



Legal Protection of Tongkonan Traditional Land Management in The Traditional Community of Tana Toraja

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ABSTRACT

Legal Protection of tongkonan Traditional land management in the traditional community of Tana Toraja. Guided by Abrar Saleng, and Andi Suriyaman Mustari Pide. This study aims to explain and analyse form of customary land management in Tongkonan on customary community of Tana Toraja and to explain and analyse possible implications occurred if customary land management in customary community of Tana Toraja were not protected. This research was conducted in the Tana Toraja District seeing several gaps that can eliminate MHA culture from various actions of several parties. This study uses empirical studies. Data collection was carried out by interviews and then analyzed qualitatively. Tongkonan customary land is managed together by each Tongkonan under the supervision of Tongkonan Layuk and is guided by Aluk Tallu Lolona which plays an important role in maintaining environmental sustainability with the belief that all parts of the land are ancestral heritage that must be preserved as a form of appreciation. The implication occurs if the land of Tongkonan is not protected by law is the loss of the characteristics of the culture of indigenous peoples because of various actions to control the land. Therefore we need regulations to protect the rights of indigenous peoples over their land.

Keywords: Legal Protection; Management; Tongkonan Land

1. Introduction

The Indonesian nation is famous of ethnic diversity, culture, language and customs. From this diversity, it is necessary to regulate the community in terms of land management (community economy) that is efficient and effective for themselves and their groups. The community economy is part of the National and Global economy that needs to be directed and strived to create as much as possible for the prosperity and welfare of all people, by upholding the principle of equity and equity and efforts to utilize natural resources while respecting the rights of indigenous peoples (Suharyono, 2019).

Customary land is the rights of indigenous peoples that have been owned or controlled by MHA for a long time, where these rights were born with the relationship and position of MHA (*rechtsgemeenschappen*). Indigenous and tribal peoples have the right to maintain and strengthen their distinct characteristics in the political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in political, economic, social and cultural state (Yusuf, 2016).

Indigenous peoples adhere to and uphold the norms and values in customary law even though the rules are not written, but custom has legal consequences for anyone who violates it. Customary law does not recognize the existence of a detention house for someone who is found guilty, but customary law has moral and material sanctions that are used as punishment to provide a deterrent effect. Customary law is sourced from norms in everyday life that arise as a statement of the original Indonesian culture, in this case a statement regarding a sense of justice in self-interested relationships so that customary law is made from generation to generation based on *value consciousness* which is manifested in daily living habits by using the measure of their reasoning and sense of justice (Sugiswati, 2012; Salam, 2016).

Toraja society consists of many alliances called Tongkonan. As is known, the alliance called tongkonan owns land called Tanah Tongkonan, land controlled by a group of indigenous peoples where all members of the tongkonan have or have equal rights to the land based on a genealogical *relationship*. The control is carried out by the descendants who live in the location of the land because the tongkonan land is not certified. Every

descendant of the tongkonan land owner has the right to live and build on the tongkonan land, provided that they participate in maintaining and protecting the family's land.

Previous research examined the existence of Tongkonan land where the results of the study stated that now its existence began to weaken the land of Tongkonan into a struggle for ownership in order to obtain economic benefits and ignore the customary values of the tongkonan. Therefore, so that the Tongkonan land still exists in the development of this modernization era, it is necessary to have legal protection against Tongkonan to avoid various arbitrary actions from other parties who want to control the land personally.

In the research the author described several disputes related to customary land such as, in the land dispute there was Tongkonan in the North Tapparan Lembang Kec. Tana Toraja Regency, where some of the family members have mastered the land of Tongkonan Karassik and then against the laws of the parties request a certificate

The problem for the Tampo indigenous people is the management carried out by the forestry. Forestry has taken over the Tongkonan forest by giving a stake in the area that is still part of the customary area of Tongkonan Rante Tampo, where in the area there are various types of plants and there is an immaterial treasure of Tongkonan in the form of "Liku Deata or Bubun Deata" which is a water resource for The entire Rante Tampo community and the surrounding community believed that the springs from the twists and turns can be used as traditional treatment for indigenous people Rante Tampo.

