

LEGAL PROTECTION OF INDIGENOUS PEOPLES OVER NATURAL RESOURCES AND PARADIGM SHIFT OF TRADITIONAL AND MODERN VALUES IN SOUTH SULAWESI, INDONESIA

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ABSTRACT

Objective: The purpose of this study is to analyze the form of state recognition of indigenous peoples and analyze the paradigm shift of traditional indigenous values to modern indigenous values.

Method: This research method is a qualitative method by conducting interviews, observations and reviewing documentation.

Results: From the results of this study, it can be concluded that from 82 maps of customary areas in South Sulawesi covering an area of 820,493 hectares spread across several regencies/cities, only 4,637 hectares are recognized through regional legal products, either in the form of Regional Regulations, Regent Regulations or through Regent decrees. The paradigm shift of traditional values to modern indigenous values in South Sulawesi has developed so rapidly due to the external influence of migrant communities and also technological advances in transformation.

Conclusion: the existence of indigenous peoples must be recognized in accordance with the mandate of the 1945 Constitution as long as they still exist and do not conflict with national interests, and the traditional values of indigenous peoples must undergo changes towards modern customary values in accordance with the dynamics of community and state development.

Keywords: legal protection, indigenous peoples, natural resources, traditional and modern values.

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PROTEÇÃO LEGAL DOS POVOS INDÍGENAS SOBRE OS RECURSOS NATURAIS E MUDANÇA DE PARADIGMA DE VALORES TRADICIONAIS E MODERNOS EM SULAWESI DO SUL, INDONÉSIA

RESUMO

Objetivo: O objetivo deste estudo é analisar a forma de reconhecimento estatal dos povos indígenas e analisar a mudança de paradigma dos valores indígenas tradicionais para valores indígenas modernos.

Método: Este método de pesquisa é um método qualitativo através da realização de entrevistas, observações e revisão da documentação.

Resultados: A partir dos resultados deste estudo, pode-se concluir que de 82 mapas de áreas habituais em Sulawesi do Sul abrangendo uma área de 820.493 hectares espalhados por várias regências/cidades, apenas 4.637 hectares são reconhecidos através de produtos legais regionais, seja na forma de Regulamentos Regionais, Regulamentos Regentes ou através de decretos Regentes. A mudança de paradigma dos valores tradicionais para valores indígenas modernos em Sulawesi do Sul se desenvolveu tão rapidamente devido à influência externa das comunidades migrantes e também aos avanços tecnológicos na transformação.

Conclusão: a existência dos povos indígenas deve ser reconhecida de acordo com o mandato da Constituição de 1945 enquanto eles ainda existirem e não entrarem em conflito com os interesses nacionais, e os valores tradicionais dos povos indígenas devem sofrer mudanças para valores consuetudinários modernos de acordo com a dinâmica de desenvolvimento comunitário e estatal.

Palavras-chave: proteção legal, povos indígenas, recursos naturais, valores tradicionais e modernos.

1 INTRODUCTION

Indonesia as a country that has an area of about 17,500 islands, with a coastline of 81,000 km. Around 62% of Indonesia's area is in the form of sea and water, the land area is 1.91 million km² while the water area reaches 6.32 million km² (Pasha and Akmalia 2022), with a large number of migrants and scattered in several areas with different ethnic, religious, linguistic diversity under the symbol of Bhinneka Tunggal Ika as a formation of indigenous peoples of the archipelago (Riyanto, Febrian, and Zanibar 2022).

Customary law communities are community units in autonomous customary territories (Reba 2019), (Eddy n.d.), where they regulate their living systems independently such as law, politics, economics and so on and are also autonomous from customary institutional aspects. However, the lives of indigenous peoples are no longer fully autonomous and detached from the process of integration into large-scale and nationally formatted organizational units of state life (Joesoef 2020). So that the formulation of customary law communities before independence is rigid (difficult to



change) in the static conditions of indigenous peoples without the pressure of change, while the formulation of customary law communities after independence is more dynamic seeing the reality of indigenous peoples currently experiencing pressure to change (Mubarak and Adawiyah 2021) (Jesayanto Jaya et al. 2021).

