

Substance of Protection of Indigenous Land Rights in South Sulawesi Province

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Abstract: This study aims to determine the substance, influencing factors, and ideal concept for protection of indigenous land rights. This study uses two types of research, namely normative research and empirical research. This study uses qualitative analysis techniques. In addition, some data were also analyzed using quantitative techniques by describing them through a frequency distribution table. The conclusion of this research is the value of legal justice which is lacking in that many indigenous land rights are confiscated unfairly. The value of legal benefits is lacking where existing legal regulations should be used as guidelines for resolving indigenous land rights disputes. The value of legal certainty is less protected where Regional Regulations, which are a reference for policy implementers to overcome inequality, have not been effectively implemented by the government. The influencing factors are the structural/government factor that requires community participation, the legal culture factor of the indigenous law community as a benchmark for the indigenous leader, and the legal knowledge factor of the community in part, which is still very low. On the other hand, the government's efforts in implementing the protection of indigenous land rights are standard and policy targets for protecting the rights of indigenous law communities with a regional regulation inter-organizational relationships which build patterns that interact with each other and have characteristics. Based on this conclusion, it is hoped that the government will more effectively implement the regulations that have been made to provide legal protection that is just, beneficial, and with certainty. For the legal structure, it is expected to provide higher quality services related to indigenous land rights issues. In addition, the legal system is more active in socializing legal protection to create a good and harmonious legal culture between the government and indigenous law communities. Furthermore, in implementing the legal protection rules for indigenous law communities, the government must always build communication with the Regency Government.

Keywords: Indigenous Land Rights; Indigenous Law Community; Legal Protection.

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I. INTRODUCTION

For indigenous law communities, land has a critical position because it is an object of wealth that is permanent in its condition, even more profitable. In addition, the land is a place to live, a place of livelihood, where the deceased members of the fellowship are buried; even according to their beliefs, it is the residence of the guardian ladies of the friendship and the ancestors of the alliance.¹

Land for human life contains a multidimensional meaning. First, from an economic point of view, the land is a means of production that can bring prosperity. Second, politically land can determine a person's position in community decision-making. Third, cultural capital can determine the owner's high and low social status. Fourth, the land is sacred because everyone will return to the land at the end of life.²

In Indonesia, many indigenous law communities differ in each province.³ Indigenous law communities in Indonesia have their unwritten laws, commonly referred to as indigenous law.⁴ Indigenous law, which is the focus of this research, is Land Law in indigenous law communities. Land in indigenous law cannot be separated from the rights of indigenous law communities.

¹Wignjodipoero, S. (1973). *Pengantar dan Azas-Azas Hukum Adat*. Bandung: PT. Alumni, p. 237.

²Nugroho, H. (2001). *Menggugat Kekuasaan Negara*. Surakarta: Muhammadiyah University Press, p. 237.

³Kaban, M. (2016). Penyelesaian Sengketa Waris Tanah Adat pada Masyarakat Adat Karo. *Mimbar Hukum*, 8(3), p. 454.

⁴Sugianto, B. (2017). Pendaftaran Tanah Adat untuk Mendapat Kepastian Hukum di Kabupaten Kepahiang. *Jurnal Panorama Hukum*, 2(2), p. 133.

Every province in Indonesia has indigenous law communities with characteristics that have existed for hundreds of years.

In its development, the pattern of land tenure based on local wisdom is increasingly marginalized due to the government's land law politics which does not explicitly regulate and protect the rights of local indigenous law communities. As a result, there is a struggle for land both by the government, business people and between communities. The government and business people are considered to have taken the community's land without equal compensation. The community feels neglected and does not get the benefits of land that has been controlled for generations and has become their source of life.

Even though some laws and regulations intended to recognize the rights of indigenous law communities, including indigenous land rights, when reviewed, there is a lack of clarity in the regulations regarding indigenous land rights, which give rise to various inadequate interpretations to protect these land rights. Even in its implementation, the weakness of the ambiguity is often used by certain parties to ignore the protection of the rights of indigenous law communities.⁵ In the current era of regional autonomy, this ambiguity should be minimized immediately with regional policies that protect the rights of indigenous law communities.⁶

Law of the Republic of Indonesia Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Local Government (hereinafter referred to as Law No. 9 of 2015) clearly states what is meant by autonomy. It states that autonomy involves three aspects, namely decentralization, deconcentration, and co-administration.

Thus, the autonomy referred to in regional autonomy is the delegation of authority, which means a given right. Meanwhile, what is meant by autonomy in the context of indigenous law communities is an innate right. The nature of this right is inherent and cannot be separated but can be distinguished. Supposedly with regional autonomy, local governments understand the existence of innate rights, not what is understood as given rights, meaning that local governments do not necessarily have to continuously make regulations governing indigenous law communities as a form of recognition of the existence of indigenous law communities, in an area. In indigenous law communities, there is a link between one right and another; by eliminating only one right, all other rights are lost, thereby ending their identity as a community of indigenous law communities.

The importance of this research is to find out how indigenous law communities should be able to obtain the existence and protection of indigenous land rights legally from local governments. What is happening now is that indigenous law communities are only recognized for their existence under certain conditions, the rights attached to these indigenous law communities should also be recognized, especially indigenous land rights.

Based on the description above, this study aims to determine the substance, influencing factors, and ideal concept for protection of indigenous land rights.

II. METHOD

This study uses two types of research, namely normative research and empirical research. Normative legal research, namely legal research that includes research on legal principles, research on legal systematics, legal history research and legal comparative research.⁷ While empirical legal research is research that looks at law in its social context,⁸ particularly related to the protection of indigenous land rights. This research was conducted in the jurisdiction of the Regional Government of South Sulawesi Province, including:

1. Bulukumba Regency;
2. Sinjai Regency;
3. Enrekang Regency;
4. Tana Toraja Regency;
5. Luwu Timur Regency.

The population in this study is indigenous law communities, indigenous institutions, government officials who make decisions and implement decisions starting from the Hamlet Head, Village Head, Camat, Head of Regional Apparatus Organizations (from now on referred to as OPD) and/or Forum Partners (elements of Regional Government, Indigenous Law Government). communities) accompanying indigenous law communities AMAN South Sulawesi, people who are not involved but know before and after the regulation. The number of samples as respondents was 50 people, which were determined and randomized proportionally, namely:

1. Bulukumba Regency = 10 people

⁵Hutagalung, A. S. & Gunawan, M. (2008). *Kewenangan Pemerintah di Bidang Pertanahan*. Jakarta: PT. RajaGrafindo Persada, p. 29.

⁶Fitri, R. (2018). Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah. *Kanun: Jurnal Ilmu Hukum*, 20(3), p. 431.

⁷Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), p. 99.

⁸Sampara, S. & Husen, L. O. (2016). *Metode Penelitian Hukum*. Makassar: Kretakupa Print.

2. Sinjai Regency = 10 people
3. Enrekang Regency = 10 people
4. Tana Toraja Regency = 10 people
5. Luwu Timur Regency = 10 people

The types and sources of data used in this study are as follows:

1. Primary data, namely data obtained directly from experts, government officials, and authorized officials in indigenous law communities;
2. Secondary data, namely data obtained from searching legal literature, in the form of legislation, references, legal scientific journals, legal encyclopedias, and texts or official publications.

Data collection techniques were carried out to obtain the data needed in this study, namely as follows:

1. Questionnaires or questionnaires, namely conducting direct interviews by asking questions to be answered by respondents related to the problems studied in this study;
2. Documentation, carried out by way of a formal request to the relevant agency;
3. The literature study was carried out by taking inventory, reading, and analyzing primary legal materials.

The entire data obtained were then analyzed using qualitative analysis techniques. In addition, some data were also analyzed using quantitative techniques by describing them through a frequency distribution table.

