

DISSERTATION EXPOSÉ

Preliminary Title:

**The Right to Consultation of Indigenous Peoples as Legal Instrument in the
Conservation of Natural Resources in Southeast Asia**

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Research Field: Indigenous Legal Studies

June 2020, Vienna

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List of Abbreviations

AMAN	<i>Aliansi Masyarakat Adat Nusantara</i> (‘Indigenous Peoples Alliance of the Archipelago’)
AICHR	ASEAN Intergovernmental Commission on Human Rights
Art(s)	Article(s)
ASEAN	Association of Southeast Asian Nations
AIPP	Asia Indigenous Peoples Pact
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPMG	Indigenous Peoples Major Group for Sustainable Development
ISEAS	Institute of Southeast Asian Studies
IUCN	International Union for Conservation of Nature
IWIGIA	International Work Group for Indigenous Affairs
NGO	Non-governmental organisation
SDG	Sustainable Development Goals
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
WWF	World Wide Fund for Nature

1. Introduction and background

Situation of indigenous peoples

According to the World Bank¹ over 6 percent of the global population in over 90 countries belong to indigenous peoples as defined by José Martínez Cobo in his study² on the problem of discrimination against indigenous populations. He describes indigenous communities, peoples and nations as “those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them”. He further explains that indigenous communities form non-dominant sectors of society and preserve, develop and transmit their ancestral territories and their ethnic identity to future generations, along with their own cultural patterns, social institutions, and legal systems.

Indigenous peoples along with their cultures have survived in the face of adversity through centuries, despite early colonizers and recent liberal assimilationists. They have striven to maintain their cultural integrity, while adapting to the changing conditions around them.³ However, indigenous peoples are increasingly facing violations of their rights and are often not protected in accordance with the standards of international law. In various cases they are experiencing criminalisation and violence and are confronted with impediments regarding their access to natural resources on which they depend, the formal economy and justice, including participation in decision making.

International human rights norms stipulate in various sources that indigenous peoples should be given the opportunity to effectively participate in decision-making processes, including by being consulted. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms indigenous peoples’ right to build and maintain their own institutions, and at the same time their right to participate in decision-making processes of the state, if their rights might be affected.⁴ The International Labour Organisation (ILO) adopted the Indigenous and Tribal Populations Convention in 1957 (No. 107), which was revised and replaced by the Indigenous and Tribal Peoples Convention No. 169 in 1989, the only international conventions ever adopted on the subject.⁵

The Committee of Experts on the Application of Conventions and Recommendations, an ILO body that carries out supervision of ILO standards, has consistently indicated that consultation and participation constitute the cornerstone of ILO Convention No. 169 on which all other provisions are based. Regarding consultation the two main challenges according to the Committee are to ensure that appropriate consultations are held prior to the adoption of

¹ The World Bank, Indigenous peoples, <https://www.worldbank.org/en/topic/indigenouspeoples> (10/6/20).

² UN Economic and Social Council: Study of the Problem of Discrimination Against Indigenous Populations – Final report submitted by the Special Rapporteur, Mr. José Martínez Cobo, 1981 [available online: <https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>].

³ Anaya, International human rights and indigenous peoples: The move toward the multicultural state. *Arizona Journal of International and Comparative Law* (Vol. 21, Issue 1) 2013, 13.

⁴ UN Document A/RES/61/295, The United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art 18.

⁵ ILO, Indigenous and Tribal Peoples Convention, No. 169, 1989.

legislative and administrative measures that most likely affect indigenous and tribal peoples directly and to pass legislation that requires prior consultation when concessions for the exploitation and exploration of natural resources are being granted.⁶ According to the ILO Convention No. 169 the rights of indigenous peoples shall be specially safeguarded regarding the natural resources pertaining to their lands, including the right of these peoples to participate in the use, management and conservation of these resources.⁷

Experts⁸ argue that not many areas of international law practice show the tension between business and human rights as clearly as the implementation of the requirement to consult with indigenous peoples. The opportunity to consultation gives indigenous peoples protection of their rights when confronted by the decisions and activities of governments and business enterprises that might affect them. While states, NGOs and corporations are starting to take this duty seriously, one of the biggest struggles for states is to tailor adequate processes and for corporations to use different strategies in order to limit the scope of consultations.