The concept of legal protection of indigenous peoples according to the constitution of the Constitution of the Republic of Indonesia Year 1945, namely "as long as reality still exists and does not conflict with national interests" means that customary law communities must prove that their existence is still real or still alive (Suandi, 2022). Considered alive if they fulfill certain characteristics as subjects of customary rights, have natural resources in the form of land and forests within certain limits and perform certain actions. While not contrary to national interests, it means that customary law communities are no longer traditional, but must undergo changes along with the development of the country.

Based on the results of research conducted by the Indonesian National Indigenous Peoples Alliance (AMAN), indigenous peoples in Indonesia are still classified as traditional indigenous peoples (Budiman et al., 2021), (Trenggano et al. 2020), because they still have a high awareness of common or collective interests, have customary rules that are still in effect to regulate their citizens, tend to be subjective and uphold togetherness (particularism) (Maiga 2019), social mobility is still difficult, less open to change, and education levels are still low and demand education within certain geographical areas (Eduardo and Gabriel 2021).

The characteristics of traditional indigenous peoples must follow the dynamics of state development, by heading towards modern indigenous peoples that are in line with legal goals and state goals. So that the characteristics of indigenous peoples in the future already reflect indigenous peoples who are able to adapt to the times, follow technological and industrial developments, adapt to outside communities, have diverse professions and do not always depend on nature anymore (Fitzmaurice 2021).

Customary law communities in some parts of Indonesia have largely undergone changes towards modern customary law societies by no longer thinking irrationally, but have used rational thinking patterns. Modern indigenous peoples are people who are no longer bound by customs. Customs that hinder progress are soon abandoned in order to adopt new values that are rationally believed to bring progress, thus being receptive to new ideas (Davies et al. 2002).



Based on Emile Durkheim's legal view, that modern indigenous peoples have organic social solidarity (Chairul Basrun Umanailo et al. 2019), (Hiah and Riesthuis 2016). Organic solidarity is based on the specialization of collective consciousness which points to the totality of beliefs that on average exist in the same society (Khairulyadi, Ikramatoun, and Nisa 2022). This solidarity arises because of a sense of functional interdependence between one another in one community group. Specialization and functional differences characterize modern indigenous peoples.

In addition to organic solidarity, Emile Durkheim also explained that the law contained in indigenous modern society is restorative law, which is a law that functions to restore conditions as they were and reshape difficult or chaotic relationships towards or become normal (Yamin and Dewi 2022). So that modern indigenous peoples are no longer fixated on customs and tend to have organic solidarity because they need each other and existing laws are restorative (Titaley and Watloly 2021), (Pratama 2019).

Thus, the current existence of customary law communities also needs optimal attention, considering that the existence of customary law communities and their customary law has experienced degradation of recognition (Budiman et al. 2021). A number of legislative initiatives that have been and are in process are a form of "recontract" between the state and customary law communities in a socio-political context that is different from the past (Uktolseja and Balik 2020). Therefore, all programs that want to be aimed at indigenous peoples must also be with a new spirit that is different (Lestarini 2023). The new spirit of indigenous peoples in the future by empowering people's economic development, community preservation and sustainability (Putra and Darminto 2020), (Junaedi et al. 2020).

This paradigm shift of indigenous peoples no longer positions indigenous peoples as traditional groups (Kurnio et al. 2021), (Grey and Kuokkanen 2020), but needs to be modernized with urban community benchmarks, which 'urges' changes in the socioeconomic patterns of indigenous peoples into welfare categories in accordance with state objectives in the state constitution (Errico 2017), Agustinus, L, J., Samekto, F. X. A., Ispriyarso, B. (2023). This is also in line with the spirit of the times that transcends linearity from traditional to modern. In this old understanding, all indigenous peoples must be modernized, changed their lifestyles and ways of production into a single, easy-to-control model (Loefler 2017).



