

# Recognition and Protection of Indigenous Peoples' Rights to Tongkonan Land in Tana Toraja Regency, South Sulawesi Province, Indonesia

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## ABSTRACT

This study aims to analyze the position of Tongkonan land as part of the Tana Toraja Indigenous Peoples and analyze the Tongkonan land management system. The research method used is empirical juridical sourced from primary data and secondary data by being analyzed qualitatively descriptively. The results of this study show that the status of Tongkonan land ownership in Toraja is not comprehensive due to the need for an approach based on local wisdom values so that Toraja customary law communities can carry out all economic, social, and cultural activities on Tongkonan land and there is also a new legal relationship between customary law communities and Tongkonan land and The loss of legal relations between the two sides caused by the loss of communal value of the tongkonan land . The status of tongkonan land is bound by customary law so that it is subject to applicable customary law, among others, the land is prohibited from being transferred to other parties outside the Tongkonan community (Toraja indigenous people)

**Keywords:** recognition, tongkonan land, indigenous people of Tana Toraja

## INTRODUCTION

Tanah is a vital need for human life, because land is a natural resource including forests that can sustain human life including indigenous peoples (Feiring 2013). Even from birth to death , human life cannot be released from the ground. This is because all aspects of human life will always be related to land so that not only in the economic aspect but also

Formally, this customary right (ulayat) has gained a place in the national land law as stipulated by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (abbreviated as UUPA) (Hidayanti, Koswara, and Gunawan 2021), however, based on the principle of law in action, there is still a lack of legal protection if faced with the purpose of development in these customary territories, , so that it often makes communities with customary rights marginalized (Heryanti and Sihotang 2022).

In Tana Toraja society, Tongkonan has two meanings, both in a broad sense and in a narrow sense (Tulaktodok, T.A, and Supripto 2019). In a broad sense, it is a traditional house and family cemetery (Erong Gua, Liang Pahatan, Patane), while in a narrow sense tongkonan is a traditional house with various forms and levels of status in society (Fajriyani 2023). The word Tongkonan comes from the words Tongkon and Ongan, Tongkon an means sitting and Ongan means shelter which is interpreted as a place to sit, hear,

discuss, and solve important problems that have the potential to disrupt the lives of people in the Tongkonan customary area (Lullulangi et al. 2021), including the preparation of customary rules and regulations needed in governing the community. For Torajan people, tongkonan houses are positioned as heirlooms and at the same time as hereditary property rights in a line of descendants of Torajan tribal clan families. As communal property, tongkonan property can only be enjoyed but cannot be privately owned, sold or mortgaged (De Jong, n.d.) .

With the shift in values in the midst of a developing society , it is necessary to protect the law that ensures justice for indigenous peoples to manage or utilize Tongkonan land that they have owned for generations so that customary law communities can carry out activities both social, economic and cultural (Madiong and Fahri 2023). The presence of Tongkonan land given by the Creator in the midst of the Toraja customary law community can also provide economic benefits to each other, can maintain the value of honor, and protecting the environmental ecosystem (Ferdinand Rudolf Poylema. 2019). Every community that has the authority to manage Tongkonan land together can plant crops , both consumption crops and wood plants that have selling value (Nasruddin, Dwiyantama, and Muhammad 2022).

In essence, the customary law community of Toraja Land is a structured community group, lives in a certain area, has a customary government system, and has a variety of its own wealth both visible and invisible (Sukri 2018). For this reason , Tongkonan land as customary land in Tana Toraja needs legal protection , including the capacity of ownership of Tongkonan land (Nur, Patittingi, and Anindhita 2021). The massive application for land rights registration in the form of issuance of title certificates on Tongkonan land in Toraja can have implications for the decline of wealth owned by customary law communities, even though the state has guaranteed legal certainty to parties who register fields land (Ouddy and Tjempaka 2022). As stipulated in Article 19 of the UUPA that, “the government in registering land throughout Indonesia must guarantee legal certainty as a prerequisite for the protection of community rights to land”.

