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COMPARATIVE FRAMEWORKS OF ORANG ASLI DECISION-MAKING PROCESS AND THE MĀORI OF NEW ZEALAND ON SUSTAINABLE DEVELOPMENT GOAL

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Abstract: The primary objective of this article is to critically analyse Orang Asli's participation in decision-making by examining international law standards as well as Māori legal recognition and practices in New Zealand. The current study adopts a qualitative socio-legal approach to examine Malaysian law's legal framework on Orang Asli's participation and evaluate if the Aboriginal Peoples Act 1954 (APA) can provide for Orang Asli's protection. It could be argued that the APA's current provisions are insufficient and do not safeguard the Orang Asli's right to self-determination, as recognised by international law. This article also argues that Orang Asli and other indigenous peoples have a significant role in the decision-making process, as mandated by the UNDRIP, and so contribute to the attainment of the SDGs and the 2030 Agenda. The papers concluded that in the Orang Asli context, the legal recognition and practices of Māori in the decision-making process should be emulated. As a result, the current study suggests that the APA be amended to include unambiguous recognitions and mechanisms that allow Orang Asli to participate in decision-making. The recognition is required to ensure that the Orang Asli's right to self-determination is protected following international law norms and contributes to achieving the SDGs.

Keywords: Aboriginal people, decision-making process, international law, Malaysian law, New Zealand.

Introduction

The right to self-determination encompasses indigenous people's participation in decision-making. However, the Malaysian state's recognition of indigenous people's participation in decision-making is still ambiguous, especially the Orang Asli in Peninsular Malaysia (A/HRC/25/57/Add.2; Hassan & Nordin, 2018; 2020). The majority of Orang Asli are marginalised, and vulnerable. Moreover, the present legal framework on Orang Asli's rights is British and takes a paternalistic approach. Nonetheless, inadequacies in the existing legal framework have disadvantaged the Orang Asli.

Theoretically, the rights of the Orang Asli are safeguarded by domestic legislation passed by the parliament to address their rights and protections. However, this is not the case in practice. The Aboriginal Peoples Act 1954 (APA) was enacted in Peninsular Malaysia to protect the welfare of the Orang Asli. Nevertheless, existing legal frameworks and governance continue to fall short of providing comprehensive protection in practice, particularly regarding participation in decision-making and self-determination. The participation of Orang Asli in decision-making can involve various issues, such as indigenous knowledge (Alhanisham *et al*., 2018). Moreover, the participation of Orang Asli in sustainable eco-culture tourism in the Royal Belum-Temengor Forest Complex, Perak (Kamaruddin *et al.,* 2015; Awang *et al*., 2015; Wan Ibrahim *et al.,* 2015) and the participation of the Jakun tribe in Tasik Chini (Man & Yeoh, 2019) are examples of activities that require the participation of Orang Asli in decision-making because it involves their economy and lifestyle. According to a previous study, there is a gap in

Malaysia's legal framework, policy, and efficacy regarding the participation of the Orang Asli in decision-making processes. It is noticeable that the lack of legal recognition of the Orang Asli's participation in decision-making processes hinders them from achieving recognition as provided under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

On the same note, the Office of the High Commissioner for Human Rights (OHCHR) has identified four important parts of Agenda 2030 and the Sustainable Development Goals framework that must be addressed for indigenous peoples: "Leave no one behind", "human rights", "equality", "participation", and "accountability". In 2015, most states reiterated their commitment to achieving and implementing the 2030 Agenda for Sustainable Development, including Malaysia and New Zealand.

The 2030 Agenda is a comprehensive and holistic approach to development that puts people first. The state has worked hard to incorporate the 17 SDGs and 169 objectives into the national development strategy. It requires sub-nationalising the SDGs, collaborating with stakeholders to mobilise resources and finance, and improving data readiness (Economic Planning Unit, 2017). Nonetheless, much work needs to be done, particularly concerning indigenous peoples and the SDGs. Governments must incorporate all segments of society, notably indigenous peoples, from early policy formation to implementation and monitoring, as the 2030 Agenda's basic principle is "leave no one behind". In line with the discussion on the participation of indigenous peoples in the decision-making process, this article contends that Orang Asli and other indigenous peoples are vital to attaining the SDGs and the 2030 Agenda.

Despite the abundance of research on Orang Asli's problems, such as customary land, education, and socioeconomics, there is a dearth of research on Orang Asli's participation in legal decision-making processes. The current research on Orang Asli's participation in decision-making processes under APA and international law contains flaws. Nicholas *et al.* (2010) and Subramaniam (2015) identified many deficiencies in the APA provisions compared to those in UNDRIP. Nordin and Widtbrodt (2012) also examined Orang Asli's right to self-determination, autonomy, and decision-making following international standards. By comparing Māori practice in New Zealand and domestic law to UNDRIP standards, the current study analyses new areas, most notably Orang Asli's participation in decision-making. The current study will contribute to the body of knowledge on Orang Asli's participation in decision-making and their right to self-determination by addressing a gap in the current body of knowledge. Thus, the primary objective of this paper is to investigate how the right to participate in the decision-making of Orang Asli in Malaysia can learn from the legal recognition of Māori in New Zealand, which ultimately addresses the SDG.