III. RESULTS AND DISCUSSION

A. Substance of Indigenous Land Rights Protection

In one perspective of legal science, the rights of indigenous law communities say that good law is a law created based on living law.⁹ As stated by Von Savigny with his school of history, that law is a historical phenomenon, so that the existence of each law is different, depending on the place and time when the law applies, and the law must be seen as the embodiment of the soul or spirit of a nation. This school is strengthened by the sociological jurisprudence school, which emphasizes the importance of living law.¹⁰ So, in this case, the indigenous law known in Indonesia is the influence of the views of this school.

Indigenous law communities, as based on Article 18B section (2) of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as The 1945 Constitution), which regulates that:

“The state recognizes and respects entities of the adat (indigenous) law communities along with their traditional rights as long as these remain in existence and are in accordance with the development of community and the principles of the Unitary State of the Republic of Indonesia, are regulated by law.”

Respect and acknowledgement of the existence of indigenous land rights as human rights, as based on Article 28I section (3) of The 1945 Constitution, regulates that:

“Cultural identities and rights of indigenous people are respected in accordance with the development of times/age and civilizations.”

Furthermore, based on Article 32 section (1) of The 1945 Constitution, regulates that:

“The state promotes Indonesian national culture among the world civilizations by ensuring the freedom of society to preserve and to develop cultural values.”

Therefore, the state needs to manage the progress of society so that it becomes a potential for development, not a cause of conflict.

Facts about the occurrence of conflicts are caused by the government's lack of professionalism in managing legal norms, causing conflicts in the management of natural resources in several regions in Indonesia.¹¹

The high level of conflict in the management of natural resources that occurs in Indonesia is caused by the imbalance in the control of natural resources between people who depend on a natural resource-based economy (land, forests, plantations, environmental services, and others) and management by the business sector, especially the large-scale industrial industry of plantations, forestry and mining and control by the State which still affirms the rights of indigenous law communities.¹²

One of the substantive triggers for the conflict is the neglect of the rights of indigenous law communities, especially related to the recognition of indigenous land rights; there are still regulatory confusions regarding land.

⁹Hadi, S. (2017). Hukum Positif dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat). *DIH: Jurnal Ilmu Hukum*, 13(26), p. 260.

¹⁰Rasjidi, L. & Rasjidi, I. T. (2004). *Dasar-Dasar Filsafat dan Teori Hukum*. Bandung: PT. Citra Aditya Bakti, p. 67.

¹¹Alting, H. (2010). *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*. Yogyakarta: LaksBang PRESSindo, p. 7.

¹²Cahyono, E., et al. (2019). Resolusi Konflik Gerakan Nasional Penyelamatan Sumber Daya Alam: Lintasan Gagasan, Praktik, dan Bentang Masalah. *Integritas: Jurnal Antikorupsi*, 5(2), p. 77.

According to Setiono, legal protection is an act or effort to protect the public from arbitrary actions by the authorities that are not by the rule of law to create order and peace, thus enabling humans to enjoy their dignity as human beings.¹³

Meanwhile, Satjipto Rahardjo argued that legal protection protects human rights (HAM) that are harmed by others. That protection is given to the community to enjoy all the rights granted by law.¹⁴

The protection of indigenous land rights in 5 (five) regencies in South Sulawesi will be discussed by researchers according to the theory of legal defence according to Satjipto Rahardjo and Setiono through indicators: the value of legal justice, the value of legal benefits and legal certainty of protection of indigenous land rights which the researchers describe are as follows.

1. Legal Justice Value of Indigenous Land Rights Protection

Law is very closely related to justice; there is even an opinion that law must be combined with justice so that it means as a law because the purpose of the law is to achieve a sense of justice in society.¹⁵ A legal and judicial system cannot simply be formed without paying attention to justice because fairness includes the essential understanding of a legal and judicial system. Therefore it must be guided by certain general principles.¹⁶ These principles concern the interests of a nation and state, which are beliefs that live in society about a just life because the goal of the state and law is to achieve the greatest happiness for everyone.¹⁷

To find out the extent of the legal justice value of protecting indigenous land rights in (5) five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 1 below:

Table 1. Legal Justice Value of Indigenous Land Rights Protection

No	Indicator	Frequency	Percentage
1	Fair	13	26%
2	Unfair	26	52%
3	Unjust	11	22%
Quantity (n)		50	100%

Source: Primary Data, 2021.

The value of legal justice for the protection of indigenous land rights based on table 1 above shows that of 50 respondents consisting of government officials, community leaders and community organizations, as many as 13 people or 26% gave fair answers, as many as 26 people or 52% gave less fair answers and as many as 11 people or 22% gave it unfairly.

In table 1 above, the results of this study show that the control of indigenous land rights is not fair. From the research results in the field in five Regencies of South Sulawesi Province, indigenous land rights are managed traditionally and controlled from generation to generation. However, currently, many parties claim unilaterally in an unfair manner, especially from the companies developing plantation areas and many powerful officials claiming the management of indigenous land rights, so that the legal justice value of protecting indigenous land rights is not fair.

Protection of indigenous land rights through indicators of legal justice, as according to M. Yusuf, said that:¹⁸

“A fair policy regarding the protection of the rights of indigenous law communities is It is essential, so far there have been many cases of lack of protection for indigenous law communities so that we often find the deprivation of rights, community conflicts due to the absence of protection of the rights of indigenous law communities.”

¹³Setiono, S. (2004). *Rule of Law (Supremasi Hukum)*. Surakarta: Magister Ilmu Hukum Pasca Sarjana Universitas Sebelas Maret, p. 3.

¹⁴Rahardjo, S. (1999). *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, p. 15.

¹⁵Adonara, F. F. (2015). Prinsip Kebebasan Hakim dalam Memutus Perkara sebagai Amanat Konstitusi. *Jurnal Konstitusi*, 12(2), p. 227.

¹⁶Ridwan, R., et al. (2016). Perkembangan dan Eksistensi Hukum Adat: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi. *Jurnal Jurisprudence*, 6(2), p. 108.

¹⁷Santoso, M. A. (2014). *Hukum, Moral, & Keadilan: Sebuah Kajian Filsafat Islam*. Jakarta: Kencana Prenada Media Group, p. 91.

¹⁸Results of interviews with Public Relations of the Kajang Indigenous Community. M. Yusuf, on June 23, 2021.

This is in line with the assessment of Lauseng who said that:¹⁹

“The existence of the Pasang Indigenous Community is not only recognized, but the government must always provide equitable protection to them, this is very important considering the many inequalities that occur as a result of the deprivation of the rights of indigenous law communities. The government must continuously develop the principle of equality without discriminating against community groups in the social order.”

Based on the description above and the research results in the field related to the lack of legal justice for the protection of indigenous land rights, most indigenous law communities in the five Regencies of South Sulawesi Province have their lands confiscated unfairly. The indigenous law communities have not received compensation for the land they have managed as a source of livelihood as indigenous law communities. And not a few indigenous law communities are involved in conflicts with companies that rob them of their territory.

2. Legal Benefits Value of Indigenous Land Rights Protection

The purpose of the law is to provide benefits to as many people as possible. The benefit here is defined as happiness, so the assessment of whether a rule is good or bad depends on whether the law gives pleasure to humans. Thus, it means that every preparation of legal products (laws and regulations) should always pay attention to the purpose of the law, namely to provide as much happiness as possible for the community.

To find out the extent of the legal benefits of protecting indigenous land rights in (5) five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 2 below:

Table 2. Legal Benefits Value of Indigenous Land Rights Protection

No	Indicator	Frequency	Percentage
1	Helpful	10	20%
2	Less Useful	27	54%
3	Useless	13	26%
Quantity (n)		50	100%

Source: Primary Data, 2021.