This thinking is in line with the teachings of Smart "post-modern paradigm" which aims to provide diversity so that each subject can interact in a competing social space (ILZe 2019). This perspective is supported by the politics of recognition that recognizes indigenous peoples as legal, social and political subjects whose existence and rights must be accepted (Subramaniam and Nicholas 2018). This is also in line with the internationally recognized principle of self-determination as a result of the International Labour Organization (ILO) conference (Tully 2013) which defined indigenous peoples as people living in an independent state where social, economic, and cultural conditions distinguish them from the rest of society in the country and their status is well regulated in whole or in part by the customs and traditions of those indigenous peoples with specific regulations.

It is recognized globally that indigenous peoples have strong resilience and resilience capacity when facing change (Ford et al. 2020, Lugo-Morin 2021). Therefore, the term empowerment needs to get the right portion so as not to underestimate customary law communities, but on the other hand it also does not mean that customary law communities do not need to enjoy assistance to be able to enjoy the development of a nation (, Conway, Tsourtos, and Lawn 2017), (Ali 2018).

If you look at the number of customary law communities in Indonesia spread across 31 provinces and as many as 43% of indigenous peoples' territories that have not received recognition and protection from the state (Wicaksono and Malik 2018). The average contributing factor is verification related to the completeness and correctness of data from the results of identifying the existence of the customary law community concerned. As many as 35% (664 communities of Customary Law Peoples) are in Sulawesi and as many as 18% (110 communities) in South Sulawesi are part of customary law in Indonesia (Lukman 2020), Mappong, Z., Lili (2023). Indigenous peoples in South Sulawesi form a unity in various ways, including the unity of customary law (Kambo, 2021). This unity coexists with the unity of rulers and joint management of natural resources in the form of land and forests by all indigenous peoples. This unity is what makes indigenous peoples in South Sulawesi able to live independently. The area of its enactment was first introduced by Cornelis van Vollenhoven and includes the Makassar tribe and the Bugis tribe (Muur 2019). The main principle of customary law in South Sulawesi is the unity of communities in government that have customary rights and form customary alliances (Sahib et al. 2022) (Febrina et al. 2021).



Regarding the development of the process of recognition and protection of indigenous peoples in South Sulawesi, there are currently 28 legal products related to indigenous peoples, in the form of 7 regional regulations, each in Bulukumba, Sinjai, Enrekang, North Toraja, Luwu, North Luwu, East Luwu (Suandi 2022), (Sedubun 2022). For derivatives of Regional Regulations in the form of regent regulations, there is 1 Regent Regulation in North Toraja which stipulates 12 indigenous peoples in North Toraja. Then in Enrekang Regency there are 10 Regent Decrees that stipulate indigenous peoples. In total there are 21 indigenous communities in South Sulawesi that have received state recognition with a recognized area of 176 thousand hectares. Then, there are 10 customary forests that have been determined through ministerial decrees with a forest area of around 4,636.08 hectares. Customary forests are in Kajang and Enrekang."

This study analyzes the form of state recognition of indigenous peoples and analyzes the paradigm shift of traditional customary values into modern customary values

1.1 RESEARCH QUESTIONS

Based on the description above, the main problems can be identified, namely:

- A. what factors influence state recognition of customary law peoples in South Sulawesi
- B. How is the paradigm shift of traditional customary values to modern customary values

2 METHODS

The research method/approach used in this study is a qualitative approach. Qualitative research is research that emphasizes the quality or the most important thing of an object. The most important thing about an object in the form of social events / phenomena / symptoms is the meaning behind the event which can be used as a valuable lesson for the development of theoretical concepts.

The instruments used in this study are interview instruments and observation instruments, where the use of instruments to obtain information about the fulfillment of legal recognition or protection requirements for indigenous peoples.

Data collection techniques are the most important step in research, because the main purpose of research is to obtain data. The data collection techniques used in this



study were 1). Observation techniques; 2) interview techniques, and 3). documentation techniques.

Through interviews, researchers find out what is contained in the minds and hearts of respondents, namely things that cannot be known through observation. The researcher can explain the interview guidelines used so that the interview is directed at the focus of the study. The guidelines are not too strict so they can be developed and changed according to the needs of researchers.