Arguably, the Orang Asli's rights are safeguarded by domestic legislation enacted by the legislature to address their rights and protections. The APA was enacted to safeguard the welfare and well-being of Orang Asli in Peninsular Malaysia. However, existing laws and institutions are insufficient to offer total protection in practice, particularly regarding decision-making. Previous research has shown a gap in Malaysia's legal framework, policy, and implementation of the Orang Asli's participation in the decision-making process. In the context of the Orang Asli community, the lack of legal recognition in the decision-making process is a barrier to achieving recognition, as stipulated in UNDRIP. The inability to resolve the Orang Asli issue effectively and comprehensively is one of the repercussions of Orang Asli's lack of participation in decision-making. For instance, the recommendations presented by the Human Rights Commission of Malaysia (2013) in the National Inquiry into the Land Rights of Indigenous Peoples continue to be disregarded because of the lack of Orang Asli's participation in higher-level decision-making. The absence of clear legislation and the ambiguity of

policies governing Orang Asli's participation in decision-making result in additional concerns facing Orang Asli, including recognition of land right, welfare, and education.

The study will be organised into parts using a doctrinal and comparative legal approach to accomplish this objective. The study examines main legal sources, including the UNDRIP, the Federal Constitution, and the APA. The preferred research method was comparing the APA's rights and protections for the Orang Asli to UNDRIP and the law applicable to the Māori of New Zealand. This article offers background information about the Orang Asli. Second, the paper explores the notion of participation in decision-making as part of indigenous peoples' right to self-determination under international law, the Federal Constitution, and the APA. The cornerstone of the study is a critical examination of the legal recognition of Māori participation in decision-making processes in New Zealand, as well as the practice of such participation. Ultimately, the analysis will offer a lesson learned from New Zealand and recommendations to enhance Orang Asli's participation in decision-making processes.

Background Information of Orang Asli and its Legal Framework

The Orang Asli who originally inhabited Peninsular Malaysia is indigenous people often referred to as "Original People" (Carey, 1976). Peninsular Malaysia was home to a population of 206,777 Orang Asli in December 2020, accounting for 0.5% of the country's total population [Department of the Orang Asli Development (JAKOA), 2020]. According to Carey (1976), the word "Asli" originates from the Arabic word "*Asali*", which denotes "native" or "origin".

The Orang Asli are comprised of 18 sub-ethnic groups, which were subsequently classified into three primary ethics: The Negrito, the Senoi, and the Proto Malay, as depicted in Table 1 below (William-Hunt, 1952; Carey, 1970). Nicholas (2002) explains that this division was significant for the Orang Asli in terms of convenience and contributed to administrative efficiency. According to Musa (2011) and JAKOA (2018), Orang Asli are not homogeneous but heterogeneous due to their uniqueness, sociocultural, and psychosocial-cognitive distinctiveness. Each ethnic group is essentially unique from the others because they speak a different language and have distinct customs, traditions, and beliefs.

The Negrito can be found mainly in the Kedah, Kelantan and Perak, while the Senoi and Proto Malay normally live in Pahang, Perak, Selangor, Johor, Terengganu and Malacca. Several sub-ethnics have assimilated well with the local community and participated in the economic activity of the area where they live. For instance, the Batek, a sub-ethnic of the Negritos, has been working with the locals to promote ecotourism in Kuala Tahan, the gateway to the National Park, or the Taman Negara of Malaysia. They have invited tourists to participate in their

Table 1: Ethnic and sub-ethnic of Orang Asli

Ethnic	Negrito	Senoi	Proto Malay
Sub-ethnic	Kensiu	Semai	Temuan
	Kintak	Temiar	Semelai
	Jahai	Jah Hut	Jakun
	Lanoh	Che Wong	Orang Kanaq
	Mendriq	Mah Meri	Orang Kuala
	Batek	Semaq Beri	Orang Seletar
Total	6,083	113,910	86,784

(Source: JAKOA as of December 2020)

daily activities or live in their settlements (Khalid *et al.*, 2013) while sharing their culture as part of the national cultural heritage (Sulaiman *et al.*, 2012). As a result, the Bateks of Taman Negara are empowered to participate in the decision-making process that will affect their livelihood.

From a legal standpoint, the Federal Constitution of Malaysia is the highest law of the land, and any legislation that conflicts with the Constitution is regarded ultra vires and null and void (Art. 4 Federal Constitution). It is critical to the recognition and implementation of the rights of all citizens, particularly those of the Orang Asli. Despite this, there are only four specific references to the Orang Asli in the Federal Constitution. The provisions in concern are found in Art. 8(5)(c), Art. 45(2), Art. 160(2) of the Federal Constitution, and the Ninth Schedule to the Constitution (Item 16).