The value of the benefits of protecting indigenous land rights based on table 2 above shows that of 50 respondents consisting of government officials, community leaders and community organizations, as many as ten people or 37.8% gave useful answers, as many as 27 people or 54% gave less useful answers and as many as 13 people or 26% gave no benefit.

In table 2 above, the results of this study show that the protection of indigenous land rights is less useful. Based on the results of research in the field in five Regencies of South Sulawesi Province, there are many problems with indigenous land rights disputes with plantation development companies that are not resolved in which the government does not can solve it even though the legal rules already exist regarding the legal protection of indigenous law communities.

Regarding the issue of land disputes and the protection of indigenous land rights of Pasang in Enrekang Regency, South Sulawesi Province, Lauseng said that:²⁰

“The government on several occasions often invites us to discuss specific issues. The community here is, of course open, we here recognize as Pasang Indigenous Community located in Enrekang Regency, but the legal protection given to us is still not useful. There are still a lot of land disputes involving indigenous law communities and certain parties where the government cannot resolve them, even though the rules are clear that the territorial issues are the full rights of the Pasang Indigenous Community.”

This is in line with the assessment of Irwan Jafar who said that:²¹

“Many issues must be resolved by the government related to the protection of the rights of indigenous law communities. With so many problems, it certainly requires good cooperation within the scope of government to resolve all forms of issues that occur by the functions of each government agency. Of course, a customary area that has survived from the past is the government's duty always to protect indigenous law communities. Thus, indigenous law communities trust the government so that good relations occur.”

¹⁹Results of interviews with Deputy of the Pasang Indigenous Community. Lauseng, on July 12, 2021.

²⁰Results of interviews with Deputy of the Pasang Indigenous Community. Lauseng, on July 12, 2021.

²¹Results of interviews with Manurung Village Head, Sub-District Malili, East Luwu Regency. Irwan Jafar, on November 10, 2021.

Based on the description above and the results of research in the field related to the lack of legal benefits of protecting indigenous land rights, various existing legal regulations governing the protection of indigenous land rights should be used as guidelines for resolving various indigenous land rights disputes, so that cases of dispute indigenous land rights do not lead to horizontal violence as happened in Bulukumba Regency between the Kajang Indigenous Community and the company PT. Lonsum, which until now has not been resolved.

3. Legal Certainty Value of Indigenous Land Rights Protection

Legal certainty is one of the law's goals and can be an effort to realize justice. The natural form of legal certainty is implementing and enforcing the law against an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take legal action, certainty is needed to realize justice. Certainty is one of the characteristics that cannot be separated from law, especially for written legal norms. Law without the value of certainty will lose its meaning because it cannot be used as a behavioral guide for everyone.

Legal certainty for the protection of the rights of indigenous law communities in 5 (three) regencies in the province of South Sulawesi is a priority program of the local government; thus, a Regional Regulation has been established which regulates the protection of the rights of indigenous law communities, where in the Regional Regulation contains references to the safety of the rights of indigenous law communities.

To find out the extent of legal certainty for the protection of indigenous land rights in five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 3 below:

Table 3. Legal Certainty Value of Indigenous Land Rights Protection

No	Indicator	Frequency	Percentage
1	Protected	9	18%
2	Less Protected	27	54%
3	Unprotected	14	28%
Quantity (n)		50	100%

Source: Primary Data, 2021.

The value of legal certainty for the protection of indigenous law communities based on table 3 above shows that of 50 respondents consisting of government officials, community leaders and community organizations, as many as nine people or 18% gave protected answers, as many as 27 people or 54% gave less protected answers and as many as 14 people or 28% gave unprotected.

Table 3 above shows that the control of indigenous land rights is less protected. From the results of field research in five Regencies of South Sulawesi Province, there are many Regional Regulations made in five Regencies of South Sulawesi Province but have not been able to provide adequate protection for the control of indigenous land rights. It can be seen that there are many land disputes involving indigenous law communities and also certain parties where the Government cannot resolve these matters.

Regarding the matter of the Government in implementing legal certainty for the protection of indigenous land rights, Rabassing said that:²²

“In protecting the rights of the Kajang Indigenous Community, of course, it has standards and targets. Therefore a Regional Regulation of Bulukumba Regency Number 9 of 2015 on Inauguration, Recognition of Rights, and Protection of the Ammatoa Kajang Indigenous Community. Where in the Regional Regulation recognizes the existence of the Kajang Indigenous Community so that the Kajang Indigenous Community also gets protection from the Government both in carrying out social life to protecting rights in the customary area.”

As for carrying out social life up to the protection of the rights of indigenous law communities, A. Takdir said that:²³

“To protect the rights of the Karampuang Indigenous Community, a Regional Regulation No. 1 of 2019 concerning Guidelines for the recognition and empowerment of Indigenous law communities was established. Where in the Regional Regulation recognizes the existence of the Karampuang Indigenous Community so that the Karampuang Indigenous Community also gets protection from the Government both in carrying out social life to protecting rights in the customary area.”

²²Results of interviews with Kajang Indigenous Community Figures. Rabassing, on June 23, 2021.

²³Results of interviews with the Management of the Alliance of Indigenous Peoples of the Archipelago of Sinjai Regency. A. Takdir, on June 29, 2021.

This is in line with the assessment of Rustam Arsyad who said that:²⁴

“A good policy is a guideline that becomes a reference for the apparatus in its implementation, including the protection of the rights of the Pasang Indigenous Community and they are part of the Enrekang Regency area so that they receive special attention from the local Government. All forms of recognition protection to the granting rights to the Pasang Indigenous Community have been stated in the Regent Decision of Enrekang Regency Number 698/Kep/XI/2019 on Recognition of the Pasang Indigenous Community. Recognition and protection of the Pasang Indigenous Community is a benchmark for implementers to protect the rights of the Pasang Indigenous Community.

Meanwhile, according to Freederik Kumbun, said that:²⁵

“Regarding the legal protection of the rights of the Rantepao Indigenous Community, the Regional Regulation of North Toraja Regency Number 1 of 2019 on Recognition and Protection of the Rights of Indigenous Law Communities has been issued so that the local indigenous law communities have received legal protection for their protection.”

Furthermore, according to Irwan Jafar, said that:²⁶

“Regent Decision of East Luwu Regency Number 286/X/2019 on Recognition and Protection of Local Wisdom of the To Cerekang Indigenous Community is the legal basis that provides legal protection to indigenous law communities.”

Based on the description above and the research results in the field related to the value of legal certainty, it is still considered to be minimal in providing protection. Therefore, legal certainty for protecting indigenous land rights based on Regional Regulations in five regencies is still not effectively implemented by the government. The Regional Regulation should be a reference for policy implementers according to the standards and targets that have been set to overcome inequality in the control of indigenous land rights. In this case, the use of plantation land and the issuance of forestry and conservation concession permits.

Based on the description above, it can be understood that there are three essential elements related to rights in the recognition and protection of indigenous law communities, namely the element of recognition, the element of protection, and the element of will. The meaning of the element of protection relates to the prohibition for anyone to take or control the property rights of others without valid rights reasons. Thus, the community has the right to be protected by anyone and anywhere on the land resources.

1. The element of recognition is formulated in the provisions in various laws and regulations regarding the existence of the rights of indigenous law communities. Even these rights are seen as human rights that must be protected. The existence of a prohibition on controlling or taking land resources belonging to indigenous law communities means that the state/government has recognized the existence of these community rights.

2. The element of protection is invested in concrete actions from the government on behalf of the state to place individual rights and community rights in their proper position based on proportionality.