In this study, the documentation used by researchers is in the form of observation sheets in the form of documents needed in the process of recognizing indigenous peoples.

The expected conclusions in qualitative research are new findings that have never existed before. Findings can be in the form of descriptions or images of an object that was previously still dim or dark so that after being examined it becomes clear, it can be a causal or interactive relationship or theory.

3 RESEARCH RESULTS AND DISCUSSION

3.1 LEGAL PROTECTION OR STATE RECOGNITION OF INDIGENOUS PEOPLES

Recognition and protection of the rights of indigenous peoples is important, to obtain legal protection from their rights in the management of natural resources contained in them (Saly 2017). Although in its development, these traditional rights must conform to the principles and spirit of the Unitary State of the Republic of Indonesia through normative requirements in the laws and regulations themselves.

The following can be seen the status of recognition of customary law territory of South Sulawesi Province until 2022

Table 1. Recognition of Customary Jurisdiction of South Sulawesi Province

Status	Map	Area (Ha)	Region
Confession	Assignment	33	Bulukumba, Enrekang, Luwu, North Luwu, East Luwu, Sinjai, North Toraja
	Settings	49	
Customary	Assignment		4.637
Forest Status (Hectares)	Potential		461.366
Total Map of Customary Jurisdiction		82	820.493

Sources: authors

Based on the table above, it shows that South Sulawesi has 82 maps of customary territories with an area of 820,493 hectares spread across Bulukumba, Enrekang, Luwu,



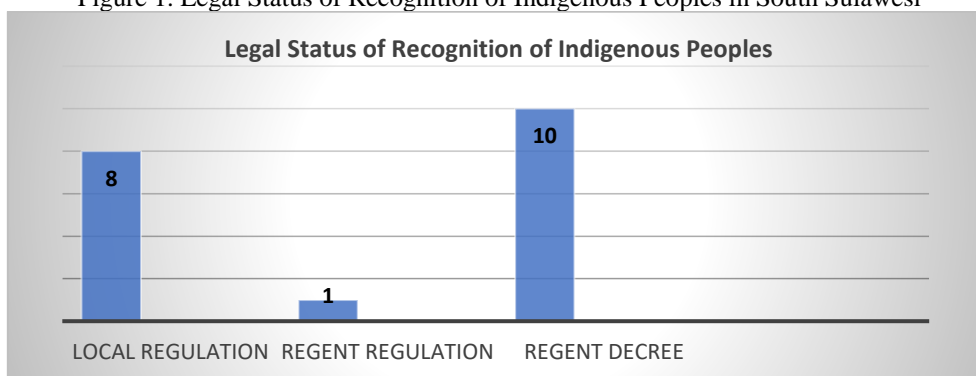
North Luwu, Sinjai, and North Toraja Regencies (Central Bureau of Statistics South Sulawesi in 2021). Of the total area of customary territory, it is recorded that only around 4,637 hectares have been determined through district law products (Haryanti, Ma, and Bowo 2021). The inhibiting factor is the main challenge in providing recognition through regional regulations to the existence of indigenous peoples (Asas 2019). *First*, related to the local political situation. The local government's willingness to recognize indigenous peoples is still half-hearted. *Second*, related to the wrong perspective on indigenous peoples. *Third*, related to funding support from the government, in this case the ministry of home affairs and *fourth* related to power relations. Even based on an interview with Muhammad Arman as Policy, Law and Human Rights Advocacy of the Executive Board of the Alliance of Indigenous Peoples of the Archipelago of South Sulawesi that out of 109 regions in South Sulawesi that have met the recognition requirements, but have not been fully effective. This is because there are still several indigenous peoples' territories that have not been identified, which has an impact on the lack of legal protection of indigenous peoples and their customary territories. Like the indigenous people of Ramang-Ramang, Maros Regency does not have sufficient information based on the registration form, even though these indigenous peoples already have the potential for protection (conservation) either by indigenous peoples or local communities.