Seeing some of these cases it is necessary to conduct a juridical assessment of the existence of Tongkonan Land of the Tana Toraja indigenous peoples, to provide legal clarity and provide protection to all indigenous peoples in terms of managing traditional Tongkonan land to obtain legal protection from the local government. The regulation of land rights is wrong One state obligation to regulate it for the realization of legal certainty and maintain the rights of each party. In addition to legal certainty, the legal rules that exist in this country also provide legal protection for the recognition of the rights of its citizens so that in the future the mission of the government to protect the rights of MHA is not only promulgated but can also be applied in the field so that the realization of legal goals as a guarantee of protection the law to provide a sense of justice for MHA.

2. Method

The method in this study is empirical research, which is a type of research by collecting data using secondary data as initial data then followed by primary data or field data that is studied based on the relevant legislation. (Asikin, 2003). This study was conducted in Tana Toraja Regency by looking at several gaps such as transitions and abuse of some parties on customary land that can eliminate the characteristics of MHA Tana Toraja culture so that the location of the study is very relevant to obtain adequate information in this study. Data obtained from primary and secondary data will be analyzed analytically descriptive, where the field research data is tested and then analyzed qualitatively with legal material obtained from literature research so that it can be discussed thoroughly and objectively.

3. Result

Tongkonan land in this study is used by the author because for the indigenous people of Tana Toraja, Tongkonan is a symbol, a source of norms and a center for politics and religious development (aluk). However, in the current era, the value of unity in indigenous peoples is starting to weaken due to various gaps that can eliminate the characteristics of indigenous peoples.

Tongkonan land as the culture of the Tana Toraja people. The land/territory where they live is a unit that cannot be separated because of the relationship that is outwardly and inwardly, hereditary which is unbroken between the community and the land. Indigenous peoples essentially have the right or authority to manage and use their land for their survival in their area. The customary territory of the Tana Toraja indigenous people is characterized by the existence of a tongkonan house building called the tongkonan layuk or the previous ancestral house which has the highest position among the tongkonan structures in a community or customary area (Tondok).

Tongkonan customary land is land controlled by a family clump whose regulation, control and use are determined in accordance with the customary norms that apply in that clump. Tongkonan land is a form of customary land, in a broad sense the term customary land can refer to two meanings, namely customary land as

"former customary property" land and land belonging to customary property (La'bi, 2021). For Toraja people, Tongkonan is not only a physical manifestation, but also indicates a group of people (*pa'rapuan*) and the center where families gather, starting from ancestors and living descendants.

The MHA group whose ancestors were the first to settle in an area that has a relationship with agrarian resources and is regulated by customary law. Agrarian resources in their lives, apart from having economic values, also have cultural values, which means that if these resources or values disappear in terms of transferring control to other parties, the economic value especially cultural values as their cultural identity will be lost. The implicit idea of the tongkonan is to build a unified community even though conflicts between tongkonan members often occur, especially conflicts over land resources.

Table 1. Types of land conflicts that often arise in the community

No	Reason	Percentage
1	Land ownership status	22.6%
2	Land tenure status	31.5%
3	Compensation for land acquisition	34.7%
4	Usage status	11.3%

Data Source: Maria SW Sumardjono

Disputes related to land at the author's research location can be seen in the following table:

Table 2. Data on Cases of Customary Land Disputes in Mengkendek District

No	Kelurahan/Lembang	Number of cases
1	Kelurahan Rante kalua'	1
2	Lembang Buntu Tangti	3
3	Lembang Rante Dada	1
4	Kelurahan Tampo	2
5	Lembang Simbuang	1