Indigenous peoples in Southeast Asia

Despite certain developments in recent years like the recognition of a wide range of indigenous peoples' rights in the international community and the confirmation of the right to their lands and territories, the rights of indigenous people in Southeast Asia have not received such recognition. Disputes over which groups would qualify as indigenous peoples are ongoing in this region, while expropriation and designation of land for massive development projects and plantations threaten the survival of various communities.⁹ This is often related to economic activities such as foreign investments in indigenous territories (plantations, mining, logging/deforestation) or trade with natural resources in regions, where indigenous peoples have their ancestral lands.

Southeast Asia is home to approximately two third of the global population of indigenous peoples.¹⁰ While all ten Southeast Asian countries and the regional organisation ASEAN will be addressed briefly in the present research, the implementation of the relevant provisions and the situation in Indonesia, the biggest Southeast Asian country with approximately 50-60 million people living in indigenous communities¹¹, will be analysed in detail. Moreover, the Philippines is another country that will offer examples of the implementation in Southeast Asia worthy of closer examination. Although no Southeast Asian country has to date ratified the relevant ILO Convention, the general practice of states and the widespread acceptance of the

⁶ *Sweepston*, The Foundations of Modern International Law on Indigenous and Tribal Peoples – The Preparatory Documents of the Indigenous and Tribal Peoples Convention, and Its Development through Supervision, Volume 1: Basic Policy and Land Rights, 2015, 189.

⁷ ILO, Indigenous and Tribal Peoples Convention, No. 169, 1989, Art 15.

⁸ *Anaya/Puig*, Mitigating state sovereignty: The duty to consult with indigenous peoples, in: University of Toronto Law Journal (Vol. 67, Issue 4) 2017, 1.

⁹ *Inman*, From the Global to the Local: The Development of Indigenous People's Land Rights Internationally and in Southeast Asia, in: Asian Journal of International Law (Vol. 6, Issue 1) 2016, 47.

¹⁰ IWIGIA, ASEAN's Indigenous Peoples, St. Film and Plate in Chiang Mai, 2010.

¹¹ UPR, Submission Report to Human Rights Council On The Situation of Human Rights and Fundamental Freedom of Indigenous Peoples in Indonesia, Universal Periodic Review 27th session, submitted by AMAN, 2017.

norm of consultation as law demonstrates that it has become part of customary international law.¹²

Many areas that conservationists are striving to preserve are located within the territories of indigenous peoples. The Kayan Mentarang National Park, situated in the interior of East Kalimantan (Indonesian Borneo), is with 1.4 million hectare one of the largest protected areas of rain forest in Southeast Asia. About 16,000 Dayak people, communities largely regulated by customary law in the conduct of their daily affairs and the management of natural resources in their customary territory live inside or near the park.¹³

The challenges of biodiversity conservation remain difficult, especially in Southeast Asia due to obscure political systems, corruption and rising pressures of population growth and development. Indigenous peoples are responsible for the relatively intact state of the ecosystems in the areas they inhabit, and often also for the prevention of activities like logging, oil drilling, and large-scale industrial agriculture, the reason for destruction of forest throughout the tropical latitudes. The objectives of protected areas include the sustainable use of natural resources along with biodiversity conservation but increasingly also the integration of social development processes through involving indigenous and local communities in management decisions that might affect them. A focus on nature that excluded people is gradually overhauled by professionals recognising natural resources, people and cultures as interconnected.¹⁴ Also, the implementation of the Sustainable Development Goals (SDG), adopted in 2015 and to be achieved by 2030, should contribute to the realization of indigenous peoples' rights.