The South Sulawesi Provincial Government's concern for the recognition of indigenous peoples, so it tried to create a program under the name "indigenous people's information system", this program contains various information related to spatial data, social data and other indigenous peoples' data. The system will be integrated with the portal of the Customary Territories Registration Agency (BRWA). The selection of South Sulawesi Province as the first province to build this information system is because the progress of recognizing indigenous peoples in South Sulawesi has been so much, but the data aggregation is not available (Daniel et al. 2022). Therefore, the existence of this information system can be *official data or references* for various parties when going to carry out development or activities and programs in areas where there are indigenous peoples. South Sulawesi Province currently has 28 legal products as proof of recognition of indigenous peoples, both in the form of Regional Regulations, Regent Regulations, Regent Decrees and ministerial decrees related to customary forests.

For more details can be seen in the chart below:



Figure 1. Legal Status of Recognition of Indigenous Peoples in South Sulawesi



Sources: authors

The recognition of indigenous peoples is the decisive integration of the functions of central and local government institutions. From the findings in the field, this integration seems to be the key to accelerating the recognition. Unclear regulations in integrating various participatory maps of indigenous peoples in government spatial planning. The absence of institutions responsible for completing the recognition and protection of indigenous peoples, including their customary rights, is also a major obstacle. The difficulty of indigenous communities meeting various prerequisites occurs because there is no commitment from local governments.

Another obstacle is the limited resources, both budget and lack of working capacity of government staff and facilities to meet the prerequisites for recognition. Even after all the conditions were met, various recognition initiatives have not been realized due to the absence of collaboration in consolidating data and information between various stakeholders. This includes cooperation in economic development for the welfare of the community.

The reality on the ground is that various problems arise, where people often only get services from certain work units. As a result, without complete service, the process of achieving the final goal is not realized. For example, in the recognition of customary law communities in an area: even though there is mapping of their customary territories, the community has never received recognition. Despite recognition, indigenous communities have never had access to economic development.

Recognition of customary law communities along with customary rights in the form of local regulations, shows that the government, both central and regional, has recognized, declared valid/ true or declared customary law communities entitled to customary rights to land and forests and other natural resources owned, obliging the government to protect these rights from threats / interference from other parties, including



by the government. The goal is to obtain certainty in the form of legal guarantees and avoid overlapping interests (conflicts/disputes), so that chaos originating from conflicts of interest can be avoided.

3.2 SHIFTING THE PARADIGM OF TRADITIONAL COMMUNITY VALUES TO MODERN INDIGENOUS PEOPLES

The question that often arises, is whether legal values are unwritten what prevails in society is considered alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesian?. To answer this, of course, requires an initial assessment of the traditional and open nature of customary law itself. Customary law has two sides of customary law side by side. On the one hand, traditional customary law, continuing ancestral traditions, will have a tendency to maintain the values and patterns formed in their culture and society (Kuswardani, Kurnianingsih, and Prakoso 2018). On the other hand, as a living and developing law, it will always be able to follow the development of society itself (modern customary law).

Customary law in its development is the result of interaction with other legal systems, both Islamic and Western legal systems that always try to harmonize themselves (Lon and Widyawati 2021). The values that exist in society are always evolving, so that the interaction of customary law with written law will always occur. Traditional customary law values and modern legal values require harmony. Thus, it is possible for customary law to accept written law into its legal system and vice versa, written law, in this case, national law as in substance raises the principles contained in the living customary law (Budi Priambodo, 2018;).

As a living law, customary law always undergoes changes or shifts in the patterns of community life. There are parts of customary law that can survive and some that disappear (Maunatlala et al. 2020). The field of law that can survive is the field of law that is sensitive in nature, which touches cultural values and community beliefs such as family law and inheritance law, while in neutral law which is the scope of public law such as criminal law and economic law, changes occur even customary law in this field can be said to have no more enforceability.

The Living Law is a living and actual law in a society, so it does not require any more reactualization efforts (Tan 2022). "*The living law*" is not something static, but it keeps changing over time. "*The living law*" is a law that lives in society, it can be



unwritten or written (Rumadan 2021). Similarly, "the *living law*" can take the form of customary law (which is unwritten), it can also be modern customary law (which is not written).