Data Source: Mengkendek sub-district office

Based on the data above, it is necessary to have legal protection as an acknowledgment of the existence of MHA customary lands. Such as Tongkonan land as a symbol, source of norms and as a center for political and religious development (*aluk*). Therefore, Tongkonan land must be registered as a form of protection and legal certainty over land ownership rights. Referring to the regulation in PP No. 24 of 1997 in article 3 which states that land registration aims to provide legal certainty and protection to the holder of rights to a plot of land, an apartment unit and other registered rights so that it is easy to prove himself as the right holder concerned. then in the indigenous Toraja community, *Tongkonan* land has rules in the local language called *ada'aluk* that bind and guide responsibilities towards everyone, including family members. The rule that has been believed by the indigenous people of Tana Toraja as a form of legal protection is the existence of "*pamali*" where indigenous people rely on the teachings of "*Tallu Lolona*" to respect and care for each other, plants and livestock.

- a. Lolo tau (the pinnacle of human life) which is the perpetrator, initiator, and organizer of traditional rituals
- b. Lolo patuoan (the shoot of life for animals) is an award for livestock as one of the complementary/complementary parts for the implementation of traditional/ritual ceremonies.
- c. Lolo Tananan (the shoot of life on plants) where this plant is a source of livelihood and as a means for the implementation of every traditional activity

Aluk Tallu Lolona plays a very important role and synergizes in the life of the Toraja indigenous people, so these three things must be obeyed and arranged to build a harmonious relationship. *Aluk tallu lolona* plays an important role in preserving the environment of the indigenous people of Toraja, because according to the MHA belief that all parts of customary land are inherited from their ancestors that must be preserved and preserved as a form of their appreciation. Therefore, *Aluk Tallu Lolona* teaches to always respect all parts of the customary land that must be protected and preserved as a form of appreciation for their ancestors.

4. Discussion

4.1 The Forms of Tongkonan Customary Land Management

a. Inward Management Form

This form of inward management means that the management of the tongkonan land can only be managed by family members who come from the tongkonan. Internal management means that only members of the legal alliance have the right to take wild plant and animal products from the land of the legal alliance. In addition, they have the right to enter into certain legal relations with the land and all the contents on the land of the legal alliance as objects (Rosalina, 2010; Salam, 2019). In the management permit, in the past, family members who wanted to manage customary land, whether dry land or wet land, had to first ask permission from the traditional head. Since ancient times, all indigenous peoples of Tana Toraja have known that Tongkonan land is a common property. As is the case with the Tongkonan Karassik in Ukka hamlet whose control is owned by the entire family whose ownership cannot be divided. It is one of the family clumps who are entrusted with coordinating the Tongkonan land or in the local language called "*To Urrambu Tongkonan*" or "*to urraka palasa Tongkonan*" they are given the authority to settle in Tongkonan and try to manage, maintain the tongkonan and try to defend the tongkonan property, so that there are no actions that are contrary to the customary rules of indigenous peoples to maintain the assets of the Tongkonan Karassik. The disputed land of Tongkonan Karassik, in this case the Land of *Pantunuan* cannot be transferred due to a pawn or sale and purchase, even the land of *Pantunuan* cannot be used as a place to live, rice fields or planted with plants that can eliminate the characteristics / identity of the *Pantunuan* land because at any time the *Pantunuan* land used by the family to perform traditional ceremonies (*rambu solo*).

b. Exit Management

In the current New Order era, it is possible that the Tongkonan Land can be given to other people to be managed. If Tongkonan land is given to someone else to work on, they must obtain permission first from the traditional head or Tongkonan leader with the stipulation that any produce from the land must be partially handed over to the tongkonan as a form of appreciation or payment to the Tongkonan. This management in Toraja language referred as *membali* (profit sharing process). Management carried out by outside parties must be licensed and given certain rewards in the form of recognition (Saleng, 2007)

Seeing the meaning and source of land value for the shortened indigenous peoples, land is grouped into three parts according to its function, such as:

- 1) Land related to their ancestors. The indigenous people in Mengkendek believe that land has a relationship between their ancestors because land is an inheritance or mandate entrusted to their descendants, so it is obligatory to protect the land properly to be passed on to the next generation.
- 2) Land related to graves/cemeteries. In Mengkendek community, they still believe that their ancestors will continue to monitor the family clump and the land that has been inherited. In relation to cemeteries, people believe that their deceased ancestors will return to the ground and will unite with the ground.
- 3) Land related to kinship. The indigenous people of Tana Toraja in the kinship system can be seen from the form of family settlement in one plot of land called Tanah Tongkonan. This Tongkonan land is form of a large land such as tanah to *ma'pakande* (rice fields), *burial ground (liang and patane)*, dry land where tongkonan stands and tanah *rante* (tanah pantunuan).