Conservation of natural resources and indigenous peoples

The legal significance of the connection between the rights of indigenous peoples and the use and management of natural resources has increased both internationally and within many countries, manifested in jurisprudence and legislation. Despite this trend, disputes and conflicts over resources keep occurring. In most territories with valuable natural resources displacement or disruption of indigenous peoples took place. Due to increasing demand, the search for natural resources keeps impacting indigenous cultures.¹⁵ In this context many governments disregard the concept that rights over land do not derive only from possession, but from indigenous peoples' articulated ideas of collective ownership over their territories and a spiritual connection with their lands.

In public international law ownership and control over natural resources fall generally under the category of sovereignty rights, however, under human rights law the disposition over

¹² *Anaya*, Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources, in: *Arizona Journal of International and Comparative Law* (Vol. 22, Issue 1) 2005, 7.

¹³ *Borrini-Feyerabend/Kothari/Oviedo*, Indigenous and Local Communities and Protected Areas – Towards Equity and Enhanced Conservation: Guidance on policy and practice for Co-managed Protected Areas and Community Conserved Areas, in: *Phillips* (ed.), *Best Practice Protected Area Guidelines Series No. 11*, IUCN – The World Conservation Union, 2004, 45.

¹⁴ IUCN, WPC Recommendation 24 – Indigenous Peoples and Protected Areas, World Parks Congress Durban, 2003.

¹⁵ *Southalan/Culotta/Fallon*, Indigenous People and Resources Development - A Rapidly Changing Legal Landscape, OGEL 4, 2011 [available online: https://www.ogel.org/article.asp?key=3137#_ednref1].

resources is as well a right of peoples as provided for in the approach to self-determination, without prejudice to any obligations arising out of international economic co-operation.¹⁶ Therefore, it can be concluded that peoples are entitled to some form of control over the resources, a right that has largely been neglected, especially with investment law being one of the most prolific areas of public international law in recent years.¹⁷

The Convention on Biological Diversity, established at the UN Conference on Environment and Development 1992, recognizes “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.” The Convention states that each state party shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.¹⁸

When conservationists first commenced to launch their projects to protect natural resources and biodiversity, they focused exclusively on the environment, but soon made the observation that indigenous peoples have a long history and are deeply connected with the natural world and have, with their understanding, made significant contributions to the maintenance of fragile ecosystems. The difficulties between indigenous peoples and conservationists came from the fact that they had different agendas; while the former and their defenders focused on protecting and legalizing their lands for their own use and living on the land without destroying those resources, the latter wanted to establish protected areas that are unavailable to people.¹⁹

It is against this background that the intended research project, dealing with the connection between the rights of indigenous peoples, notably the right to consultation, and the effective conservation of natural resources in increasingly threatened ecosystems, is a topic of great relevance that will add new findings to the existing status of research in the field of indigenous legal studies.

2. Research question and areas of research

In dealing with the above described topic the dissertation aims to answer the main research question *whether the right to consultation of indigenous peoples constitutes an effective legal instrument in the conservation of natural resources in Southeast Asia*. Different areas of research in the field of indigenous legal studies and public international law require to be examined in order to draw conclusions necessary to answer this question. Firstly, indigenous peoples’ rights and in particular their right to consultation and participation will be assessed. It will be discussed, which aspects the right to consultation includes and the parameters of

¹⁶ UN, International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), 993 UNTS 3, 1966, Art 1 para 2.

¹⁷ *Gilbert*, The Right to Freely Dispose of Natural Resources: Utopia or Forgotten Right?, in: *Netherlands Quarterly of Human Rights* (Vol. 31, Issue 2) 2013, 314–341.

¹⁸ UN Document, Chapter XXVII. Environment, 8. Convention on biological diversity, 1992, Art 8.

¹⁹ *Chapin*, A Challenge to Conservationists, in: November/December 2004 *WORLD WATCH* magazine, Worldwatch Institute, 2004, 20.

effective consultation will be defined. Secondly, the topic of conservation will be explored in the light of indigenous peoples' rights. Eventually, it has to be analysed, if the right to consultation could contribute to the conservation of natural resources and concurrently prevent exploitation, when consultation is implemented according to the standards of public international law.

