

# Makalah



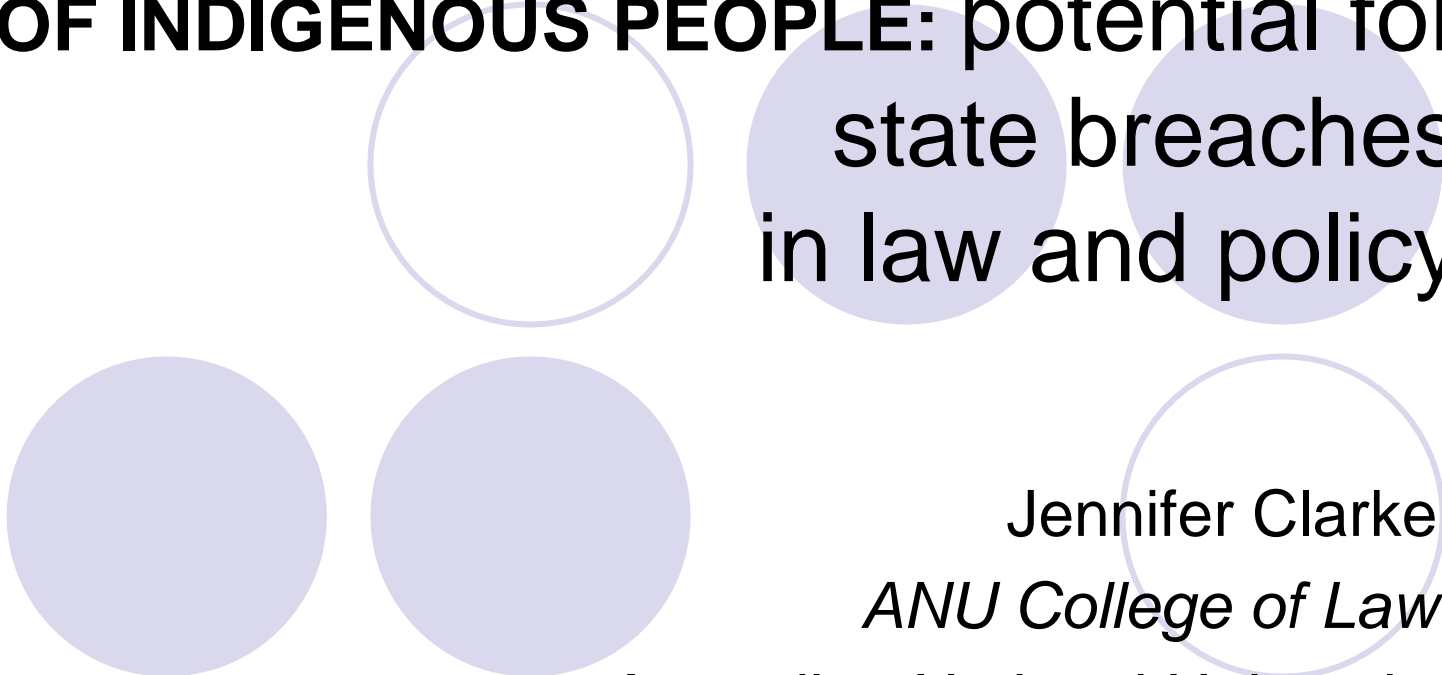
ADVANCED TRAINING  
Hak-hak Masyarakat Adat  
(*Indigenous Peoples' Rights*)  
Bagi Dosen Pengajar HAM  
di Indonesia

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF  
INDIGENOUS PEOPLE: potential for state  
breaches in law and policy

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# **ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF INDIGENOUS PEOPLE: potential for state breaches in law and policy**

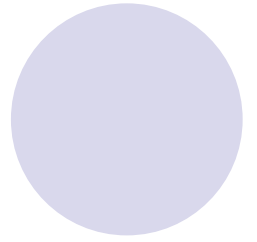
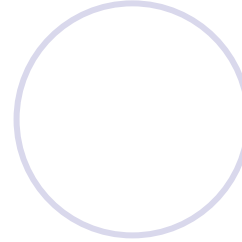
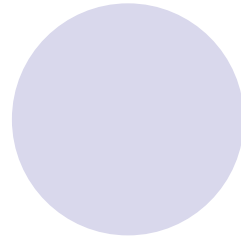
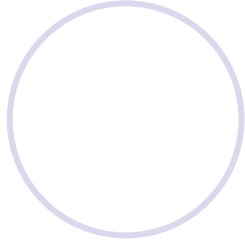
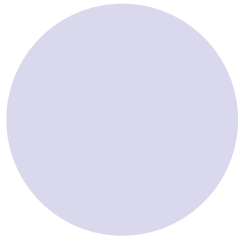


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# ESCR breaches



1. Underlying causes of ESCR (*hak ekosob*) breaches;
2. 'Third' and 'fourth' world differences and similarities;
3. Right to housing (*hak perumahan*) ;
4. Right to health (*hak kesehatan*);
5. Right to education (*hak pendidikan*);
6. Right to cultural participation (*hak partisipasi budaya*);
7. Conclusions.