In addition, according to Art. 8(1) of the Federal Constitution, which ensures equality before the law as well as the right to equal protection under the law, every citizen is guaranteed the right to equal protection under the law. In particular, Art. 8(5)(c) of the Constitution affords special protection to the Orang Asli by allowing discrimination in their favour, emphasising their development, and covering matters about the land reservation. Nevertheless, although Art. 8(5)(c) is in direct contravention of the principle of equality, discrimination on the part of the Orang Asli is seen as positive discrimination. In the *Public Prosecutor v. Datuk Harun bin Hj. Idris & Ors, 2 MLJ 116, [1976]*, the judge referred to an Indian decision, *Shri Ram Krishna Dalmia AIR 1958, SC 538*, which held that such discrimination as good law and permissible under the law. Furthermore, the Orang Asli are guaranteed a seat in Parliament pursuant to Art. 45(2) of the Federal Constitution, with the YDPA, will appoint a Senator from among the Orang Asli to promote their rights and protect their well-being.

Acknowledging the rights of Orang Asli, the APA is an act that was enacted on 25 February 1954, to provide for the protection, well-being, and advancement of the Orang Asli. The APA is significant legislation passed to protect the Orang Asli's rights in Peninsular Malaysia. It was implemented for the Orang Asli during the colonial era and is still in effect presently. The APA was originally designed to thwart communists from obtaining assistance from Orang Asli. Additionally, it was designed to obstruct the propagation of communist propaganda among the Orang Asli (Nicholas, 2002).

The current study focuses on the participation of the Orang Asli in the decision-making process, and it will expound on specific provisions of the APA, such as section 3 regarding the identity of the Orang Asli. Section 3(3) of the APA grants the Minister the authority to determine whether or not the Orang Asli are aboriginal people. The Director-General is also empowered under Section 4 of the APA to oversee the general administration, welfare, and advancement of the Orang Asli population. Following this, Section 16(1) of the APA provides for the appointment of Batin (Headman) through hereditary succession or by selecting individuals from the community. The nomination of Batin, on the other hand, is subject to approval by the Minister. Section 16 (2) of the APA also states that the Minister has the authority to remove any Batin from his or her position of authority.

While the laws in the APA are undoubtedly outdated and inadequate to ensure full protection of the rights of the Orang Asli, the APA is widely seen as an important step forward. According to Dentan *et al.* (1996), the APA is a piece of legislation that contains "paternalistic" features because the government is placed in a position where it may govern the lives of the indigenous people. As a result of this viewpoint, Idrus (2010) defined the APA as a "ward" of the Orang Asli, claiming that the legislation featured provisions that allowed states to control Orang Asli, who were already positioned in a controlled condition. It is recognised that while the APA's main objective is to offer protection for the Orang Asli, it also serves as a platform for JAKOA to control all affairs about the Orang

Asli (Nordin & Witbrot, 2012). Hooker (1996) argues that the APA's implementation deprives the Orang Asli of their rights, particularly in administrative procedures and concerns relating to ancestral lands. According to Krishnan (2007), "protection" indicated that these communities were vulnerable during the bargaining process. Several earlier research, including those by Rachagan (1990), Nicholas (2000) and Cheah (2004) have found that the APA is a statute with paternalistic characteristics. Despite several criticisms, the APA is still seen as a statute protecting the Orang Asli. In Selangor State Government v. Sagong bin Tasi & Ors [2005] 4 CLJ, the APA has declared a human rights law that protects and promotes Orang Asli communities. The APA's quasi-constitutional status as human rights legislation needs a liberal interpretation. The APA should act as an inspiration for all Orang Asli to participate in decision-making and ultimately inspiring to all Orang Asli.

As Hassan *et al.* (2021) discussed, Section 23 of the Access to Biological Resources and Benefit Sharing Act 2017 (ABS 2017) requires prior informed consent of the communities before using the traditional knowledge of indigenous peoples and local communities regarding biological resources. The benefits of its use should be shared with the communities. However, a lack of legal recognition of land would impede the ABS Act's capacity to safeguard the rights of the Orang Asli. Besides, the Orang Asli were not consulted prior to the revision of the Wildlife Protection Act 1972 (the Wildlife Conservation Act 2010), which supposedly Orang Asli should have been consulted before the amendment to the act because it will directly impact the Orang Asli way of life (Subramaniam, 2011). Therefore, Subramaniam (2011) criticised the government when amendments were made unilaterally without the participation of the Orang Asli in the decision-making process.

The government made additional measures to adopt the Statement of Policy Regarding the Administration of the Aboriginal Peoples of the Federation of Malaya, 1961, to bolster initiatives to provide the Orang Asli better protection and well-being (Jabatan Kemajuan Orang Asli, 1961). The integration and assimilation of Orang Asli into the mainstream populations of Peninsular Malaysia is one of the aims of the said policy. Additionally, this policy emphasised that they are afforded equal rights and opportunities as any other Malaysian. To achieve this aim, the government came up with a set of acceptable and adequate guidelines to safeguard and advance the welfare of the Orang Asli. This policy also showcased the Orang Asli's growing economic and development progress (Hassan & Nordin, 2020).

Although no provision in Malaysian law specifically recognises the rights of Orang Asli in the decision-making process, the provisions of paragraph (d), Policy 1961, require the Orang Asli's consent before removing them from their ancestral land (Jabatan Kemajuan Orang Asli, 1961). The provision of Policy 1961 did not, however, describe the procedures and guidelines for obtaining Orang Asli's consent. In addition, the application of Policy 1961 is rather uncertain compared to the APA and other legislation. Therefore, Malaysia's legal position regarding the participation of Orang Asli in the decision-making process remains inadequate compared to the standard under international law.