The issuance of title certificates on Tongkonan land allegedly can cause problems if issued by the Head of the Agrarian and Spatial Planning Office /Head of BPN to become private property ( Rahmi 2019 ) even though Tongkonan land is the customary right of customary law communities which has also been protected and guaranteed its existence by the state as stipulated in the UUPA that customary rights are one of the rights to control land hierarchically including land rights (Suartining and Djaja 2023). Tongkonan land has received recognition through the Regulation of North Toraja Regency No. 1 of 2019 concerning the Recognition and Protection of the Rights of Customary Law Peoples (Tangdialla, Wibisono, and Panggalo 2022). (Amanda Putri and Djauhari 2018). However , what is a reality in the midst of the Toraja customary law community is feared that there will be a shift in cultural values caused by the certification of Tongkonan land to private property rights because through private property rights certificates can eliminate communal elements contained in the customary rights of the Toraja customary law community (Mangi, Saleng, and Pide 2022). The object of land registration, in particular, is complete systematic land registration so that some parcels of Tongkonan land have been personally certified (Musleh Harry 2018).

## LITERATURE REVIEW

According to (Alfredy, Nur, and Arisaputra 2022), the results of his research explained that in the area of the position of tongkonan land including customary land which is marked by the existence of tongkonan layuk houses as a symbol of the Toraja clan. The management and utilization of tongkonan land within the tongkonan customary territory is highly expected the role and function of customary institutions as institutional forums periodically.

However, unlike the research conducted by Alfredy and Adisaputra, the research conducted by (Arung La’bi, Nur, and Lahae 2021) states that if tongkonan land registered through complete systematic land

registration is allegedly going to cause various problems, especially those who are authorized as tongkonan land rights certificate holders, of course they are private because the certificate certainly includes the name of the owner of the Tongkonan land.

If you look at the status of Tongkonan Land as customary land, then Tongkonan Land is collective, meaning that land belongs to the Tana Toraja customary law community as stated by (Tobar, Kasnawi, and Ramli 2020) that Tongkonan land is managed collectively by customary law communities Toraja provides many benefits, both economic, social and cultural aspects.

The research has similarities with the results of research conducted by (Idrus 2017) based on the results of his research stating that communal property (*mana' tongkonan*) is based on property owned by a group of tongkonan members from one family (*pa'rapuang*) which is the legacy of the first ancestor who found the 'Tongkonan House'.

Based on previous studies related to the recognition and management of Tongkonan land, there are still too few studies that review the recognition of Tongkonan land, which currently there are still many pros and cons regarding collective alliance rights Tongkonan Land and on the other hand there are some Tongkonan land that has become private property and even certified.

## RESEARCH METHODS

The research techniques applied in this research study are empirical legal research methods, namely legal research equipped with empirical data (mashendra and Mursanto 2021). This research was conducted with a statutory approach (Statute approach) and a conceptual approach. Empirical (sociological) legal research method is a type of legal research conducted by means of tracing primary data. So all data that has been collected, both primary data and secondary data, will then be examined on a theoretical basis with a qualitative approach. This means a data analysis technique by describing the facts in the field by interpret as a whole related to the recognition of ownership rights over tongkonan land.

## RESULTS AND DISCUSSION

### Status of Tongkonan Land as part of the Tana Toraja Indigenous Peoples

Tongkonan land used by Toraja customary law community groups on which there is a Tongkonan house along with its devices, huta n, burial ground, and rante (Pakan, Pratiknjo, and Mamosey 2018). Tongkonan land in Toraja society is still marked by natural boundaries, such as rivers, trees, and mountains. Such a provision will raise new problems regarding the status of Tongkonan land boundaries because it is inevitable that such natural boundaries will one day move and disappear. Although according to some parties that these boundaries are not clear, in reality for the community concerned this is still firmly held as a boundary mark to distinguish it from the limits of the rights of the surrounding indigenous peoples.

Within the Toraja Indigenous people, Tongkonan has provisions and rules regarding the order of life for each person or Tongkonan family called Aluk and Ada' which bind and guide responsibility to each person and or Tongkonan family.

In accordance with the results of an in-depth interview with Hermina, as the elder of Law Societies Alliance Santo Rayan, in which they stated that The Toraja customary law community is always in contact with its cultural customs, not least with the existence of land which is owned by the Toraja people. together with the indigenous people of Tana Toraja. Tongkonan land derived from hereditary ancestors is the culture of the Toraja customary law community in which there are elements of values and norms that related to local wisdom (Baan, Girik Allo, and Patak 2022). The existence of Tongkonan land which is managed

collectively by the Toraja customary law community provides many benefits, both economic, social and cultural aspects, (Sumiaty et al. 2023). Based on an in-depth interview with Sumule (Nek Kawan) as the Traditional Head in Deri Village that all series of traditional ceremonies by the community were carried out in the Tongkonan land yard. This is so that Tongkonan land is a joint property of the Tana Toraja community. Tongkonan land is commonly used as a place for traditional ceremonies. With the support of Tongkonan land ownership which is collective so that it cannot be owned privately by any party because it has become a mutual agreement so that the Tana Toraja customary law community is obliged sustainably nurtured from generation to generation (P, A, and A 2020).