3. The will element means that indigenous law communities have honor and respect as human rights. Thus the law has given the right to the community to get protection for their nature. Because they have protected rights, they can give voluntarily to other parties or even defend against exploitation by other parties, all of which are the rights of the customary law community so that only they have the will regarding the use of the land.

According to the researcher's analysis based on the legal protection theory of Satjipto Rahardjo and related to the results of research in the field related to the protection of indigenous land rights, resulting in several assessments, namely:

1. The value of legal justice for indigenous land rights is managed traditionally and controlled for generations, but currently, many parties are claiming unilaterally unfairly, especially from companies developing plantation areas. Moreover, many powerful officials claim to manage the indigenous land rights, so the value of justice for protecting indigenous land rights is not fair.

2. The value of legal benefits where there are many unresolved issues of indigenous land rights disputes with plantation development companies where the government cannot resolve them even though the legal rules already exist regarding the legal protection of indigenous law communities.

The value of legal certainty has been that many regional regulations have been made in five Regencies of South Sulawesi Province but have not been able to provide adequate protection for the control of indigenous land

²⁴Results of interviews with Pasang Village Head, Sub-District Maiwa, Enrekang Regency. Rustam Arsyad, on July 12, 2021.

²⁵Results of interviews with North Lembang Belau Village Head, Sub-District Masanda, Tana Toraja Regency. Freederik Kumbun, on November 18, 2021.

²⁶Results of interviews with Manurung Village Head, Sub-District Malili, East Luwu Regency. Irwan Jafar, on November 10, 2021.

rights. It can be seen that there are many land disputes involving indigenous law communities and also certain parties where the government cannot resolve these matters.

On the other hand, the rights of indigenous law communities include ulayat rights, which are rights born from these communities as legitimized by indigenous law (innate rights) and other rights granted by the state. Indigenous land rights, also called by various other names, is one of the rights in indigenous law communities. Based on Article 3 of Law of the Republic of Indonesia Number 5 of 1960 on Agrarian Basic Principles (hereinafter referred to as Law No. 5 of 1960), regulates that:

“In view of the provisions of Articles 1 and 2, the implementation of the ulayat rights and other similar rights of indigenous law communities, as long as such communities in reality still exist, must be such that it is consistent with the national interest and the State’s interest and must not contradict the other Laws and regulations of higher levels.”

The agrarian concept in Law No. 5 of 1960 has broad coverage. This case includes the earth, water, and the natural resources contained therein. Therefore, the recognition of indigenous land rights as regulated in Article 3 of Law No. 5 of 1960 also applies to indigenous land rights practiced in the territory of indigenous law communities.²⁷

There have been many hierarchical regulations that exist under published laws. However, the complete success of the purpose of the establishment of the regulation has not yet been seen. Even today, the implementing regulations of Law No. 5 of 1960 have not provided guarantees for legal certainty, legal protection, justice, and prosperity. In this case, for local communities whose agrarian and natural resources are exploited by other parties. Even Achmad Sodiki concluded that although the natural wealth had been depleted, the local community is getting less benefit.

Optimal protection of indigenous land rights has indeed become the duty of the government. However, it can be seen that although the implementation of the protection of indigenous law communities' rights has been clearly stated in a policy, in reality, there are still many problems related to the confiscation of indigenous land rights that often occur in the field. Of course, these problems must be a concern of the government.

B. Factors Affecting Protection of Indigenous Land Rights

We all realize the importance of the benefits of land for humans, even though the land is an unrenovable natural resource. Therefore, the government in various policies has attempted to regulate the utilization, designation, and use of land for the benefit of humanity in Indonesia. The policy is as based on Article 33 section (3) of The 1945 Constitution, which regulates that:

“The land and the water as well as the natural resources therein are controlled by the state and utilized for the optimal welfare of the people.”

Furthermore, based on Article 2 section (2) of Law No. 5 of 1960, regulates that the State’s right of control as referred to in section (1) of this article confers the authority:

- a. to regulate and administer the allocation, use, supply, and maintenance of the land, water, and airspace;
- b. to determine and regulate legal relationships between people and the land, water, and airspace;
- c. to determine and regulate legal relationships among people as well as legal acts concerning the land, water, and airspace.

Based on the above provisions, it can be seen that the authority to regulate land is entirely left to the State as an organization of powers.

On the other hand, the effectiveness of law enforcement is closely related to the effectiveness of the law. For the law to be effective, law enforcement officials must enforce the provision of sanctions. A sanction can be actualized to the community using force (compliance). These conditions show that there are indicators that the law has been effective.

According to Soerjono Soekanto, the factors that influence the effectiveness of the law include the following:²⁸

1. Legal factors contain elements of justice, certainty, and expediency. It is not uncommon for conflicts to occur between legal certainty and justice in practice.
2. Law enforcement factors relate to the parties that form and apply the law.
3. Factors of legal facilities can be formulated as supporting to achieve goals.
4. Community factors are related to the willingness and legal awareness of the community in law enforcement.
5. Cultural factors are united with community factors but are deliberately differentiated. In this case, the discussion of cultural factors discusses the value system that is the core of spiritual or non-material culture.

²⁷Gayo, A. A. & Ariani, N. V. (2016). Penegakan Hukum Konflik Agraria yang Terkait dengan Hak-Hak Masyarakat Adat Pasca Putusan MK No. 35/PUU-X/2012. *Jurnal Penelitian Hukum de Jure*, 16(2), p. 161.

²⁸Soekanto, S. (2007). *Pokok-Pokok Sosiologi Hukum*. Jakarta: PT. Raja Grafindo Persada, p. 110.

Lawrence W. Friedman argues that the effectiveness of law enforcement depends on the legal system, which includes three components or sub-systems, namely the structure of law, substance of the law, and legal culture.²⁹ To find out what factors influence the protection of indigenous land rights is based on the theory of legal effectiveness according to Soerjono Soekanto and Lawrence W. Friedman. Researchers will describe the results of research in the field through distributing questionnaires to respondents and through the interview process.

1. Legal Structure Factor

Governance is divided based on externalization, accountability, and efficiency by taking into account the compatibility of the relationship between the composition of the Government. The implementation of the authority relationship between the Government and the Provincial, Regency, and Municipal Governments, or between Regional Governments that are interrelated, dependent, and synergistic as a single government system. Government affairs that are handed over to the regions are accompanied by funding sources, transfer of facilities and infrastructure, and staffing as a decentralized affair.

Based on Article 18 section (5) of The 1945 Constitution, regulates that:

“The local governments exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the Central Government.”

In the agrarian context, the above provisions create ambiguity when related to Article 33 section (3) of the 1945 Constitution, which is the basis for making Law No. 5 of 1960. Article 33 section (3) of The 1945 Constitution does not regulate the possibility of controlling the land and the water as well as the natural resources therein to the Regional Government. However, explicitly it must be controlled by the State and utilized for the optimal welfare of the people.

The above provisions are also confirmed in Elucidation Article 2 of Law No. 5 of 1960, that:

“Agrarian affairs are by nature and in principle the duty of the Central Government. Thus, the delegation of authority over the implementation of the State’s right of control to land is a form of medebewind. All will be implemented as required and in ways which may not contradict to the national interests.”

Furthermore, based on Article 11 section (1) of Law No. 9 of 2015, regulates that:

“Concurrent Government Affairs which are the authority of the Region composed of Mandatory Government Affairs and Options Government Affairs.”

The implementation delegated from the Central Government to the Regional Government within the framework of Regional Autonomy is the implementation of the national land law. Based on Article 2 section (4) of Law No. 5 of 1960, regulates that:

“The authority to implement the State’s right of control referred to above may be delegated, as required, and provided that it is not contrary to the national interest, to Autonomous Regions and to indigenous law communities under the provisions of Government Regulation.”