Until now, the problem regarding land related to the cultivation of land by the people has not been completely resolved. Like the cultivation of plantation land, land problems that occur in forest areas. Unclear demarcation or demarcation of boundaries is often the cause of disputes between communities and forestry parties, if this issue is not immediately resolved and the government does not immediately make better land regulations, then problems related to land will continue to grow and the Indonesian land law situation will be disturbed.

In Law Number 41 of 1999 concerning forestry principles in conjunction with Law Number 19 of 2004 specifically in Article 4 paragraph (3) it is stated that forest control by the State must continue to pay attention to MHA as long as its existence is still recognized and does not conflict with national interests. . Then in Article 67

paragraph (1) it is stated that the existence of MHA is recognized if according to reality it meets elements such as:

- a) Society is still in the form of embracing
- b) There is an institution as a form of customary control tool
- c) The legal area is clear
- d) The customary court is still adhered to as a legal institution and instrument
- e) Still holding collections of forest products to meet daily needs

The indigenous people of Tana Toraja view the forest as one of the large living spaces which is not only meaningful as a production and economic land but has other benefits such as cultural and religious aspects which have the highest position and respected by every indigenous people. As a preventive measure, the government should design policies or regulations in this case the formation of a Regional Regulation (PERDA) related to the protection of the management of Tongkonan customary lands and the rights owned by indigenous peoples in their customary territories and to provide protection and certainty for Tongkonan land managers. the granting of land rights through land registration or a policy regarding special data collection for the boundaries of the Tongkonan customary land areas based on the regulations in PP No. 24 of 1997 on article 3. Based on the theoretical analysis, Gustav Radbuch's legal purpose is that with legal certainty, it can provide protection for every indigenous people's rights from various actions of the authorities. Tongkonan land and which actions are allowed and which actions cannot be carried out in accordance with the applicable laws and regulations

4.2. The Implications If Tongkonan Customary Lands Are Not Protected by Law

The existence of law in society is a means that aims to create peace and order in society so that there are no gaps in people's lives with other communities. In this regard, the law must provide a protective role for human interests in the form of norms or rules. The form of the role of law to provide protection to people whose interests are disturbed is that any conflicts that occur must be resolved according to applicable law, so that in this case actions that are contrary to the law can be prevented. The role of law is to provide rules that apply in society with the aim of resolving all conflicts that occur in society, especially to prevent conflicts that occur in interactions between individuals (Tuti, 2014). Customary law applies only where its stipulation can be known by legal officers such as customary heads, judges, customary deliberations, village officials and so on which are stated both inside and outside the dispute.

There are several influential factors that can change the order or customary rules that have been obeyed from generation to generation by indigenous peoples. In reality, customary law and communal rights as characteristics of MHA are starting to change, as stated by Ter Haar that the factor ranging from "the destiny of the community itself" to "reaction and resistance to outside influences". (Pide, 2014) However, the main things that cause changes or shifts from the communal nature of land to individualism according to Ter Haar are:

- a. Because of the desire to stand alone
- b. Reduced forest yields and land availability
- c. Conflict (hostility) between relatives.

Other factors that influence the existence of Tongkonan customary land are as follows:

1. Economic factors play a very important role in human life. In order to fulfill their daily needs, people do not hesitate to sell their land. The existence of the act of transferring land rights is a concrete example of the influence of these economic factors.
2. There is a government program on land acquisition for the public interest.