The interim conclusions to those areas of research will lead to an understanding that is necessary to eventually draw findings on the overarching theme, which is the right to consultation as stated in various sources of public international law and its role in the conservation of biodiversity as mandated in environmental law.

Indigenous peoples' rights and the role of consultation

The first area of research is the protection of the rights of indigenous peoples, the right to consultation and the associated right of participation. The relevant sources of international law will be examined, from general human rights provisions and how the protection of minorities could be applicable to the legally not binding UNDRIP of the UN General Assembly as well as the ILO Conventions. The distinction between individual rights and collective rights and the rights of peoples as provided for in the ICCPR and the ICECSR will be explored.

The obligations of consultation and participation as incorporated in ILO Convention No. 169 are rooted in general human rights principles as can be found in other international instruments. Those were expressed by the UN Committee on the Elimination of Racial Discrimination and the UN Human Rights Committee, which has interpreted the norm of cultural integrity, defined in Art 27 of the ICCPR, to require effective participation of indigenous peoples in decisions that affect their cultural attributes. This includes decisions concerning cultural ties with the land on which they live.²⁰ The legal categorization of those sources has to be defined and the concept of customary international law dealing with the rights of indigenous peoples analysed.

After dealing with the international legal framework on the rights of indigenous peoples and the right to consultation in general, the implementation in various Southeast Asian countries will be discussed. It has to be examined, which legal and administrative measures were adopted in order to guarantee free, prior, and informed consultation that will effectively change the exclusion of indigenous peoples and therefore prevent violating their rights under international law. While it can be concluded that no Southeast Asian country has ratified ILO Convention Nr. 169 yet²¹, the question of the implementation of customary international law according to the standards of international law will be more complex and evaluated in detail. It will be analysed, which rights can be derived from certain measures, and if the obligations on the side of the governments, but also of corporations, were met. Examples like the Merauke Integrated Food and Energy Estate Project²² in Papua, Indonesia, which has been designed to produce inter alia agrofuels for export, resulting in the non-consensual conversion of indigenous peoples'

²⁰ *Anaya*, International human rights and indigenous peoples: The move toward the multicultural state, in: *Arizona Journal of International and Comparative Law* (Vol. 21, Issue 1) 2013, 57.

²¹ ILO, NORMLEX – Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 (10/6/20).

²² *Bolin*, MIFEE: The Merauke Integrated Food and Energy Estate, in: *Human Rights in Papua*, 2011, 36-40.

ancestral lands and forests, will serve as example of alleged violations of the right to consultation and the challenge of including provisions in national legislation requiring prior consultation when concessions for exploitation and exploration of the lands of indigenous peoples are granted to foreign investors. The obligations of governments to protect the rights of the local population and the related conflict of land grabbing in some Southeast Asian countries, especially Indonesia and the Philippines, will be demonstrated.

In dealing with those topics the dissertation aims to demonstrate in its first part the legal framework and exemplary the respective national measures in legislation and jurisdiction in Southeast Asian countries. The research strives to conclude here, where the right to consultation has been stated and adopted and how it has been implemented. Further conclusions on the relevance and effectiveness of those provisions will be drawn, and common, universally applicable standards derived.

Conservation of natural resources and indigenous peoples

The topic of conservation and the approach to involve indigenous peoples in the process of resource development and the protection of biological diversity constitutes an area of research, which will be examined in regard to the before analysed provisions of indigenous peoples' rights. Looking into this field the dissertation will assess the right to natural resources²³, establishing a right to participate in the conservation of resources. It will further be analysed in the light of the concept of subsistence rights, namely the rights of peoples to have access to food and water.²⁴ The question will be answered whether those provisions, together with the norms addressing indigenous peoples in the Convention on Biological Diversity, establish principles that constitute obligations for states in the field of conservation.

Under human rights law peoples are entitled to some form of control over their resources. In evaluating this area of research, the dissertation seeks to answer to what extent the right of the local population to freely dispose of their natural resources within indigenous territories has been disregarded in the process of regulating the conservation of natural resources.