To find out the extent to which the legal structure affects the protection of indigenous land rights in (5) five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 4 below:

Table 4. Legal Structure Factor that Affects the Protection of Indigenous Land Rights

No	Indicator	Frequency	Percentage
1	Affecting	26	52%
2	Less Affecting	16	32%
3	Not Affecting	8	16%
Quantity (n)		50	100%

Source: Primary Data, 2021.

Effect of legal structure factor for the protection of indigenous law communities based on table 4 above shows that of 50 respondents consisting of government officials, community leaders, and community organizations, as many as 26 people or 52% gave affecting answers, as many as 16 people or 32% gave less protected affecting, and as many as eight people or 16% gave not affecting.

In table 4 above, the results of this study indicate the legal structure factor for the protection of indigenous land rights. From the results of research in the field in five Regencies of South Sulawesi Province, government officials should carry out and implement laws and regulations and the task of protecting the community, which

²⁹Friedman, L. M. (1984). *American Law: An Introduction*. New York: W. W. Norton & Company, p. 5.

in this case concerns the protection of indigenous land rights. However, there are many deviations from their duties and functions as officers in reality.

As for the legal structure factor for the protection of indigenous land rights, according to M. Yusuf, said that:³⁰
“The government has an arbitrary character in making decisions and does not pay attention to future impacts. Therefore, the community must participate in ensuring that government programs can injure the rights of indigenous law communities. In this case, the community can act by rejecting the program. Without the participation of the community itself, the protection of the rights of indigenous law communities will not run optimally.”

Regarding the protection of the rights of indigenous law communities, the government must always be present in providing services and granting the rights of indigenous law communities. According to Lauseng said that:³¹
“As a bureaucratic apparatus, of course, we should understand that a policy is directed at the interests of the general public, not only the interests of certain groups. So that in making a decision, it is necessary to consider several agencies or implement the policy itself. Regarding the protection of the rights of indigenous law communities, the government must always be present in providing services and granting the rights of indigenous law communities. Therefore, there is no reason for us to take actions outside the standard procedures of the policies.”

Based on the description above, community participation is needed to oversee all programs that the government has made. Communities must reject all forms of policies that may deprive indigenous law communities of their rights. The challenges in realizing the fulfillment of the rights of indigenous law communities must be understood and analyzed in-depth by all stakeholders involved in policymaking. Therefore, a policy will not run optimally if the implementer does not understand their duties and responsibilities.

2. Community Legal Cultural Factor

Culture has an essential function for humans and society, namely, regulating so that humans can understand how they should act, act, and determine their attitudes when dealing with other people. Culture includes the values that underlie the applicable law. Values are abstract conceptions of what is considered good (so that it is embraced) and what is considered inadequate (so that it is avoided). Cultural factors have similarities with community factors. However, in the cultural factor, more emphasis is placed on the problem of the value system that exists in society. In terms of community factors, it is said that the level of community compliance with the compliance of community rules is still low. This condition occurs because of the compromising culture in Indonesian society. There will be a tendency from the culture of the community to escape from the applicable rules.

The legal culture (system) includes the values that underlie the applicable law, where values are abstract conceptions of what is considered excellent and flawed. These values are usually a pair of values that reflect the two extremes that must be harmonized. The pair of conservatism and innovation values always play a role in developing law. Therefore, on the one hand, some state that the law only follows changes that occur and aims to maintain the status quo.

To find out the extent to which the community legal cultural affects the protection of indigenous land rights in (5) five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 5 below:

Table 5. Community Legal Cultural Factor that Affects the Protection of Indigenous Land Rights

No	Indicator	Frequency	Percentage
1	Affecting	27	54%
2	Less Affecting	18	36%
3	Not Affecting	5	10%
Quantity (n)		50	100%

Source: Primary Data, 2021.

Effect of community legal cultural factor for the protection of indigenous law communities based on table 5 above shows that of 50 respondents consisting of government officials, community leaders, and community organizations, as many as 27 people or 54% gave affecting answers, as many as 18 people or 36% gave less protected affecting, and as many as five people or 10% gave not affecting.

³⁰Results of interviews with Public Relations of the Kajang Indigenous Community. M. Yusuf, on June 23, 2021.

³¹Results of interviews with Deputy of the Pasang Indigenous Community. Lauseng, on July 12, 2021.

In table 5 above, the results of this study indicate the community legal cultural factor for the protection of indigenous land rights. From the results of research in the field in five Regencies of South Sulawesi Province, indigenous law communities running in their daily lives are based on indigenous leaders. They have been given an indigenous rule regarding rights and obligations in land management.

As for the community legal cultural factor for the protection of indigenous land rights, according to Rabassing said that:³²

“Here we have our own beliefs and customs and have a very sacred leader, which becomes our benchmark in carrying out our daily lives. The people here do not demand much from the government. We ask that the rights of the people here are not taken away but protected. If anyone argues it is difficult because we have a different culture from them, that is a false statement. Our lives are the same. Only the way is different. The difference of opinion occurs because certain parties want to seek profit in our area. Nevertheless, that is not important because we trust the government in protecting our rights. The protection of these rights is more than sufficient.”

Regarding the protection of the rights of indigenous law communities, Rustam Arsyad said that:³³

“Pasang Indigenous Community has been carried out from generation to generation and led directly by indigenous leaders. As for the resolution of problems that have so far, especially the issue of indigenous land rights, it is always left to indigenous leaders as role models to solve the following the expectations of the Pasang Indigenous Community. Therefore, as the executor of the village government, we provide facilities and open communication spaces in solving problems that occur.”

Based on the description above, indigenous law communities have a benchmark for indigenous leaders where indigenous leaders carry out indigenous rules that have existed for a long time. However, indigenous law communities also entrust the government to protect the rights of indigenous law communities, especially in resolving indigenous community disputes that occur.

3. Community Legal Knowledge Factor

Lack of community legal knowledge because some indigenous law communities are still classified as traditional people who only understand the problems of unwritten laws/indigenous law. In this case, the indigenous law contains advice that is both an appeal and a prohibition. The low level of community legal knowledge must be a concern for all parties. In addition to avoiding law violations due to ignorance of the rules, this is also important in preventing unlawful acts. If the public knows about the law where they violate it, they will get sanctions. In this case, it is hoped that the public can increase awareness to obey the law. Increasing community legal knowledge is also very useful so that people do not hesitate in carrying out activities in this life because they already know what is wrong and right according to the rule of law.

To find out the extent to which the community legal knowledge affects the protection of indigenous land rights in (5) five Regencies of South Sulawesi Province, the author will describe the results of research in the field through distributing questionnaires to respondents and interviews, we can see in table 6 below:

Table 6. Community Legal Knowledge Factor that Affects the Protection of Indigenous Land Rights

No	Indicator	Frequency	Percentage
1	Affect	29	58%
2	Less Affect	14	28%
3	Not Affect	7	14%
Quantity (n)		50	100%

Source: Primary Data, 2021.

Effect of community legal knowledge factor for the protection of indigenous law communities based on table 6 above shows that of 50 respondents consisting of government officials, community leaders, and community organizations, as many as 29 people or 58% gave affecting answers, as many as 14 people or 28% gave less protected affecting, and as many as seven people or 14% gave not affecting.

In table 6 above, the results of this study indicate the community legal knowledge factor for the protection of indigenous land rights. From the results of research in the field in five Regencies of South Sulawesi Province, some traditional indigenous communities still have a deficient level of legal knowledge. In

³²Results of interviews with Kajang Indigenous Community Figures. Rabassing, on June 23, 2021.

³³Results of interviews with Pasang Village Head, Sub-District Maiwa, Enrekang Regency. Rustam Arsyad, on July 12, 2021.

this case, the indigenous community does not understand laws and regulations, especially regarding protecting management rights over indigenous land.