The paradigm shift of "*the living law*", which has undergone a shift in values from community traditions that have been maintained for a long time, has changed along with authority policies (Nurjaman and Witro 2021). As in the community of Bone-bone Village, Baraka District, Enrekang Regency which treats the area as a No Smoking Area or can be called, a Non-Smoking Area is a place or area that is prohibited from smoking. The establishment of a No Smoking Area is one way to protect the community against the risk of health problems due to the environment polluted by cigarette smoke.

Based on an interview with Abd. Wahid as the Head of Bone-bone Village gave his response that smoking behavior is a tradition that has long been maintained, but the impact of smoking behavior is not only on the smoker's personality but also has an impact on the community, including the occurrence of air pollution from cigarette smoke. However, with continuous efforts made with community leaders and Bone-Bone village officials through socialization and personal approach, smoking behavior has begun to be abandoned, not only by adults but also by children aged 6-12 years. On that basis, the Village Head issued Bone-Bone Village Regulation No. 1 of 2009 concerning smoke-free areas is a policy issued by the Bone-Bone village government that prohibits the people of Bone-Bone village and people from other regions from smoking, selling, and advertising cigarette/tobacco products in the Bone-Bone village area.

The policy implemented in Bone-Bone village is not an easy thing to implement. The village government must adapt to the community, as well as the community is able to adapt to the policies that have been implemented in Bone-Bone village.

Such is the case in the Karampuang indigenous community which has experienced a shift in past customary values with the traditional values of today's people. For example, the dynamics of the traditional leadership pattern in the past led by a female king who oversaw 6 male kings. While today the traditional leader is held by 3 men and only one woman (sanro position) in the Karampuang traditional hamlet community. His leadership changed due to the condition of some Karampuang hamlet communities who did not want to leave ancestral traditions so that they formed a customary institution structure with a leadership structure that was different from the Karampuang traditional leadership since it was first formed

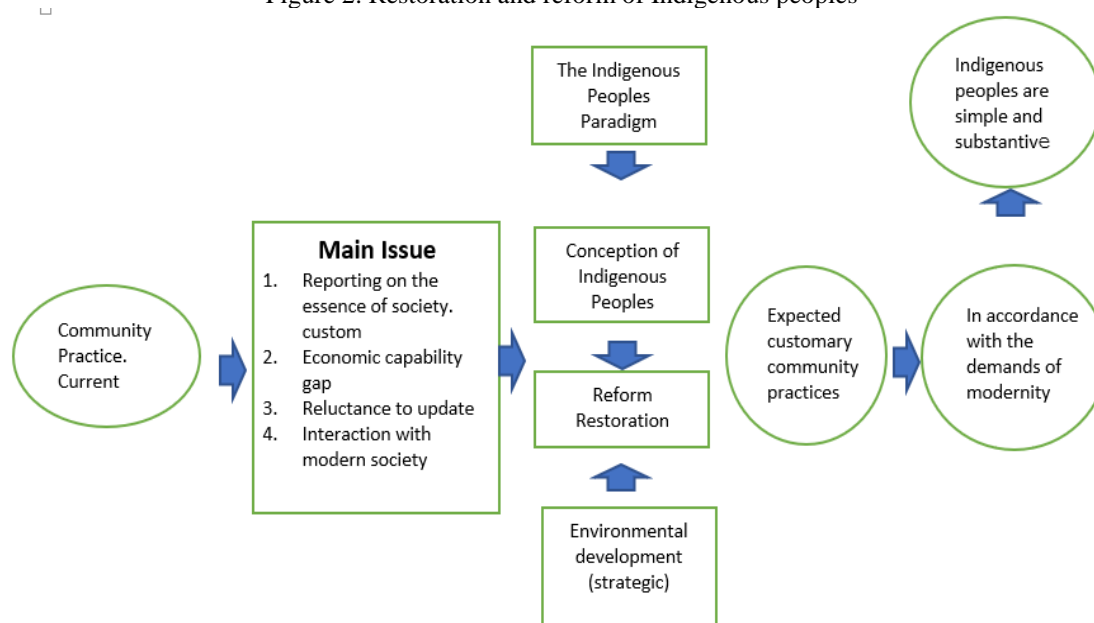


In the Kajang community, the Bulukumba District with the principle of *Kamase-masea* in the culture of the Kajang indigenous people is manifested in the form of a simple attitude to life and leads to rejection of a westernized modernization culture. However, modernization is still a form of dynamic thinking.