The situation of striving for conservation in Southeast Asia and the approach of governments and conservationists towards indigenous peoples, including the acceptance and protection of their rights will be observed here. The conclusion will show whether conservation issues and indigenous peoples are adequately connected and if the protection of natural resources and indigenous peoples' rights are legally intervened in an effective way.

Connection between the right to consultation and the conservation of natural resources

After examining those various areas of research, the connection between the right to consultation and efficient conservation of natural resources in Southeast Asia will be analysed. The answer to the question whether consultation can have an impact on conservation depends on the conclusion if the obligation to consult with indigenous peoples is legally binding and implemented in a way that proves effective. If the right to consultation can be interpreted as binding provision under customary international law, it entails responsibilities for states as well

²³ ILO, Indigenous and Tribal Peoples Convention, No. 169, 1989, Art 15.

²⁴ UN, International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), 993 UNTS 3, 1966, Art 1.

as for other subjects of public international law. The question arises whether the implementation in certain Southeast Asian countries plays a significant role when it comes to the management of protected areas and therefore allows indigenous peoples to contribute to the conservation of natural resources. The hypothesis that the significance of indigenous consent regarding conservation is gaining importance will be answered.

The observations and conclusions drawn from those research areas will lead to findings regarding the main research question and support the evaluation whether the right to consultation can constitute an effective legal instrument in the conservation of natural resources. The main research question could be answered in a way that the right to consultation with its legal implications is not or hardly of significance when it comes to measures of conservation. A possible outcome of the research could rather be that the right to consultation is increasingly of importance in conservation efforts. This would be a potential conclusion if consultation can be proven to be an effective legal instrument in this context. The involvement of indigenous peoples through granting them the right to consultation and participation needs to have a clear measurable impact. Then another conclusion would be that there can be a connection drawn between conservation efforts and protecting the rights of indigenous peoples. This further requires demonstrating that the right to consultation is being recognised and if implemented accordingly could contribute to effective conservation and therefore contribute to the protection of natural resources in Southeast Asia.

3. Status of research

While the body of literature in the field of indigenous peoples' rights as well as the topic of the right to natural resources and conservation has been growing, these areas still have important unanswered questions and multiple unexplored aspects, especially regarding the region of Southeast Asia. There has been a significant number of publications on the topic of land rights and related aspects of investment law, however, the academic literature on the approach towards involvement of indigenous peoples in the utilization of their ancestral lands is relatively small.

Relevant articles in the before mentioned areas have been published that prevalently elaborate human rights aspects²⁵ and the connection to environmental law²⁶. Corporate social responsibility²⁷ and other requirements like the principle to strive for free, prior and informed consent²⁸ as a responsibility of states and increasingly non-state actors like business enterprises²⁹ are some of the more commonly discussed issues in the present research areas. Topics like the duty to consult with indigenous peoples, their participatory rights regarding

²⁵ *Anaya*, International human rights and indigenous peoples: The move toward the multicultural state, in: *Arizona Journal of International and Comparative Law* (Vol. 21, Issue 1) 2013, 13-62.

²⁶ *Meyer*, International Environmental Law and Human Rights: Towards the Explicit Recognition of Traditional Knowledge, in: *Review of European Community & International Environmental Law* (Vol. 10, Issue 1) 2001, 37-46.

²⁷ *Lewis*, Corporate responsibility to respect the rights of minorities and indigenous peoples, *State of the World's Minorities and Indigenous Peoples*, 2012.

²⁸ *Owen/Kemp*, 'Free prior and informed consent', social complexity and the mining industry: Establishing a knowledge base, in: *Resources Policy* (Vol. 41) 2014, 91-100.

²⁹ *Tugendhat/Couillard/Gilbert/Doyle*, Business, Human Rights and Indigenous Peoples: The Right to Free, Prior and Informed Consent, Joint Committee on Human Rights, Committee Office, House of Commons, London.

decisions about natural resource extraction and the protection of their rights over land and natural resources have already been examined by experts like the former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. However, those articles mostly deal with the situation in South American countries³⁰ and evaluate as examples countries like Peru, Ecuador or Colombia³¹. Few if any conclusions are drawn concerning the situation in Southeast Asian countries.