The question is whether the APA and the current policies protect and advance the Orang Asli because of these paternalistic traits, the Orang Asli are viewed as constantly dependent on the state for survival. Therefore, the next section will introduce Māori as indigenous peoples in New Zealand before delving into international legal standards and Sustainable Development Goals (SDGs) that encourage indigenous participation in decision-making.

Māori as Indigenous Peoples in New Zealand

The Māori is an indigenous population of New Zealand (*Aotearoa*) and is believed to have arrived in the New Zealand archipelago as early as 800 A.D. from Eastern Polynesia (Anaya, 1993; A/HRC/18/35/Add.4). As a result of British colonialism, the Māori population

is said to be declining, and now they are a minority group in the country which represents 15% of the total population of 4.25 million people (Anaya, 1993; A/HRC/18/35/Add.4). The majority of the Māori community inhabits Auckland which is about three-quarters (¾) of their total (Anaya, 1993; A/HRC/18/35/Add.4). Like other indigenous communities, the Māori community has a unique social organisation that is the Māori community is formed from *whanau* (extended family), and some of these extended families will form a *hapu* (sub-tribe), then some hapu groups will form an *iwi* (tribe) (O'Sullivan & Dana, 2008).

Māori peoples also have close ties to their land, race, and identity, and this concept is known as *turangawaewae* (Anaya, 1993; A/HRC/18/35/Add.4). Their daily lives also depend on activities such as fishing, hunting, and even farming. Higgins from the Nga Tahoe tribe informed through interviews that the Māori community adheres to the concept of collective land ownership while individuals or a family can apply for certain land space to carry out their economic activities.

In addition, New Zealand is the country that ratified the international human rights treaty, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic, and Cultural Rights (ICSECR) on 28 December 1978. New Zealand is also one of the countries that did not support DHOA when it was announced by the UN General Assembly (107th & 108th General Assembly Plenary Meetings). Among the main factors of DHOA rejection was that New Zealand did not agree with the content of the recognition of indigenous peoples 'right to self-determination for fear it would involve a separation (Charters, 2006). However, on 20 April 2010, the Minister of Māori Welfare addressed the UN Permanent Forum on Indigenous Issues in New York aimed at announcing a desire to change its stance to support DHOA (New Zealand Parliament, 2010). This change in stance shows that New Zealand takes the protection of the rights of the Māori community seriously.

At the domestic level, New Zealand's legal system can be described as unique because of the Treaty of Waitangi. Accordingly, Lord Cooke of Thorndon described the treaty as the most important document in New Zealand's history (Palmer, 2001). Palmer (2008) asserts that international recognition achieved through these treaties has a legal international binding effect. In addition, this treaty has no legal status unless incorporated into an act. Nevertheless, the treaty has significance as it has gained the court's attention as one of the factors for decision-making (Palmer, 2008).

The Treaty of Waitangi, signed on 6 February 1840 was an important document to Māori society because the treaty bound the treaty between Māori and the British colonies (Network Waitangi, 2012). The Treaty of Waitangi contains three articles in two languages, namely English and Māori, and the provisions have been codified in the First Schedule, the Treaty of Waitangi Act 1975 (TWA). In the preamble, the act featured differences in understanding of the treaty text in bilingualism, which can invite confusion and misunderstanding. The provision in the preamble is "And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Māori language". Respect for the Māori peoples can be referred to through the provisions of section 3 of the TWA because it binds the government to abide by the principles of the treaty while putting the rights of Māori in the right place.

However, there is a difference in understanding of the provisions of the treaty between the two versions when the word *kawanatanga* is translated as "sovereignty" while the interpretation in the Māori language means governorship. This distinction is important because it is a symbol of the right of self-determination for Māori, and they did not hand over the sovereignty of the New Zealand archipelago to the British, instead only giving it the right to govern (Frantz, 1997). However, *Pakeha* (non-Māori) are said to have ignored the treaty and assumed that all New Zealanders were one nation (Stokes, 1992).

In the context of Māori society, Durie (1998) has proposed a framework for the right of self-determination by combining two main elements, namely power *(nga puo mana)* and also the factors of the implementation of the right of self-determination *(te mana whakahaere)*. Considering *Nga Puo Mana* as the underlying source of Māori power, Durie (1998) suggests seven aspects, namely *Nga Puo Mana,* which consists of (1) *Mana Atua* (Natural resources and environment), (2) *Mana Tupuna* (Identity and Heritage), (3) *Mana Tangata* (Power on Amount), (4) *Mana Whenua* (Land Ownership), (5) *Mana Moana* (Fisheries Business), (6) *Mana Triti* (Implementation of the Treaty of Waitangi), and (7) *Mana Motuhake* (Autonomy, Governance, and Nationalism). All seven of these *Nga Puo Mana* are matched by the factors that lead to the recognition of the right of self-determination known as *Te Mana Whakahaere*. Durie (1998) divides these factors into three main groups, namely objectives (progress of Māori society, cultural recognition, and environmental conservation), key participants (Hapu, Iwi, and leadership at local, regional, and national levels), and also strategic relations (inter-state relations in New Zealand, the Pacific Region and indigenous peoples around the world). This framework supports the recognition of the right to self-determination of the Māori community. For this article, the next part analyses the international legal framework and provisions of UNDRIP as well as related SDG Goals that are relevant to the participation in the decision-making process and self-determination of the indigenous people.

