and decision-making processes is mainly caused by their exclusion from formal meetings. While Entapang Village has seen some successes in bringing land conflict issues to a higher level⁴ by collaboration

4 An interview conducted with Entapang's village head, Mr Musa, revealed that the village was able to send a complaint letter to the Prime Minister of Malaysia through collaboration with civil society organisations. After series of protest and demands, the Malaysian prime minister officially warned the companies to uphold the principles stipulated in the Roundtable on Sustainable Palm Oil (RSPO). However, implementation of these principles still requires progress, and land ownership issues remain unresolved as of March 2017.

with several NGOs, village representatives are mostly men, and the dissemination of information within the wider community is not effective. The village head, along with other male representatives, has also undermined women's capability to be vocal and active in demanding rights related to land as well as jobs on the palm oil plantation. In most cases, men are entrusted with 'important' talks or communicating with outsiders regarding palm oil conflict. Moreover, both formal and informal meetings are attended predominantly by men, while women—if they make a presence at all—are the wives or relatives of acknowledged male representatives (i.e. village head, the previous village head, etc.). This is in line with feminist political ecology's framework on 'gendered knowledge', which asserts that 'patriarchal gender norms inform basic conceptions of who counts as a knowledge producer, what counts as knowledge, and how knowledge is produced'. Gendered knowledge, in the context of Sanggau and Kapuas Hulu, dictates the level of women's engagement in communal decisions. Although women's lower level of education could be identified as a potential weakness, it should not undermine their capability to voice and act to protect their rights and well-being. In fact, the perception of women's roles—i.e., perceived gendered roles and responsibilities—creates an environment that ignores education for women, thereby perpetuating the structures that enable men to gain more education and power while women are sidelined. The lack of access to information is an important component of gender injustice, as it holds great implications for the democratic procedures that preclude the realisation of

gender equality as well as the fulfilment of women's rights. As discussed previously, women's lack of access to information eventually results in a lack of access to resources, thereby bringing about exclusion in decision-making processes and leaving them with limited life choices. Some concrete examples will follow in the next section.

Exclusion in the Decision-Making Process and Limited Life Choices

In Kapuas Hulu, one case of the lack of access to information can be found in the *plasma* (smallholder) cooperative. In Tajau Mada village, *plasma* cooperative meetings play a significant role; villagers have mostly surrendered their land, and negotiation happens during this meeting. However, most representatives in the *plasma* cooperative are men. There are only four women (all of whom are widows) out of two hundred total members. The domination in male representation partly reflects the legality of land ownership is at the male's side. In one interview, a Dayak woman labourer whose husband was the head of the *plasma* cooperative shared that she does not know much about the *plasma* or what is discussed and agreed upon in the cooperative meetings. She said there is a handbook that she can consult for more information on what is discussed in the meetings. She tried to read this book but did not remember what was important. If information access is limited for the wife of the *plasma* cooperative head, I must assume that other women have even less access to information, if any.

As most Dayak women are excluded from decision-making

processes, they rarely find any avenues to voice their best interests. In many cases, only later are women informed when their family land (registered under their husband's name) is transferred to the company for opening up its plantation. Once such land is acquired by the company, villagers cannot reclaim it individually. Families, especially the women, must thus resort to coping mechanisms after its loss. To make ends meet, Dayak women find ways to feed their family and pay for their children's education by finding side-jobs or by committing to on-farm and off-farm work. Many women interviewed have between two and six side jobs, excluding their plantation work. These side jobs include making desserts to be sold to co-workers, sewing clothes, providing massages, seasonal fishing, rice farming, and rubber tapping. Some engage in rice farming, but largely for family consumption. Others work on rubber plantations, as Dayak communities have been cultivating rubber farms for several decades and it is a preferred crop for generating cash income. Mrs. Maria Noemi's account of her daily routine partly illustrates women's multiple workloads to sustain her family.