As for the community legal knowledge factor for the protection of indigenous land rights, according to Salam said that:³⁴

“There are still many Kajang Indigenous communities who do not understand the legal issues in our state. In this case, the Kajang Indigenous Community is still carrying out its traditional life from generation to generation. The legal system is based on indigenous law that Ammatoa has led as the indigenous leader.”

Regarding the protection of the rights of indigenous law communities, Samsul said that:³⁵

“Legal knowledge from the Pasang Indigenous Community is still deficient, and many indigenous communities do not understand the applicable law. As a result, many certain parties take the opportunity to seize indigenous land rights because they think that indigenous communities do not know the rules regarding the protection of indigenous law communities.”

According to the researcher's analysis, based on the theory of legal effectiveness by Lawrence W. Friedman & Soerjono Soekanto, which is related to research in the field. In this case, related to the protection of indigenous land rights, among the following:

1. Legal structure factor in overseeing government policies related to the protection of indigenous law communities' rights, the community's participation is needed to manage all programs launched by the government. The challenge in realizing the fulfillment of the rights of indigenous law communities must be studied and understood in depth by all stakeholders involved in a policy because a policy will not run optimally if the implementer does not understand his job
2. Legal culture factor of indigenous law communities has a benchmark for indigenous leaders, where indigenous leaders carry out indigenous rules that have existed for a long time. However, indigenous law communities also entrust the government to protect the rights of indigenous law communities, especially in resolving customary disputes that occur
3. Community legal knowledge factor in terms of legal knowledge is partly still shallow; many of them do not understand the applicable law. It resulted in many problems, and they did not know about the land that was their rights that were seized

C. The Ideal Concept for the Protection of the Rights of Indigenous Law Communities

In the context of implementing development in the current era of regional autonomy, especially in the land sector, the role of indigenous institutions is very much needed to help local governments regulate the use and supervision of land use in their territories.³⁶

Implementation of development that requires land availability in large quantities often sacrifices indigenous land rights. Apart from being caused by the dilemmatic nature of indigenous land rights itself, social, economic and political factors are pretty influential in weakening the existence of indigenous land rights.³⁷ Therefore, it is necessary to immediately make efforts, both in the legal field and in other related areas, so that the implementation of development programs can proceed as planned without eliminating or weakening the existence of indigenous land rights.

Indigenous land rights are not exclusive rights that can only be utilized by the indigenous law communities that own them. For the development program planned by the Government to run without eliminating/abolishing the existence of indigenous land rights indigenous law communities, it is necessary to carry out cooperation between agencies and related fields.

According to Jan Michiel Otto, legal certainty has a more juridical dimension. However, Otto provides legal certainty limits that further define legal certainty as to the possibility that in certain situations, namely:³⁸

1. There are transparent (clear), consistent and easy to obtain (accessible) rules;
2. Ruling agencies (government) apply the law rules consistently and are also subject to and obedient to them;
3. Citizens, in principle, adjust their behavior to these rules;

³⁴Results of interviews with the Head of Tanah Toa Village, Sub-District Kajang, Bulukumba Regency. Salam, on June 23, 2021.

³⁵Results of interviews with Pasang Village Secretary, Sub-District Maiwa, Enrekang Regency. Samsul, on July 12, 2021.

³⁶Arisaputra, M. I. (2013). Penerapan Prinsip-Prinsip Good Governance dalam Penyelenggaraan Reforma Agraria di Indonesia. *Yuridika*, 28(3), pp. 209-211.

³⁷Gayo, A. A. (2018). Perlindungan Hukum Hak Atas Tanah Adat (Studi Kasus di Provinsi Aceh Khususnya Kabupaten Bener Meriah). *Jurnal Penelitian Hukum de Jure*, 18(3), pp. 292-293.

³⁸Shidarta. (2006). *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*. Bandung: Refika Aditama, pp. 83-84.

4. Independent and impartial judges (judicial) apply these legal rules consistently when they resolve legal disputes, and concrete judicial decisions are implemented.

The ideal concept for the protection of indigenous land rights in 5 (five) regencies in South Sulawesi Province will be discussed by researchers according to the theory of legal certainty according to Jan Michiel Otto through indicators of inter-organizational relations, characteristics of implementers, the researchers describe as follows.

1. Concept of Inter-Organizational Relation

Public policy implementation will be challenging to achieve the target if relations between government organizations do not support it. For public policy to be implemented effectively, the common objectives must be understood by the individuals responsible for achieving the standards and goals of the policy. Therefore the ideals and objectives must be communicated to the implementers. Communication in delivering information to policy implementers about the standards and objectives must be consistent and uniform from various sources of information. The role of regional work units in implementing regional regulations regarding the protection of indigenous law communities' rights is related to each government agency's duties in carrying out policies to protect the rights of indigenous law communities

To find out the extent to which the concept of the relationship between organizations protecting indigenous land rights in five (5) regencies of South Sulawesi Province, the researcher will describe the results of research in the field through questionnaires and interviews to respondents as follows:

Table 7. Concept of Inter-Organizational Relation

No	Indicator	Frequency	Percentage
1	Affect	35	70%
2	Less Affect	12	24%
3	Not Affect	3	6%
Quantity (n)		50	100%

Source: Primary Data, 2021.

The concept of inter-organizational relations is an ideal concept for the protection of indigenous land rights. Based on table 7 above shows that from 50 respondents consisting of government officials, community leaders and community organizations, as many as 35 people or 70% gave an influencing answer, as many as 12 people or 24% gave a less clear answer. As many as three people or 6% gave no affect.

In table 7 above, the results of this study indicate that it affects the concept of the relationship between organizations protecting indigenous land rights, from the effects of research in the field in five regencies in South Sulawesi, where the government builds a relationship pattern which makes it easier for the government to provide information if it finds problems.

The ideal concept for the protection of indigenous land rights through indicators of organizational relations, as expressed by Arfan, said that:³⁹

“There are several SKPDs involved in the implementation of the protection of rights to the Kajang Indigenous Community, of course by their respective functions and duties. The Forestry Service, for example, functions to monitor the location of forests that are included in customary areas. There is also an environmental service that always pays attention to ecological aspects. Because the Ammatoa customary area is also now a tourist destination, the tourism office is also involved in implementing the protection of the rights of indigenous law communities. All relevant agencies certainly understand the standards of a policy and work according to their respective functions”

Relations between organizations are needed in the implementation of the protection of the rights of indigenous law communities, as according Syahrul Paesa, that:⁴⁰

“Relationships between organizations, in this case, the scope of the government of Sinjai Regency, are needed in carrying out the protection of the rights of the Karampuang Indigenous Community, besides that the existence of such a relationship pattern also makes it easier for the government to provide information if it finds problems. The design of relationships between organizations can also measure an agency's performance in carrying out its functions in the government structure.”

The results of interviews with respondents regarding the ideal concept for the protection of indigenous land rights through indicators of inter-organizational relations, it can be seen that to realize the policy of protecting

³⁹Results of interviews with Head of Section II of the Bulukumba Regency ATR/BPN Office. Arfan, on June 23, 2021.

⁴⁰Results of interviews with Head of Bulupoddo Sub-District, Sinjai Regency. Syahrul Paesa, on June 29, 2021.

the rights of indigenous law communities, several agencies have developed a pattern of interacting relationships and carry out the function of protecting the rights of indigenous law communities by their duties and responsibilities. This pattern of cooperation leads to the goal of making a policy to protect the rights of indigenous law communities so that all forms of problems that occur can be resolved.