Not only the indigenous people of Kajang who to this day are able to maintain cultural values, several other indigenous peoples in South Sulawesi also do the same. However, not many have been able to survive the onslaught of modern culture. Therefore, self-awareness of the younger generation is certainly the main requirement for preserving local culture in the present.

Contact with other cultures in the form of intra-community diffusion, Contact with other cultures in the form of intra-community diffuse where the new element is contrary to the function of the old element so that most of it is not accepted by indigenous hamlet communities (Erwinsyah 2022). The traditional socio-cultural conditions of the Karampuang people certainly maintain the culture and traditions they have long run, but on the other hand, outside cultural influences cannot be avoided (Made et al. 2021) The condition of people outside Karampuang village, Sinjai Regency, in general, no longer agrees with the thoughts of indigenous hamlet communities who still want to maintain traditional patterns of life behavior and are not open to change. It is this contact between tradition and new and traditional patterns of behavior that eventually leads to intra-community diffusion.

Figure 2. Restoration and reform of Indigenous peoples



Sources: authors



In South Sulawesi there are still some traditional values that are still maintained, although there are some of them that have experienced a shift in values towards modern values. The shift was caused by cultural changes in the form of traditional values in traditional ceremonies as a result of changes that occurred in their living environment, both their natural and physical environment and their social environment For details can be seen in the following table:

Table 2. Customary law values in South Sulawesi

Indigenous values	Regency	Conceived meaning
Ma'nene	Tana Toraja	The ritual of cleaning ancestral mummies that have been tens to hundreds of years old
Sere Bissu Manggiri	Bone	A dance performed by a bissu (waria).
Mappatentong	Sidrap	The culture or tradition of building wooden houses on stilts in cooperation in Bugis society
Ma'parampo in Engagement Patterns	Tana Toraja	The male family visits the Tongkonan (traditional house) women's family to express their seriousness in building the staircase house.
Doe' Panai	Makassar	is a symbol of giving appreciation to the future wife given by men who want to ask for her
Tongkonan traditional house	Toraja Land	a place of development of socio-cultural life for the Toraja people.
Mappanre Temme	Sinjai	the process of conducting a banquet in connection with the khatam of the Qur'an
Pasang' ri kajang	Bulukumba	Regulates various aspects of human life. There are religious, social, cultural, livelihood, environmental, and leadership aspects.
Mappadendang	Enrekang	gratitude to the creator for the bountiful harvest (rice)
Accera Kalompoang	Gowa	It is a traditional ceremony to clean the heirlooms of the Kingdom of Gowa stored in the Balla Lompoa Museum
Maudu' Lompoa	Takalar	tradition carried out by the Takalar community as the culmination of the celebration of the commemoration of the Birthday of the Prophet Muhammad SAW

Sources: authors

The table above shows that these traditional traditions are still maintained even though the preservation procedures have begun to shift because the indigenous people have blended in with the migrant communities who live together in indigenous communities. Although there is still a small number that still maintain old traditions. For example, one of the well-known customs in South Sulawesi is Mappalili. which has the meaning to keep the rice plant from something that will disturb or destroy it. Mappalili or Appalili is a hereditary ritual held by the people of South Sulawesi that has been held since several years ago.

4 CONCLUSION

- a. The legal protection of the customary law communities of South Sulawesi has not been maximized because there are still some indigenous peoples who have not received government recognition.



b. The paradigm shift in traditional community values to modern indigenous peoples' values has taken place significantly because it is influenced by migrant communities who bring their culture in the lives of these indigenous peoples. Although there are still some traditional values, people in South Sulawesi still survive with the progress of modernization.



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