“Other than working at the plantation, I do many side jobs. I wake up 2:30 am every morning and make a snack which I sell to the plantation workers while we cue up for the fingerprinting. I make 100 pieces every day and sell it for 1,000 Rupiah each. Also, if I have some money to spare I buy chicken and raise it for a while and resell it later. I also do clothes repairing service with my sewing machine when I have some time. I do massage, I can cure a toothache as well...[t]aking care of the children had

mostly been my job, although my husband helps me washing clothes from time to time...I do not have any savings at all because when I get money, I have to pay the debt, buy food for the family. I don't own any jewelry, I own nothing for myself. There is no such thing as 'holiday' for me. What makes me keep going is my 'needs' and 'money'." (Mrs. Maria Noemi, Sejiram Village, Kapuas Hulu Regency, March 2017)

As permanent workers receive a rice allowance as part of the company's social benefit, they purchase rice from the market instead of growing their own. Again, this highlights how hierarchical labour arrangement affects women and men differently. Despite women's engagement in the wage labour force, in addition to their non-wage labour at home, they are still required to secure food for their families, which in turn pushes them towards rice farming if they are casual workers.

Moreover, having no authority over land signifies the powerlessness of women. It is not just a matter of under whose name the land is enlisted, but has far-reaching implications that bring about Dayak women labourers' exclusion in decision-making processes and that perpetuate women's multi-layered marginalisation and exploitation. The reduced roles of women further undermine their capability to fully participate in claiming their rights as well as securing the well-being of their families and communities.

Cash Economy Factor: The Lost Rights Implied by the Capitalisation of Nature and Labour

As described earlier, land grabbing by corporations is one of the root causes of conflict among indigenous communities in West Kalimantan, and also entails human rights violations and gender injustice. Using what may be termed ‘accumulation by dispossession’ (Harvey, 2003), private actors maximise their profit by dispossessing the land of indigenous peoples. In this ‘capitalisation of nature’, human rights and welfare become secondary. After the inception of oil palm cultivation through corporate land grabbing, Dayak communities partially (or entirely) lose the land on which they had been producing subsistence crops. As the new cash economy is reinforced, things that communities had taken for granted emerge as new challenges.

Before the cash economy completely shifted the landscape of Dayak peoples’ livelihoods, there was no hierarchal relationship—at least when it came to managing their livelihood—since both men and women worked their farms together as a family team. Some existing research also confirms flexibility across Dayak traditions (Colfer 1982, p. 156). Men and women were not discriminated against on the basis of who ‘sows’ and who ‘reaps’. However, with the capitalist system brought by the oil palm industry, gender relations have lopsided profoundly, particularly as local residents began engaging in oil palm plantation labour, where men could gain a higher position in the cash economy while women endured more burdens in

the process of impoverishment. One might argue in favour of the palm oil industry in purely monetary terms, saying that the Dayak indigenous people are now able to generate income, which they had not been able to do before. With cash in hand, they can afford more things such as cell phones, motorbikes, higher education, etc. However, increased 'purchasing power' does not mean increased wealth. Rather, it reveals the level of 'indebtedness' these indigenous peoples get into. Along with the debt they pay for companies initial investments, Dayak people become familiar with consumer culture, procuring things from outside through cash where their necessities had once been provided within their community, forest, and land. Mrs. Triani, who works as a casual daily labourer in Sejiram Village, shared the need to purchase her family's basic needs:

"I have to buy everything from rice to vegetables, meat, fish, and everything because we don't do any farming." (Mrs. Triani, Sejiram Village, Kapuas Hulu Regency, March 2017)

Dayak indigenous people become accustomed to the wave of cash economy quite subtly, such that some Dayak women did not realise their debts when buying products on credit. Having cash and purchasing commodities does not necessarily mean 'development.' They eat and consume things that they previously could not afford, at the expense of cash, which keeps them indebted. At the surface, it may seem that they are getting 'better-off', but this is short-sighted. As in a Dayak context, women are mostly responsible for food security and household management, losing the land used for subsistence

farming means they must work harder to feed their families. Under this structurally unjust system, women sell their labour, to some extent providing it at the lowest cost, as it is one of the few options available.