**AWAS!**

**Tulisan ini tidak  
membicarakan  
definisi  
orang  
asli!**

# Underlying causes of breaches:

- Fundamental causes of many breaches of ESCR are **original deprivations of valuable land and resources**, especially where **colonisation** of indigenous people
  - ✓ was rapid, recent or **continues**,
  - ✓ goes **uncompensated**, and
  - ✓ brought **major** economic, social, population and cultural **changes** (eg transforming economies from hunter-gatherer to international capitalism within <100 years).  
eg **Australia, Papua**.



# 'Third' and 'fourth' worlds

Differences in societies, states and natural resources can mean differences in how the state breaches these rights, eg:

- **'Developing' countries:**

- ✓ many indigenous problems (eg poverty) are shared with other citizens, but **pressure on indigenous people to make sacrifices in 'national interest' or so foreign investment is attracted can be extreme**, particularly if their distinct existence is not acknowledged.
- ✓ ESCR breaches are also often **unlawful under domestic law**, but attract no or few sanctions.

- **Compare 'Developed' 'settler' nations: ... (cont.)**

# 'Third' and 'fourth' worlds

- dispossession benefits ***increasingly affluent non-indigenous majorities or global elites*** through land and resource exploitation.
- some indigenous social conditions are *worsening* because of this increased economic inequality. **Governments breach ESCR by failing to address, or having policies which contribute to, these problems of *marginalisation*.**
- **most ESCR breaches occur *pursuant to law*.** In Australia, this is easy to achieve: few rights (certainly not housing, health or education) are constitutionally protected, and it is common for legislatures to override judicial recognition of others.



# ‘Third’ and ‘fourth’ worlds

The results of similar ESCR breaches can be distributed differently in different countries because of population or resource differences. For example:

- **Asian poverty can be both urban *and* rural** (like poverty in the USA);
- **Much Australian poverty is now rural**, due to poor quality land and globalisation. **It’s worst in remote all-Aboriginal enclaves**, despite fairly secure ‘Aboriginal land rights’ title to land (besok). Australia’s population is small and urban - few other people live in these areas. This **geographical segregation produces racial discrimination in service delivery** – the state neglects these ‘communities’, serving more demanding, distant majorities.

# Right to adequate housing

- **Breaches of housing rights (Art 11) reflect this dispossession and segregation.**
- Total indigenous Australian population <500,000. **25% live in remote enclaves** because of:
  - ✓ **traditional** connections with, and obligations to, land (most traditional owners of city land were exterminated or removed, or existence denied);
  - ✓ **history**: enclaves were once ‘reserves’ to which indigenous Australians were confined;
  - ✓ **costs, racism and discrimination** (eg by landlords) and ‘**white**’ ‘**disciplinary gaze**’ (eg over housekeeping, child-rearing) in towns.

# Right to adequate housing

- In Australia generally:
  - ✓ **Stolen land valuable!** City house prices doubled from 1990s, too high for many young 'white' people.
  - ✓ **But high home ownership rate:** >70% occupiers are owners (older people). Purchases mainly debt-funded. Where land is marketable, ownership facilitates access to credit for other purposes (eg business, education).
  - ✓ **Low population**, controlled migration, limit pressure on land, despite 'McMansions' (rumah2 mewah yg bentuknya semua sama dan yg biasanya sangat besar untuk ukuran penghuninya)... **(cont...)**



# Right to adequate housing

- **But Australian government subsidies assist *wealthy* people to buy property:**
  - ✓ Small 21<sup>st</sup> century ‘first home buyers’ subsidy *not means-tested*;
  - ✓ Tax concession for *non-owner-occupied* property, in theory to encourage private rentals; in practice allows high rents and subsidised purchase of holiday and second homes.

**Abolishing these would provide funds to build proper housing in remote Aboriginal enclaves.** But too popular with recipients!

# Right to adequate housing...

## Compare remote Aborigines:

- ✓ until **1990s** many families in **2-room shacks** with no floors or plumbing. Standard *far* below Australian mainstream, even for public housing.
- ✓ Most **housing still publicly (under-) funded**, much still inferior quality and none like cities;
- ✓ **Low incomes, land values**, mean few residents can (borrow money to) build privately. Public housing outstripped by population growth Overcrowding (eg 17 people per 3 bedroom house) produces illnesses unknown in wider population, social problems like child abuse.
- ✓ **Inferior policing** leads to housing damage.