2. Concept of Implementation Characteristics

The focus of attention on implementing agencies includes formal and informal organizations involved in implementing the policy. It is essential because policy implementation performance will be significantly influenced by the suitable characteristics and matches with the implementing agents. It is related to the policy context that will be implemented in several policies that require strict and disciplined policy implementers. In other contexts, democratic and persuasive implementing agents are needed. In addition, the coverage or area is an essential consideration in determining the implementing agent for the policy. Implementing the approach to protecting the rights of indigenous law communities in 5 (five) regencies applies a structured system. It works according to the portion of each agency that is the implementer, so it is hoped that the implementation of public policies will lead to the targets that have been set.

To get an answer to the extent to which the concept of the characteristics of the implementation of the protection of indigenous land rights in five (5) regencies of South Sulawesi Province, the researcher will describe the results of research in the field through questionnaires and interviews, to the respondents as follows:

Table 8. Concept of Implementation Characteristics

No	Indicator	Frequency	Percentage
1	Affect	35	70%
2	Less Affect	11	22%
3	Not Affect	4	8%
Quantity (n)		50	100%

Source: Primary Data, 2021.

It was related to the concept of the characteristics of implementing an excellent idea for the protection of indigenous land rights. Based on table 8 above shows that of the 50 respondents consisting of government officials, community leaders and community organizations, as many as 35 people or 70% gave an influencing answer, as many as 11 people or 22% offered a less effective solution and as many as four people or 8% answered no.

Table 8 above shows that the results of this study affect the concept of the characteristics of the implementation of the protection of indigenous land rights, from the effects of research in the field in five regencies in South Sulawesi, which aims to provide an interpretation to the government to be more severe in dealing with issues related to the rights of indigenous law communities.

The government's efforts in implementing the protection of indigenous land rights through indicators of implementation characteristics, as stated by Arfan, said that:⁴¹

"We work, of course, there must be standards, there are regulations that have been set, that is the characteristic and character of the apparatus in carrying out policies. Likewise, in the area of protection for the rights of indigenous law communities, all implementation procedures already exist, even in the form of instructions from the leadership at every opportunity; we are always emphasized to work according to the standards that have been set."

To pay attention to the rights of indigenous law communities, as stated A. Takdir, said that:⁴²

"The presence of our institution aims to give interpretation to the government to be more severe in dealing with issues related to the rights of Indigenous Karampuang Community, it is not uncommon for us to directly hold persuasive meetings with the government of Sinjai Regency so that the rights of the indigenous law communities are taken into account, in this way it is hoped that it can build the character of the government so that it is serious in dealing with a subject matter, including the issue of indigenous land."

In accommodating the aspirations of the indigenous law communities, as stated Rustam Arsyad, said that:⁴³

⁴¹Results of interviews with Head of Section II of the Bulukumba Regency ATR/BPN Office. Arfan, on June 23, 2021.

⁴²Results of interviews with the Management of the Alliance of Indigenous Peoples of the Archipelago of Sinjai Regency. A. Takdir, on June 29, 2021.

⁴³Results of interviews with Pasang Village Head, Sub-District Maiwa, Enrekang Regency. Rustam Arsyad, on July 12, 2021.

“When we talk about our character as village government officials, we always accommodate the aspirations of the Pasang Indigenous Community regarding the protection of their rights, the aspirations of the indigenous people. We then convey the law communities to the relevant agencies so that they can be resolved as soon as possible. It is not uncommon for me to always meet with the head of the service to convey related problems, and we must respond quickly to issues related to indigenous law communities. It aims to create the character of good governance.”

The results of interviews with respondents regarding the ideal concept for the protection of indigenous land rights through indicators of implementation characteristics in carrying out the protection program for the rights of indigenous law communities, namely carried out by directives or instructions in the form of work operational standards so that in providing complete services and in solving any problems regarding indigenous law communities, communication is carried out to resolve any issues.

According to the researcher's analysis, based on the theory of legal certainty by Jan Michiel Otto, which is related to research in the field. In this case, related to the protection of indigenous land rights, among the following:

1. The relationship between organizations can be seen that in realizing the policy of protecting the rights of indigenous law communities, several agencies have developed a pattern of interacting relationships and carry out the function of protecting the rights of indigenous law communities by their respective duties and functions.

2. The characteristics of implementation in carrying out the program to protect the rights of indigenous law communities are carried out by directives or instructions in the form of work operational standards so that in providing complete services and in resolving any problems regarding indigenous law communities, communication is carried out to fix each issue.

To play an active role as a mediator, the government understands matters relating to the prevailing customs in the indigenous law communities concerned, including the existence of indigenous land rights in the area, its social structure and so on. Therefore, the government formulate development policies that do not harm the interests of local indigenous law communities.

IV. CONCLUSIONS AND SUGGESTIONS

Based on the description of the results and discussion, the conclusion from the substance of protection of indigenous land rights in South Sulawesi Province is the value of legal justice which is lacking in that many indigenous land rights are confiscated unfairly. The value of legal benefits is lacking where existing legal regulations should be used as guidelines for resolving indigenous land rights disputes. The value of legal certainty is less protected where Regional Regulations, which are a reference for policy implementers to overcome inequality, have not been effectively implemented by the government. The influencing factors are the structural/government factor that requires community participation, the legal culture factor of the indigenous law community as a benchmark for the indigenous leader, and the legal knowledge factor of the community in part, which is still very low. On the other hand, the government's efforts in implementing the protection of indigenous land rights are standard and policy targets for protecting the rights of indigenous law communities with a regional regulation inter-organizational relationships which build patterns that interact with each other and have characteristics. Based on this conclusion, it is hoped that the government will more effectively implement the regulations that have been made to provide legal protection that is just, beneficial, and with certainty. For the legal structure, it is expected to provide higher quality services related to indigenous land rights issues. In addition, the legal system is more active in socializing legal protection to create a good and harmonious legal culture between the government and indigenous law communities. Furthermore, in implementing the legal protection rules for indigenous law communities, the government must always build communication with the Regency Government.

REFERENCES

- [1]. Aburaera, S., et al. (2017). The Natural of Justice in the Procurement of Land for General Interests in the National Development Framework. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(9), 155-160.
- [2]. Adonara, F. F. (2015). Prinsip Kebebasan Hakim dalam Memutus Perkara sebagai Amanat Konstitusi. *Jurnal Konstitusi*, 12(2), 217-236. doi: <https://doi.org/10.31078/jk1222>
- [3]. Alting, H. (2010). *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*. Yogyakarta: LaksBang PRESSindo.
- [4]. Arief, A., et al. (2019). Legal Efforts to use Indihome Service Telecommunication Services in Protecting Rights as Consumers. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 24(10), 14-25.
- [5]. Arisaputra, M. I. (2013). Penerapan Prinsip-Prinsip Good Governance dalam Penyelenggaraan Reforma Agraria di Indonesia. *Yuridika*, 28(3), 188-216. doi: <http://dx.doi.org/10.20473/ydk.v28i2.1881>
- [6]. Bachmid, F., et al. (2018). The Rights of the Constitutional Court's Decision on the House of Representatives' Representatives about the President's Prospective and/or the President's Vice