Furthermore, while it looks like Dayak women join the 'workforce' by generating income, the loss of farmland burdens their daily practices. Although women's economic empowerment discourse frequently evaluates increasing numbers of women joining the workforce as women's emancipation and a leap towards gender equality, such a view fails to consider women's dual burdens. In fact, women face continuous labour both inside and outside the house. Evaluating and analysing women's lived experiences through a male-centric value setting, not recognizing that, while men's income generation and productive activities through wage labour are made possible by women taking care of housework, women still perform this non-wage labour while being involved in wage labour. This is an invisible exploitation that I term gender injustice. When social group gains at the cost of another groups' sacrifice and exploitation, it is not 'development' in a true sense. The invisible exploitation of Dayak women's labour on both the wage and non-wage front amounts to a structural injustice that serves as a precondition for capitalist development.

Conclusion

This study has explored how the capitalisation of nature and labour by oil palm expansion has inflicted structural and gendered injustice on Dayak indigenous women in West

Kalimantan, Indonesia. To address the questions of how the palm oil plantation scheme brings about gendered injustice in labour dimensions and daily practices, it has given particular attention to Dayak women labourers' experiences and struggles. The findings of my research are briefly summarised as follows:

- a. In the changing livelihood landscape, a process attributed to oil palm inception, the Dayak community was not fully informed of possible consequences and often experienced deception regarding land dispossession. Dayak women were almost completely excluded from this process, as their socially constructed roles did not require their public participation. As a result, Dayak women were left with limited livelihood choices while simultaneously shouldering multiple burdens to secure food and manage the household economy.
- b. The social construction of womanhood, which locks Indonesian women in the subordinate position of supporting their household head (husband), has brought about many gendered consequences. In a palm oil labour context, women carry out tasks that are considered secondary to males' harvesting tasks. This is not only discriminatory but also entails health risks and social insecurity. The ideology of 'state ibuisism' is utilised to accelerate national development by exploiting Dayak indigenous women's cheap wage labour and their taken-for-granted non-wage labour.
- c. Dayak women labourers find these structural and gendered

injustices, especially the ways company undermine the value of their work, problematic and disturbing. A strong sense of injustice was expressed by women respondents on their subordinated position and discrimination based on (among others) gender/ ethnicity. They also showed a strong resentment of the unfair power dynamics in land dispossession, which affect their daily practices of wage labour and non-wage labour.

My research findings, as supported by existing studies, indicate that there are ambivalent views towards the oil palm industry among different groups of people in Indonesia. Gaining access to cash income may seem to bring benefits that the Dayak indigenous community had not experienced before (i.e. the ability to purchase commodities and live a more consumerist lifestyle), however, this is short-sighted; in fact, the rise of cash economies entail risky long-term consequences. Villagers' land is grabbed by oil palm companies, putting them in a situation of permanent enslavement, working without proper consultation and compensation.

In this structurally unjust system, Dayak women labourers face particular struggles and injustices that male and (trans-) migrant workers do not necessarily deal with. Most women labourers have very limited access to information and lack access to resources and control, thus leading to their restrictions in livelihood choices and exclusion in decision-making processes. The enforced shift from subsistence farming to cash economy has also detrimentally affected Dayak women, who sacrifice the

most in this case by working their small plot of land (if any) in addition to their plantation labour. This double burden becomes a triple burden when factoring in household labour, which is still predominantly done by women.

Whilst the Indonesian government and oil palm investors continue to highlight the economic benefits of the palm oil industry, a change from gender-neutral to gender-sensitive language is direly required. The first step will be to recognise the contributions women make, both in the private realm and public realm, in sustaining the economy and listening to women's voices that have long been 'muted'. The narratives of Dayak women labourers presented in this study show just a glimpse of their many voices. By challenging and transforming socially constructed gender norms and by further promoting women's full participation in ecological and economic changes, women will finally be able to step into genuine empowerment and equality.

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