Based on the provisions in Law No. 12 of 2012 concerning land acquisition for the public interest where every activity is to acquire land by providing compensation to the party who releases the land. The abolition of the Tongkonan land rights was also caused by the government's program on land acquisition for the public interest. For people whose land will be used for development, the relinquishment of their land rights to the government has consequences, both economically and socially, especially if the land is the only plot of land as a place to live as

well as a source of livelihood. Therefore, land acquisition for the public interest must be carried out based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony (Rongiyati, 2012).

Several written regulations governing natural resources generally concern land and water. As stated in Article 33 of the 1945 Constitution. In order for these provisions to be implemented, they were promulgated in the State Gazette of the Republic of Indonesia Number 104 of 1960. Law Number 5 of 1960 concerning Basic Agrarian Regulations or UUPA. Furthermore, the recognition of the existence of indigenous diversity in Indonesia has been regulated in Article 18 B paragraph (2), Article 3 Amendments to the 1945 Constitution, Article 4 of MPR Decree No. IX/MPR-RI/2001, and in Article 3 and Article 5 of the UUPA No. 5 of 1960. Natural wealth is a gift from God to mankind that must be managed and used as well as possible by mankind. Natural resources are a mandate and gift from God Almighty which is a gift for the Indonesian people that cannot be valued, so they must be managed wisely, openly and fairly, used effectively and sustainably for the prosperity of the Indonesian people (noor, 2018)

The emergence of a property right to land tends towards private/individual ownership that occurs through a process. Arbitrary actions can occur in the process of controlling and utilizing land that has existed for a long time, whose use has been carried out from generation to generation, replaced by a transfer to another party that occurs without any obstacles. This process of individualization of land rights occurs because of the increasing population development factor causing an unbalanced land supply, economic progress that causes land prices to increase and external influences that cause changes in the mindset of indigenous peoples. The increasing number of people, the demand for land is increasing due to limited land or land supplies with human needs, which will be increasingly unbalanced which can lead to problems such as disputes over land boundaries or disputes about land ownership that often arise in the community (Sutarja, 2019).

Based on the research that has been done by the author, it was found that until now there has been no regulation made by the local government that regulates government provisions to pay attention and provide protection to the rights of MHA regarding the protection of Tongkonan land which is currently in a weak and threatened position so that the form of recognition by the government is needed in the form of local regulations. Protection of customary land law is necessary, if there is no law that protects us as indigenous peoples, we will lose the characteristics of our culture, including the boundaries of indigenous peoples. Indigenous peoples need regulations as guidelines for implementing activities and there must be facilities for handling them so that there are no conflicts. In 2019 the Bill on Indigenous Peoples was included in the priority program but until now the RRU has not been approved because of one of the factors that there is no political will, both from the President and the Parliament. The main rules in this bill have been regulated on the protection of the customary law community in carrying out their traditional rights including: Protection as a legal subject; Returns of customary areas to be managed, utilized, and preserved in accordance with their customs; Compensation for the loss of the rights of customary law communities to manage customary areas with the permit of the central government or regional government in accordance with their authority; development and maintain local culture and wisdom in the context of preservation of environmental functions; Increasing the standard of living of the customary law community; preservation of local wisdom and traditional knowledge; and preservation of assets and/or traditional objects. The presence of this law is expected to be a legal umbrella that is just to protect people who experience difficulties and limitations in maintaining, managing and getting their customary territories from various land conflicts.

5. Conclusion

The form of management/utilization of the Tongkonan customary land in Tana Toraja indigenous community is jointly managed by each tongkonan under the supervision of the tongkonan layuk and guided by the teachings of Aluk Tallu Lolona plays an important role in maintaining the sustainability of the environment with the belief that all parts of the customary land are heritage of ancestors that must be maintained and preserved as a form of respect and appreciation.

The implication occurs if Tongkonan land is not protected by law is the loss of traditional cultural characteristics of indigenous peoples because of various abuse actions carried out by those who want to control the land individually. Therefore we need rules as legal protection to protect the rights of indigenous peoples over their land.

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