The Rights of Indigenous Peoples in the Decision-making Process under UNDRIP

The UNDRIP recognises indigenous peoples' rights, although it is only a "soft law" that is non-binding under international law (Davis, 2008). Charters (2006) explains that UNDRIP needs a moral commitment rather than a legal obligation. The Supreme Court of Belize recognised UNDRIP as being implemented at the domestic level in *Aurelio Cal et al. v. Attorney General of Belize Claims No. 171 and 172 of 2007 (18 October 2007) (Mayan Land Rights)*. In this case, the judge expressed strong support for UNDRIP. Unlike conventions in international law, General Assembly resolutions are not legally enforceable on member nations. Nevertheless, States are not expected to violate principles of general international law included in these resolutions or declarations.

Art. 3 of the UNDRIP recognises indigenous peoples' inherent right to self-determination, which states: "Indigenous peoples have the right to self-determination. They can freely select their political status and pursue their economic, social, and cultural growth as a result of that right." It is comparable to Art. 1 of two international human rights covenants (ICCPR and ICSECR). The right to self-determination of indigenous peoples has four fundamental dimensions: Political, economic, social, and cultural. According to Daes (1996), recognising the right to natural resources is intrinsically linked to all dimensions. Art. 4 of the UNDRIP extends further, recognising indigenous peoples' autonomy or self-government in matters relevant to their internal and local affairs. It also provides indigenous peoples with the ability to manage their finances. The political dimension of the right to self-determination, in Art. 3 of the UNDRIP, is manifested through the right of indigenous peoples to autonomy and self-government, which is enshrined in Art. 4 of the declaration.

For indigenous people, the right to self-determination is the freedom to live according to their traditions, beliefs, and values that are recognised by the majority of the population, as defined by Daes (2002). Hannum (1993) argues that the right to self-determination encompasses not just political but also economic, cultural, and social aspects. Furthermore, according to Anaya (1993), the right to self-determination is founded on freedom and equality. In determining whether indigenous peoples can choose their way of life, it is necessary to look at how they are implemented (Daes, 2002).

The recognition of the right to self-determination can be implemented in many different ways, including granting autonomy and participation in both the internal and external affairs of the government (Brownlie, 1995). According to Alfredsson (1998), indigenous peoples will benefit from autonomy and will be elevated because they were not dominant during and affected by colonialism. This is consistent with the views expressed by delegates from Norway, who stated that allowing indigenous peoples to participate in decision-making processes at all levels of government is a kind of recognition of their right to self-determination (E/CN.4/2001/85). The decision-making mechanism can be legislative or administrative in structure, and it all together involves both the economic and development processes.

According to a delegate from Spain (E/CN.4/2001/85), the participation of indigenous peoples does not jeopardise a country's sovereignty or territorial integrity. Likewise, representatives from Brazil agreed that indigenous peoples should be included in the decision-making process in general rather than just in matters about the development of their lives (E/CN.4/2000/84) and that the concept of the right to self-determination should include participation in the decision-making process of indigenous peoples in particular. Recognition should also be accorded through autonomy and self-government in internal and local affairs as part of the participation process (E/CN.4/Sub.2/1993/29).

It is also incorporated into Art. 5 of the UNDRIP, which grants, among other things, the right to participate in political decisions made by a State. In this way, indigenous peoples can administer and streamline their political structures and participate actively in their governments' political affairs. In the context of the modern world, the involvement of indigenous peoples in the decision-making processes of the state is a crucial indication of the exercise of their right to self-determination (Art. 18 of UNDRIP). Representatives of indigenous peoples chosen by their communities should be invited to participate, and the roles and duties of individuals in their communities should be clarified during the process (Art. 35 of UNDRIP). Also important is that the government acknowledges its right to build its institutional decision-making structures. Despite the fact that indigenous peoples' participation in the decision-making process falls under the purview of politics, it is closely connected to economic and social issues (Art. 20 of UNDRIP).

Free, Prior, and Informed Consent (FPIC) should be respected, particularly when decisions affecting indigenous people are involved. FPIC is a principle recognised by UNDRIP and other international laws, such as the International Labour Organization's Convention on Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169), which requires governments to obtain indigenous people's consent prior to making any decision (E/C.19/2005/3). FPIC is described in UNDRIP in a variety of ways, including the removal of indigenous people from their ancestral land (Art. 10 of UNDRIP), the right to restitution or compensation if indigenous people's land is seized, taken, used, occupied, or damaged without their FPIC (Art. 28 of UNDRIP), and the introduction of law or any administrative matter that may affect indigenous people (Art. 32(2) of UNDRIP). The government is expected to engage and collaborate in good faith with indigenous people and to be open to obtaining FPIC from them (Art. 19 and 32(2) UNDRIP).