# Right to adequate housing

Poor remote housing and services **often justified by:**

- ✓ **Cultural difference:** Aboriginal culture values housing in social, not material, ways – eg can't evict relatives, even if full. But less overcrowding if more, and more culturally appropriate, houses!
- ✓ **Distance:** costs of transporting materials, installing and employing services, too high. But remote Aboriginal housing *very* similar to housing in poor black areas of southern USA – causes appear more likely economic inequality than isolation.
- ✓ **High labour costs:** could train owner-builders?

# Right to health

- **Dispossession, segregation and misallocation of government resources also explain breaches of the right to health (Art 12).**
- For example:
  - ✓ **poor nutrition** due to decline of hunter-gathering and distance from fresh food markets,
  - ✓ **poor hygiene** due to the fairly recent change to sedentary living (some people < 100 years), and
  - ✓ **poor housing** caused by low budgets, poor construction or neglect.

These produce a mix of (preventable) 'first' and 'third' world diseases in remote Aboriginal people: diabetes and heart disease alongside trachoma, rheumatic fever and parasite infections.

... (cont.)

# Right to health



- **More, better qualified, medical staff serve urban populations than serve sicker remote Aborigines.** Government will not subsidise remote wages to compensate for loss of city privileges (social networks, restaurants; ‘good’ schools, cinemas etc). Foreign doctors increasingly common in rural areas – less well paid, some less well trained and unfamiliar with Aboriginal culture.
- **Government subsidises expensive, less essential medical procedures** (eg vision correction, *in vitro* fertilisation) **for people wealthy enough to pay for them** through tax rebates.

# Right to health

- While pharmaceutical companies trawl traditional Aboriginal botany for cancer cures, it is **unusual for indigenous people (particularly people from remote areas) to train as health professionals**, mainly due to poor primary and secondary education (more to come on this).
- Also **rare for other health professionals** (eg flying doctors) **to understand traditional practices which affect health**, including effective traditional medicine. Like most professionals, they don't spend enough time in remote 'communities' to become familiar with their patients, and they soon return to the city.

# Right to health



**Mental health** can suffer due to:

- **poor education and lack of employment** (few jobs in remote enclaves, most taken by better-qualified outsiders);
- **associated alcohol and drug abuse**, sometimes a response to negative life experiences (eg being removed from family by the state as child);
- **associated violence** (now common in some enclaves, in part due to under-policing);
- **associated crime and imprisonment** (both rates are high for indigenous Australians).



# Right to education

- Historically, there were some useful efforts made towards **culturally-appropriate education** - in indigenous languages, or addressing indigenous cultural priorities.
- However, problems:
  - ✓ **government funding for this work has declined over the past decade;**
  - ✓ **government funding for public schools has also declined. Remote Aborigines usually cannot afford private schools (for which public subsidisation has *increased* in past decade, benefiting more privileged people).**

# Right to education



- **Aboriginal and policy confusion:**
  - ✓ **What is education *for*?** Personal develop't? GDP? Cultural assimilation? If no work, why get formal education? If work, why get traditional education? Will girls have babies if educated?
  - ✓ **What can education achieve?** Will it convince people to abandon 'irrational' practices like sharing money, instead of putting it in the bank?
- **Declining social conditions undermine study** (illiterate or innumerate parents can't help at school or home; no homework space in noisy, overcrowded house; no breakfast so can't think).

# Right to education



- These factors produce much **truancy** and **failure to meet national education benchmarks in 'bush' schools**: eg many children of even secondary age cannot read as their peers in the city can.
- **2005 Northern Territory study**: for every \$A1 spent on education of children in the city of Darwin, < 20 cents spent on children in one of the NT's largest **'remote' communities** – a town which now has > 3000 people. Resources were delivered in anticipation of mass truancy, no attempts made to curtail it.

# Right to participate in cultural life

## ● Is education unidirectional? Who defines and participates in national cultural life (Art 15)?

- ✓ Few Australians learn *Bahasa Indonesia*, but *almost none* learn one of 20/300 remaining viable indigenous languages, or their English creoles. Some indigenous traditions are valorised, but others make 'white' Australians uncomfortable and we think that they can teach us nothing.
- ✓ 'Bi-culturalism' is found in New Zealand (which has just one indigenous language) but not in Australia.

# Right to participate in cultural life

- Indeed, there appears to be a **risk that some indigenous contributions to national life will go unrewarded because they are taken for granted or falsely attributed to others** - eg the use of indigenous land or plant knowledge in pharmaceutical manufacture. Australian law requires some reform to ensure that these unique or traditional contributions are adequately rewarded.

# Conclusions



- In settler states like Australia, it is **almost impossible to protect the ESCR of indigenous people because of the logic of dispossession.**
- There are also **significant risks of breaches resulting from**
  - **spatial separation of indigenous populations and**
  - **majority control of cultural and research agendas.**
- Because Australia's indigenous minority is so small, **vigilance by members of the majority** is also required to prevent these breaches.