If specified to the Toraja customary law community, especially those in North Toraja province, South Sulawesi, there are also regional regulations that regulate and discuss the legal protection of indigenous peoples, especially those related to the use or management of Tongkonan land collectively (Salam 2023). The legal umbrella is North Toraja Regency Regional Regulation Number 1 of 2019 concerning Recognition and Protection of the Rights of Traditional Law Communities. Article 13 paragraphs (1) and ((2) regulate the management of Tongkonan land by customary law communities collectively so that it becomes the right and authority of the customary law community itself). Tongkonan's absolute land ownership is managed collectively by the Toraja customary law community. It should get attention, especially from the government and local governments, including related stakeholders (Nugroho et al., 2022). Special attention that can be given can be in the form of representative legal protection for Toraja customary law communities that are related to the recognition of collective Tongkonan land ownership so that all elements community togetherness cannot be privatized by individuals who already have a different mindset from other customary law communities (Joesoef and Sugiyono 2019), (Lubis, Kaban, and Ikhsan 2024).

The mindset of the indigenous people of Tana Toraja which has gradually changed along with the development of the community considers that the communal management of Tongkonan land is the absence of the desire to carry out ancestral cultural traditions caused by internal influences from the indigenous people themselves and from outside communities that merge themselves in the Tana Toraja indigenous community (Baan, Girik Allo, and Patak 2022). The external factors in question include marriage with other tribesmen, migrating out of town or abroad, and a sense of reluctance to have attachments to the original cultural traditions (Hugo 2005). Even many Toraja customary law communities have broken away from the cultural traditions that are their traditions, the reason is that customary law communities consider that The cultural ceremonies they carry out are quite expensive traditions, especially at the Rambu 'solok' ceremony and there are some who argue that it is a waste of costs (Katjong 2019). However, what is regulated in the North Toraja Regency Regional Regulations that matters related to the duties and authorities of customary law communities are obliged to maintain, Regulate, and preserve all aspects related to cultural customs such as natural resources, traditional clothing, and traditional architecture.

The existence of these regional regulations is expected to be the basis for the Tana Toraja customary law community to have the right to get welfare through the natural resources they manage, they also have the duty or obligation to do what the regulation has ordered so that thus every customary law community alliance will get a balance between their rights and obligations in carrying out community life within the customary environment (Putri, Pradhani, and Noor 2020).

Tongkonan land ownership by the Toraja customary law community collectively is also in line with the religious communalistic conception applied in the midst of customary law community life (Tulaktondok, T.A, and Supripto 2019). The concept of religious communalism implies that every aspect of land management and empowerment within the customary territory is believed to originate from ancestors that are supernatural or sacred so that they must be maintained by all members of the communion of indigenous peoples both genealogical and territorial (Pujiriyani, Salim, and Soimbala 2022). The concept implies that there is no private ownership or members of the customary law community alliance of Tongkonan land,

except only to obtain results from the management of Tongkonan land. (Otu and Edet, 2023), (Pasoloran, Sanderan, and Pasulu 2023). The concept is synonymous with Cicero's opinion which states that private property does not exist, but what exists on earth especially what the author associates within indigenous territories is common property given by the creator to be managed properly by humans (Pendenza 2020). If it is related to the Tongkonan land ownership system by the Toraja customary law community, the Tana Toraja customary law community should not be able to experience the transfer of hands into private property but land Tongkonan must always be conserved and managed collectively by indigenous peoples who have territorial genealogical ties to the land (History et al. 2006).

With the preservation of environmental conditions in the middle of the Tongkonan land area, customary law communities are always conducive and stable, therefore government attention is needed to recognize the status of Tongkonan land as a communal right of the Tana Toraja customary law community, as well as the establishment of a customary institution structure in the middle of the region.