Indigenous Peoples and the SDG

The United Nations General Assembly passed a resolution on Agenda 2030 for Sustainable Development that addressed the concerns of indigenous peoples regarding Goals 2 and 4 and advocated for its implementation (A/RES/70/1). However, many SDGs are specifically significant to indigenous peoples, with 73 out of 169 targets directly addressing the UNDRIP. In addition, the SDGs include two indicators directly connected to indigenous peoples (Indicators 2.3.2 and 4.5.1), as well as several

other indicators relevant to indigenous peoples, most noticeably indicators 1.4.2 and 5.a.1 on land rights (OHCHR, 2021).

Indigenous peoples are closely linked to SDG 15 since they safeguard forests and the environment. Having said that, Goal 15 intends to conserve terrestrial ecosystems, repair degraded land, and stop biodiversity loss. The role of indigenous peoples in promoting sustainable development is significant since they rely on natural resources and their traditional practices and ways of life are based on environmental and social sustainability principles [International Fund for Agricultural Development (IFAD), n.y.]. According to FAO research titled Indigenous and tribal peoples' forest governance: An opportunity for climate action in Latin America and the Caribbean, protecting indigenous land rights is crucial in the battle against climate change and biodiversity loss (FAO & FILAC, 2021). The survey found that the indigenous peoples of Latin America are the best protectors of the region's forests, with deforestation rates up to 50% lower than elsewhere in the world (FAO & FILAC, 2021). Moreover, indigenous peoples see the forest and nature like a supermarket because it offers them food, drink, and medicine. Nature, however, inspires their culture, rituals, and identity (Ibrahim, H.O, 2016). Thus, indigenous peoples are the ones who promote sustainable forest practices.

Despite this, more initiatives must be coordinated to demonstrate the state's commitment to the 2030 Agenda and the SDGs (Economic Planning Unit, 2017). Indigenous peoples' land rights are not recognised and respected, posing a risk to the SDGs and Agenda 2030 implementation. Non-recognition of indigenous peoples' rights to land, health, education, and economics will hinder the attainment of SDG 1 (end poverty), SDG 5 (gender equality and peacebuilding), SDG 15 (life on land), and SDG 16 (inclusive society). The fact that indigenous peoples' land, culture, and ability to participate in and influence decision-making are all too often ignored contributes to many issues that affect them. A violation of international law norms, particularly those relating to indigenous peoples' claims to customary land and resources, may also be evaluated.

Despite the UNDRIP recognising indigenous peoples' rights to self-determination and participation in decision-making processes and being in line with SDG Goals, the question remains whether the same recognition can be observed at the national level. Following is a discussion on Māori decision-making in New Zealand, which will provide insights into the decision-making process of the Māori people through an examination of relevant laws.

Self-determination and Decision-making Process of Māori in New Zealand

In line with self-determination in Art. 3 of UNDRIP, indigenous peoples are entitled to the right to autonomy as part of recognising the right to self-determination. Autonomy can be understood as indigenous peoples having the capacity, rights, and responsibilities to make choices and decisions that affect their lives and society as a whole (NZ Institute of Economic Research, 2003). Durie (1998) articulated that Māori expects greater control over their destiny and natural resources in line with the concept of tino rangatiratanga and mana motuhake to ensure environmental conservation for future generations. The right to self-determination benefits the entire indigenous community and the nation as a whole, which in turn can contribute to the long-term sustainability of natural resources while ensuring that each party is held accountable for their respective responsibilities. This position is consistent with Imai's (2009) assertion that self-administration can enhance local welfare control and service delivery efficacy within the existing system.

According to Art. 2 of the Treaty of Waitangi, the Māori are entitled to recognition of their right to self-determination, including the right to make their own decisions and to the exclusive ownership of land, plantations, forests, fisheries, and other property. The essence of

the provision reflects the recognition of Māori rights to land and other property ownership, as previously noted, in accordance with Art. 3 of the UNDRIP, which encompasses political, economic, social, and cultural dimensions.

Numerous areas should be considered to evaluate the recognition of Māori participation in the decision-making process. This article will delve into two main aspects: (1) Māori's participation in the Resource Management Act 1991 (RMA) and (2) joint management.

Participation of Māori in the Decision-making Process under the Resource Management Act 1991

The Resource Management Act 1991 (RMA) recognises the right of Māori to manage natural resources. The Act emphasises the promotion of sustainable management of natural and physical resources (Section 5(1), RMA 1991). Section 5 (2) defines sustainable management by referring to a number of key elements, including cultural aspects, that must be taken into consideration. Based on this definition, Beverley (1998) argues that some of the words used can refer to the Māori community, such as the words "people and communities" and "cultural well-being".

In addition to promoting the sustainable management of natural resources, the RMA accords recognition to Māori, notably under Section 6 (e), which requires all persons exercising functions and powers under this Act in relation to the management of natural and physical resources, including the use, development, and protection of those resources, recognise Māori and their culture and traditions about their ancestral lands, water, sites, waahi tapu, and other taonga.