In the field of protection and control over natural resources, not much attention in academic literature was dedicated to the right of the local population to freely dispose over their natural resources or be involved through consultation in the conservation of those resources. While scholars in the field of business law commence to consider human rights obligations towards indigenous peoples, conservationists and environmental law just recently included indigenous communities into their research. Few articles³² attempt to examine to what extent such a fundamental human right like the free disposition over natural resources has been predominately absent in the development of a new international legal framework regulating the trading and preservation of natural resources.

Although there is a considerable amount of publications from international organisations and NGOs available, the actual recent situation and implementation in Southeast Asia is largely unknown. This is also due to a collision of various interests, from governments and even military to private companies and foreign investors, migrant farmers and local populations, conservationists and natural scientists to indigenous communities, indigenous peoples' defenders and human rights advocates. This political picture influenced the status of research in the present field and did not always contribute to adding new insights to the existing international law scholarship.

Other difficulties in the present research areas include the definition of indigenous peoples, which is necessary for the recognition of the peoples and eventually the protection of their rights. There was no uniform definition introduced and although the definition of Cobo³³ is used in relevant literature, some Southeast Asian countries like Indonesia stated that this definition does not reflect the situation in the country and can not be applied. This is also one of the reasons why there is no consensus on the topic of indigenous peoples' rights protection within the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Hardly any findings on the present topic in regard to Southeast Asian countries can be found in the existing academic literature. Therefore, an answer to the present research question has not been given in the existing rather unclear and inconsistent body of literature.

³⁰ *Anaya/Williams*, The Protection of Indigenous Peoples' Rights over Lands and Natural Resources under the Inter-American Human Rights System, in: Harvard Human Rights Journal 14, 2001, 33-86.

³¹ *Anaya*, Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources, in: Arizona Journal of International and Comparative Law (Vol. 22, Issue 1) 2005, 7-18.

³² *Gilbert*, The Right to Freely Dispose of Natural Resources: Utopia or Forgotten Right?, in: Netherlands Quarterly of Human Rights (Vol. 31, Issue 2) 2013, 314–341.

³³ UN Economic and Social Council: Study of the Problem of Discrimination Against Indigenous Populations – Final report submitted by the Special Rapporteur, Mr. José Martínez Cobo, 1981 [available online: <https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>].

4. Methods

When examining the legal framework, firstly treaties and international agreements that have been established in the above mentioned areas of research will be analysed together with customary international law and general legal principles in order to determine the current legal situation. In a positivistic approach, the rules to which states have agreed through treaties, customs, and other forms of consent will be examined.³⁴ The text of the relevant international agreements, their *travaux préparatoires* as well as their historical developments, especially regarding the two ILO Conventions on indigenous peoples, will be interpreted in order to understand their objectives and significances.

Secondly, it will be assessed, which countries in Southeast Asia have ratified those international agreements and how those provisions have been incorporated into national legislation. Further sources that will be analysed include resolutions of the UN General Assembly and relevant soft law. Also documents of other international organisations will be considered. Through applying a policy-oriented perspective here, the common interests of those various actors in the international community will be observed. Their interests have been clarified and implemented in accordance with the actors' expectations of effectiveness and appropriate processes. Through analysing those various legal sources, contradictions and inconsistencies can be pointed out and the impact of the respective legal constructions will be demonstrated.

Relevant academic literature of scholars and expert opinions will be analysed in dealing with the current legal discourse. Those articles will substantiate the legal difficulties of the topic.

Besides this doctrinal legal research, the external perspective will be observed through empirical legal research methods, also describes as “the law in the books and the law in action”³⁵. The case study qualitative method will be applied as part of an empirical legal research project that is complementary and auxiliary to legal research.³⁶ The qualitative empirical research should inform on how the law is applied in practice, so that the international legal situation in Southeast Asia can be interpreted and evaluated. Through case studies certain phenomena will be described and explained. A Eurocentric approach is advised to be avoided.