- Representatives According to the State Basic Law of the Republic of Indonesia. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 23(10), 43-61.
- [7]. Cahyono, E., et al. (2019). Resolusi Konflik Gerakan Nasional Penyelamatan Sumber Daya Alam: Lintasan Gagasan, Praktik, dan Bentang Masalah. *Integritas: Jurnal Antikorupsi*, 5(2), 75-92. doi: <https://doi.org/10.32697/integritas.v5i2-2.484>
- [8]. Fitri, R. (2018). Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah. *Kanun: Jurnal Ilmu Hukum*, 20(3), 421-438. doi: <https://doi.org/10.24815/kanun.v20i3.11380>
- [9]. Friedman, L. M. (1984). *American Law: An Introduction*. New York: W. W. Norton & Company.
- [10]. Gayo, A. A. & Ariani, N. V. (2016). Penegakan Hukum Konflik Agraria yang Terkait dengan Hak-Hak Masyarakat Adat Pasca Putusan MK No. 35/PUU-X/2012. *Jurnal Penelitian Hukum de Jure*, 16(2), 157-171. doi: <http://dx.doi.org/10.30641/dejure.2016.V16.157-171>
- [11]. Gayo, A. A. (2018). Perlindungan Hukum Hak Atas Tanah Adat (Studi Kasus di Provinsi Aceh Khususnya Kabupaten Bener Meriah). *Jurnal Penelitian Hukum de Jure*, 18(3), 289-304. doi: <http://dx.doi.org/10.30641/dejure.2018.V18.289-304>
- [12]. Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Local Government (State Gazette of the Republic of Indonesia of 2014 Number 246, Supplement to State Gazette of the Republic of Indonesia Number 5589).
- [13]. Hadi, S. (2017). Hukum Positif dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat). *DIH: Jurnal Ilmu Hukum*, 13(26), 259-266. doi: <https://doi.org/10.30996/dih.v0i0.1588>
- [14]. Hasma, A., et al. (2019). Implementation of Fulfilling Rights to Get Health Services in Community Institutions City Class I Makassar. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 24(1), 70-80.
- [15]. Husen, L. O. (2005). Hubungan Fungsi Pengawasan Dewan Perwakilan Rakyat dengan Badan Pemeriksa Keuangan dalam Sistem Ketatanegaraan Indonesia. Bandung: CV. Utomo.
- [16]. Husen, L. O. (2009). *Hukum Pajak & Hak Privilege*. Bandung: CV. Utomo.
- [17]. Husen, L. O. (2019). *Negara Hukum, Demokrasi dan Pemisahan Kekuasaan*. Makassar: CV. Social Politic Genius (SIGn).
- [18]. Husen, L. O., et al. (2017). Legal Protection of Protected Wildlife in the Criminal Law System in Indonesia. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(6), 301-306.
- [19]. Husen, L. O., et al. (2018). The Essence of Political Party's Right to Recall its Members in the House of Representatives in Indonesia's Constitutional System. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 23(9), 41-47.
- [20]. Husen, L. O., et al. (2021). *Panduan Penulisan Skripsi: Fakultas Hukum Universitas Muslim Indonesia*. Makassar: CV. Social Politic Genius (SIGn).
- [21]. Hutagalung, A. S. & Gunawan, M. (2008). *Kewenangan Pemerintah di Bidang Pertanahan*. Jakarta: PT. RajaGrafindo Persada.
- [22]. Jalil, H., et al. (2017). *Hukum Pemerintahan Daerah dalam Perspektif Otonomi Khusus*. Makassar: CV. Social Politic Genius (SIGn).
- [23]. Kaban, M. (2016). Penyelesaian Sengketa Waris Tanah Adat pada Masyarakat Adat Karo. *Mimbar Hukum*, 8(3), 453-465. doi: <https://doi.org/10.22146/jmh.16691>
- [24]. Law of the Republic of Indonesia Number 5 of 1960 on Agrarian Basic Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to State Gazette of the Republic of Indonesia Number 2043).
- [25]. Law of the Republic of Indonesia Number 23 of 2014 on Local Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to State Gazette of the Republic of Indonesia Number 5587).
- [26]. Law of the Republic of Indonesia Number 2 of 2015 on the Enactment of Government Regulation in Lieu of Law Number 2 of 2014 on Amendment to Law Number 23 of 2014 on Local Government Into Law (State Gazette of the Republic of Indonesia of 2015 Number 24, Supplement to State Gazette of the Republic of Indonesia Number 5657).
- [27]. Law of the Republic of Indonesia Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Local Government (State Gazette of the Republic of Indonesia of 2015 Number 58, Supplement to State Gazette of the Republic of Indonesia Number 5679).
- [28]. Muin, S. A. A., et al. (2020). Legality and Legitimacy of the Questionnaire Rights of the House of Representatives in Indonesia. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(8), 37-41.
- [29]. Nugroho, H. (2001). *Menggugat Kekuasaan Negara*. Surakarta: Muhammadiyah University Press.

- [30]. Nurmala, L. D., et al. (2020). The Nature of the Legal Protection of Children Who Commit Crimes in the Child Criminal Justice System. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(7), 1-18.
- [31]. Pasamai, S., et al. (2017). Factors Affecting the Protection of Indigenous Peoples' Rights under the National Agrarian Law System (Case Study in Central Sulawesi Province). *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(5), 1958-1970.
- [32]. Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn).
- [33]. Rahardjo, S. (1999). *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti.
- [34]. Rahman, S., et al. (2017). Proper Government Role In Land Procurement For Public Interests In Indonesia. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(5), 918-923.
- [35]. Rasjidi, L. & Rasjidi, I. T. (2004). *Dasar-Dasar Filsafat dan Teori Hukum*. Bandung: PT. Citra Aditya Bakti.
- [36]. Regent Decision of East Luwu Regency Number 286/X/2019 on Recognition and Protection of Local Wisdom of the To Cerekang Indigenous Community.
- [37]. Regent Decision of Enrekang Regency Number 698/Kep/XI/2019 on Recognition of the Pasang Indigenous Community.
- [38]. Regional Regulation of Bulukumba Regency Number 9 of 2015 on Inauguration, Recognition of Rights, and Protection of the Ammatoa Kajang Indigenous Community (Regency Gazette of Bulukumba Regency of 2015 Number 9, Supplement to the Regency Gazette of Bulukumba Regency Number 9).
- [39]. Regional Regulation of North Toraja Regency Number 1 of 2019 on Recognition and Protection of the Rights of Indigenous Law Communities (Regency Gazette of North Toraja Regency of 2019 Number 1, Supplement to the Regency Gazette of North Toraja Regency of 2019 Number 99).
- [40]. Ridwan, R., et al. (2016). Perkembangan dan Eksistensi Hukum Adat: Dari Sintesis, Transplantasi, Integrasi Hingga Konservasi. *Jurnal Jurisprudence*, 6(2), 106-115. doi: <https://doi.org/10.23917/jurisprudence.v6i2.3008>
- [41]. Sampara, S. & Husen, L. O. (2016). *Metode Penelitian Hukum*. Makassar: Kretakupa Print.
- [42]. Santoso, M. A. (2014). *Hukum, Moral, & Keadilan: Sebuah Kajian Filsafat Islam*. Jakarta: Kencana Prenada Media Group.
- [43]. Setiono, S. (2004). *Rule of Law (Supremasi Hukum)*. Surakarta: Magister Ilmu Hukum Pasca Sarjana Universitas Sebelas Maret.
- [44]. Shidarta. (2006). *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*. Bandung: Refika Aditama.
- [45]. Soekanto, S. (2007). *Pokok-Pokok Sosiologi Hukum*. Jakarta: PT. Raja Grafindo Persada.
- [46]. Sugianto, B. (2017). Pendaftaran Tanah Adat untuk Mendapat Kepastian Hukum di Kabupaten Kepahiang. *Jurnal Panorama Hukum*, 2(2), 131-148. doi: <https://doi.org/10.21067/jph.v2i2.2072>
- [47]. The 1945 Constitution of the Republic of Indonesia.
- [48]. Wignjodipoero, S. (1973). *Pengantar dan Azas-Azas Hukum Adat*. Bandung: PT. Alumni.

Sri Handayani, et. al. "Substance of Protection of Indigenous Land Rights in South Sulawesi Province." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 27(03), 2022, pp. 50-66.