Similarly, Section 7 (a) seeks to give particular attention to *kaitiakitanga* (exercise of guardianship). Section 2 (1) RMA defined *kaitiakitanga* as the exercise of guardianship by the *tangata whenua* of an area under *tikanga* Māori in relation to natural and physical resources and includes the ethic of stewardship. This recognition is critical in ensuring the long-term viability of recognising the right to self-determination because the RMA has legal ramifications for all parties involved, including the government.

Accordingly, section 8 of the RMA features the uniqueness of the act in New Zealand as it recognises the Treaty of Waitangi where the section requires each individual to consider the principles contained in the treaty in managing, developing and using natural resources. In this regard, the government and the *iwi* must work collaboratively to address major challenges that affect communities (Boland *et al.,* 1998). This is consistent with the treaty principle requiring parties to act in good faith, as outlined in the case of the *New Zealand Māori Council v. Attorney-General (Forest case) [1989] 2 NZLR 142, Te Runanga o Wharekauri Rekohu Inc v. Attorney-General [1993] 2 NZLR 301* (Boland *et al.*, 1998). In line with the concept of the right to self-determination, the principles of the Treaty of Waitangi that can be referred to in section 8 of the RMA are partner and responsibility for negotiations (Vince, 2006). However, the duties specified in this treaty were not confined to the right to negotiate with Māori, as the judge in *New Zealand Māori Council v. Attorney General (Land case) [1987] 1 NZLR 641* broadened the scope to include the government's obligation to protect Māori interests, (Boland *et al.*, 1998). According to Boland *et al.* (1998), the responsibility of the parties involved to negotiate with Māori is based on two situations, namely the interpretation of part II, the RMA prescribed under sections 6 and 7 of the RMA, and through the statutory directives specified under the act to negotiate.

Recognition of the right to Māori autonomy can also be referred to in section 6 (e) of the RMA. One of the aspects that must be given attention to achieve the purpose of the APS under section 5 is to maintain the relationship between Māori, culture, and traditional customs with customary land, water, sites, sacred places, and other *taonga*. Attention to the rights of Māori can also be referred to under section 7 (a) by paying attention to the relationship

between Māori and kaitiakitanga, which means the exercise of guardianship. According to the preceding provisions, Māori rights have been recognised since it enables them to participate in the decision-making process regarding the state's natural resource management. Māori participation in decision-making processes is critical to universal acceptance of indigenous peoples' right to self-determination.

Joint-management

One example of the implementation of autonomy in New Zealand is through a co-management model where indigenous people are given space to participate in decision-making. It is said to be an effective method of managing natural resources and social systems (Castro & Nielsen, 2001). This model incorporates decisions jointly by various parties involved such as indigenous peoples, government and private organisations, or other interested parties (Castro & Nielsen, 2001).

Joint management can be implemented in several methods. According to Morse (2013), one of the methods of implementing joint management is through a negotiation process. In addition, Plummer and Fitzgibbon (2004) propose a joint management framework by featuring several important components such as the characteristics of natural resources, conditions and outcomes and equipped with mechanisms that link to each other. Based on the experience of the Māori, co-management is not uncommon as co-management models have been practised in several cases such as Co-management in Taupo District Council and Tuwharetoa Māori Trust Board (Coates, 2009), New Plymouth Port Assets, Te Whiti Park and several others (Local Government New Zealand, 2007). These experiences demonstrate the trust given to the Māori community to be involved as part of the implementation system and decision-making process while confirming the recognition of Māori self-determination.

One example of co-management is the Waikato Raupatu River Settlement which goes through direct negotiations with the New Zealand government (Waikato River Authority, 2013). According to section 8 (3) of the Waikato Raupatu Claims Settlement Act 1995, the Tainui community and the Waikato River have a unique relationship because they consider the river to have vitality, integrity and spirituality. Section 8 (3) provides:

> *"The Waikato River is our tupuna (ancestor), which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui. The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being. Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long-established tikanga to ensure the wellbeing of the river. Our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture".*

Based on Māori beliefs, the origins of this river contain life-giving water transmitted through the mountain's ancestors, *Tongariro,* which is a cure for others (Te Aho, 2009). Therefore, a negotiation was held to resolve the crisis between the Tanui community and the government, where the government allegedly failed to respect, provide and preserve the close relationship between Waikato-Tanui and the river, which has deep customary values for the people (Te Aho, 2008). As a result of agreement and cooperation between the parties involved, an act, the Waikato Raupatu Claims Settlement Act 1995 was passed by parliament to implement

the agreement (Deed of Settlement) signed between the government and the Waikato-Tanui community on 22 May 1995 (Waikato Raupatu River Trust and Waikato Regional Council, 2012).

In preserving the well-being of the Waikato river, the Tanui Waikato community is allowed to play a decision-making role in managing the river, not just mere participation and negotiation. Recognition of the Tainui race has been enshrined in the Waikato-Tainui Rapupatu Claims (Waikato River) Settlement Act 2010, specifically under sections 35-55, which provides for cooperation between the two parties and the manner of its implementation. In addition, a Statutory Board was created after a "Deed of Settlement" was signed by both parties to ensure the welfare of the river (Williams, 2009). The establishment of this "statutory board" is a common practice in Canada, especially in cases involving the Nunavut Land Claim Case, Nunavut Wildlife Management, and environmental issues (Imai, 2009).