“Where research only examines one side of an issue - e.g., in this context, if only interviewing companies and government; then it is impossible to understand what indigenous people think and would be satisfied with.”³⁷ In order to fully examine the present topic, it is feasible to conduct research in Southeast Asia and apply qualitative empirical approaches. Interviews with researchers, practitioners and relevant stakeholders are planned to be conducted in Southeast Asia, in particular in Indonesia. Court decisions of those countries will also be assessed.

³⁴ *Ratner/Slaughter*, Appraising the Methods of International Law: A Prospectus for Readers, in: *The American Journal of International Law* (Vol. 93, Issue 2) 1999, 293.

³⁵ *Argyrou*, Making the Case for Case Studies in Empirical Legal Research, in: *Utrecht Law Review*, Special Issue: Methodology of Legal Research (Vol. 13, Issue 3) 2017, 95-113.

³⁶ *Langbroek/van den Bos/Thomas/Milo/van Rossum*, Methodology of Legal Research: Challenges and Opportunities, in: *Utrecht Law Review*, Special Issue: Methodology of Legal Research (Vol. 13, Issue 3) 2017, 1-8.

³⁷ *Southalan/Culotta/Fallon*, Indigenous People and Resources Development - A Rapidly Changing Legal Landscape, *OGEL* 4, 2011 [available online: https://www.ogel.org/article.asp?key=3137#_ednref1].

5. Proposed Dissertation Outline

A. Indigenous Peoples Rights

1. Introduction on indigenous peoples
 - a. History of the recognition of indigenous peoples
 - b. Facts and figures and current situation in Southeast Asia
2. International legal framework on the rights of indigenous peoples
 - a. ILO Conventions
 - b. UNDRIP
 - c. ICCPR and ICESCR
 - d. International Customary law
 - e. Soft law sources, SDG
3. Implementation of international law on indigenous peoples in SEA
 - a. Regional level: ASEAN's approach
 - b. Situation of indigenous peoples in Indonesia
 - c. Situation of indigenous peoples in Philippines
 - d. Comparison of certain other Southeast Asian countries

B. Right to Consultation and Participation

1. International legal framework on the right to participation and consultation
 - a. ILO Conventions
 - b. UNDRIP
2. Different obligations for states and corporations
 - a. Governments' approach to customary lands
 - b. Foreign investors obtaining concessions
3. Implementation of the right to consultation and participation in SEA
 - a. Level of progress in Indonesia
 - b. Situation in the Philippines
 - c. Comparison of certain other Southeast Asian countries

C. Conservation of Natural Resources and Indigenous Peoples

1. Legal Framework on conservation and indigenous peoples
 - a. Conservation topics in ILO Convention No. 169
 - b. UNDRIP provisions on conservation
 - c. Convention on Biological Diversity
 - d. Right to natural resources – subsistence rights
2. Resource development in indigenous territories
 - a. Control over natural resources as sovereignty right
 - b. Violations of indigenous peoples' rights due to conservation
 - c. Co-managed protected areas and community conserved areas
3. Conservation in Southeast Asia in and around indigenous territories
 - a. Governments, conservationist and indigenous peoples
 - b. Examples of cooperation with indigenous peoples

D. Impact of Indigenous Peoples' Right to Consultation on Conservation of Natural Resources

1. Legal framework connecting indigenous peoples' consultation rights and conservation
 - a. Provisions on consultation in conservation of natural resources
 - b. IUCN resolutions and recommendations
2. Cooperation with indigenous peoples in protected areas
 - a. Role of consultation in conservation
 - b. Paradigm shift regarding protected areas
 - c. Inclusion of different stakeholders
3. Implementation of the right to consultation in Southeast Asia relevant to conservation
 - a. Analysis of different sources of implementation
 - b. Compliance with standards of international law
 - c. Similarities and differences of certain states
 - d. Effect of measures on conservation

E. Conclusion

6. Suggested Bibliography and Resources

Monographies and Volumes of Collected Articles

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