### **Tongkonan Land Management System for the Tana Toraja Customary Law Community**

Toraja indigenous peoples still know customary land in this case known as Tongkonan Land which is managed by customary law communities for generations, and has customary stakeholders who have the authority to lead and govern in the area (Minister 2009). Tongkonan land is shared land by the Tongkonan customary law community, while the Tongkonan customary law community is genealogical. The utilization and management of Tongkonan land in Toraja Land is based on the genealogical and territorial hereditary system that resides in the location of the land. The descendants of Tongkonan landowners have the right to live and build houses on Tongkonan land provided that they participate in maintaining and maintaining the family's land (Waterson 2013). (Ulayat et al. 2023).

The communal ownership of Tongkonan land does not have written evidence but only has proof of ownership by the method of awareness (unwritten) of the parties concerned based on the principle of kinship and the principle of openness which is supported by the trust of all levels of customary law communities (Muntaqo et al. 2022). So each family in the customary alliance only knows the collective ownership of Tongkonan land through conversations from people in their families (Poespasari, Usanti, and Soelistyowati 2023). That is why so that parties who have a legal relationship with Tongkonan land are always known by the family concerned, because they already know each other and still have one Lineage.

But over time and changes in the perspective of the Torajan customary law people, they each have an interest in controlling the Tongkonan land privately, even though it includes acts of violation of custom. It is not only Tana Toraja's local regulations that have been violated but also presidential instructions regarding systematic land registration where the National Land Agency of North Toraja Regency has included Tongkonan land as the object of complete systematic land registration

But ironically, the problem with the complete systematic land registration activity is that there are plots of Tongkonan land and land managed collaboratively by indigenous peoples submitted to National Land Agency to be issued a certificate of ownership privately. Information from the coordinator of the substance group for the determination of land and space rights of the National Land Agency of Tana Toraja Regency said that in the North Toraja region and Toraja Land there are no customary rights because not recognized by the state in formal or written nature, including Tongkonan land for which there is not enough data so that it is not inventoried. Finally, it cannot be found how much Tongkonan land has been issued a certificate. On that basis, there is no inventory data or exact data on Tongkonan land within customary territories in North Toraja Regency.

Based on Government Regulation Number 24 of 1997 concerning Land Registration in Article 9 it does not place customary land as the object of land registration. However, this is different from what has happened in

the Toraja customary law community, especially in North Toraja district. If this is allowed to happen, it will result in the disappearance of local wisdom values which are the identity of traditional law communities. Through private ownership of Tongkonan land by the Torajatana community, it will be possible to give rise to new legal consequences within the Toraja customary law community.

New problems such as disputes between families, feelings of jealousy, or the loss of togetherness in the form of brotherhood. Legal relationships that have been created for a long time and have always been maintained by ancestors for generations will also experience degradation due to private ownership of Tongkonan land. Tongkonan land on which there are potentials, as well as resources that are collectively owned and enjoyed collectively, will turn into privately owned land and the clash of rights and obligations of customary law communities will no longer be holistic.

Ownership of objects on Tongkonan land, whether in the form of wooden trees, fruit trees, and so on, will be controlled personally by the party holding the ownership certificate so that customary law communities no longer have legal relations with the Tongkonan land.

To provide legal protection to Tongkonan land, the best way is needed, including forming tongkonans into foundations (social and religious). After the tongkonan institution becomes a foundation, it is then proposed to the Minister of State for Agrarian Affairs/Head of the National Land Agency, by first asking for a recommendation from the Minister of Religion (religious foundation) or the Minister of Social Affairs (social foundation) so that the tongkonan foundation is allowed to have ownership rights to the land.

The second solution is to register the tongkonan land as joint property of several people. However, this solution will encounter problems when it comes to the issue of the names of who is registered as joint owner of the tongkonan land, considering that the number of members in each tongkonan is relatively large.

## CONCLUSION

The status of Tongkonan land in the Tana Toraja Customary Law community has been accommodated in North Toraja Regency Regional Regulation Number 1 of 2019 concerning Recognition and Protection of the Rights of Customary Law Communities which regulates the management of Tongkonan land by customary law communities collectively so that ownership belongs to the entire Toraja customary law community.

The management of Tongkonan Land in the Toraja community creates ambivalence, on the one hand, Tongkonan Land is still maintained as the right of the association, so that its management is carried out from generation to generation by members of the alliance community. And on the other hand, Tongkonan Land has been managed independently by the Tana Toraja community and even Tongkonan Land has been certified as private property.

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