In co-management, the decision-making aspect is important. However, Imai (2009) argues that the impact of the implementation of this model as the decisions made by the co-management body is of an advisory in nature where the government will make the final decision. On the other hand, in practice in Canada, governments consider and recognise traditional methods of assessing and controlling environmental, cultural, and socio-economic impacts (Imai, 2009). Although this model benefits indigenous peoples, in many cases, their power is limited when the issue is related to indigenous customary land issues (Imai, 2009). Limiting the scope of recognition to only cover customary land issues contradicts the right to self-determination of indigenous peoples as enshrined under UNDRIP.

In addition, the implementation of the concept of co-management is seen to be able to elevate the position of the *iwi* involved because half of the statutory body consists of representatives from the *iwi* while the other part is from the Regional and Local Councils (Waikato Raupatu River Trust & Waikato Regional Council, 2012). Referring to the agreement between Tainui and the Waikato Local Council, the objectives of both parties have been listed, and there are several principles, such as the principles of cooperation, welfare, and Tainui's relationship with the river have been clarified so that it can drive effectiveness in the implementation of this cooperation (Waikato Raupatu River Trust & Waikato Regional Council, 2012). Tribal representatives also have the power to make rules and laws relating to flora, fauna, and fisheries along the Waikato River and they have the right to develop environmental plans taking into account the powers set out under the Resource Management Act (William, 2009).

Such a model has highlighted the cooperation of various parties, namely the Māori, the government, and other stakeholders who mobilise energy to maintain and manage the river together. In this regard, this Waikato River management collaboration refers to the conservation of the river, not the determination of the river owner himself (Te Aho, 2009). Cooperation and agreement between the government and the Tainui community can be used as a model of recognition of Māori's participation in the decision-making process because they are given the space to have a say and then have a position to decide something that affects their lives.

Comparative Analysis

The Orang Asli and Māori peoples have distinct positions and legal recognition regarding participation in decision-making. The laws inadequately protect the rights of the Orang Asli. Meanwhile, the APA does not provide an adequate framework for Orang Asli's participation in decision-making. On the other hand, the laws and practices governing the Māori peoples are much more favourable and conform to the principles and spirit of the UNDRIP, as well as aiding the attainment of the SDGs.

Unlike the Orang Asli in Malaysia, many Māori-specific systems and legislation cannot

be refuted. Numerous factors, such as increased Māori political participation in Parliament and Māori relations with the majority population, contribute to better recognition of Māori rights in the decision-making process. In addition, Hassan *et al.* (2022) observed that the standing and recognition of the Māori economy contributed to increased recognition of rights. To be on par with the Māori community, the government must be more proactive in promoting the development of the Orang Asli and respect the Orang Asli's participation in the decision-making process. In addition, the Māori people are accorded greater recognition because New Zealand legislation recognises their rights to participate in decision-making; indeed, it can be defined as advanced and successful. This recognition is consistent with UNDRIP's endorsement of the right to self-determination and is critical to achieving the SDGs. In this context, the Treaty of Waitangi's principles significantly influences the recognition of Māori self-determination and decision-making processes.

Conclusion

Examining the success and recognition of Māori's rights to participate in decision-making processes reveals three important takeaways from the initial analysis, which are as follows: (1) New Zealand provides a clear legal framework for Māori participation in decision-making processes, particularly those that influence their way of life and culture. Unambiguous legal provisions have facilitated the acceptance of the right to self-determination, thereby safeguarding and enhancing Māori rights; (2) New Zealand is also more progressed in providing space and mechanisms for Māori people to participate in decision-making processes that establish their rights and provide further protection for the Māori community; and (3). Regarding respecting the right to self-determination and Māori rights, New Zealand is considered to uphold the Māori values, principles, and practices and provide legal recognition. The experience of Māori involvement in the co-management is the Waikato Raupatu River Settlement demonstrates the government's recognition of Māori in decision-making processes.

This article offers several measures that should be prioritised to enhance Orang Asli's participation in decision-making, considering the background, the current economic conditions, and the relationships between the Orang Asli and the majority in Malaysia. The government should consider amending the APA to include various legal provisions consistent with the principles and spirit of the UNDRIP and the SDGs, including Orang Asli's right to participate in decision-making processes and exercise their right to self-determination.

In addition, the government should acknowledge and recognise the traditional land rights of the Orang Asli. The government should also emulate New Zealand's practice and legislative framework in strengthening Orang Asli-related institutions. The government should consider and recognise the Orang Asli traditional way of life's values, customs, and uniqueness, as well as the legal decision-making process, as the New Zealand government has done for Māori following the UNDRIP, and work toward achieving the SDGs.

Fundamentally, for the recognition of the Orang Asli's rights to be successful, the government must have the political will, as well as effective consultation with the Orang Asli's and related non-governmental organisations. It is critical to ensure that the protection of Orang Asli rights is consistent with international law standards and, ultimately, to accomplish the Sustainable Development Goals without leaving anyone behind.

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