

Literation of Land Rights Law in (*Tola Gumi*) Protection of Indigenous Peoples and its Impact on Community Welfare

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Abstract

The purpose of this research is to examine the role of positive law and customary law in protecting indigenous peoples' rights to land literation and natural resources and their impact on community welfare. The research method used is normative legal studies. Customary law is focused on the customary law of the Tobaru tribe. The Tobaru tribe is one of the well-known tribes in Indonesia, which is famous for its land rights law (*Tola Gumi*). The study results reveal that the regulations of the central government and the regional government of North Maluku have not guaranteed the implementation of legal protection and the welfare of indigenous peoples, especially for the Tobaru tribe. This is also evidenced by the fact that the regional government has not implemented the Constitutional Court Decision in the North Maluku region. This legal review shows that three of the five pillars of the state, namely protection of human rights, social justice, and anti-discrimination, have not been implemented properly. Indigenous people are very dependent on land as their main source of livelihood for farming. Weak legal protections, such as the absence of land titles, make them vulnerable to social conflicts and lose their customary land rights. This research implies that it is hoped that the government will provide consistent legal protection for the welfare of indigenous peoples. Researchers encourage future studies related to learning about the rights of indigenous peoples in terms of the international legal system.

Keywords: *Indigenous Peoples, Land Rights Law Literation, Community Welfare*

Introduction

The enforcement of customary law and social norms on land ownership and statutory regulations is a problem for indigenous peoples in Indonesia. The literature explains that claiming land rights rarely empower indigenous people. Communities in conflict with companies or local state actors tend to be excluded from the status of indigenous peoples. Often the government rejects claims to their land rights because they are considered to be in direct conflict with forestry interests (van der Muur, 2018). As of 2019, the Constitutional Court (CC35) decision regarding customary forest is no longer state forest has entered its sixth year, and there has been no decision. Some local governments, such as those in the Sultanate of Ternate, are noted to have established land rights

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in the Ternate City Government Regulation Number 13 of 2009 concerning the Protection of the Customary Rights and Culture of the Indigenous Peoples of the Sultanate of Ternate. The conditions are different in North Maluku; the regional government seems slow in responding to the CC35 decision. In fact, the rights of indigenous peoples, especially the rights to land (Tola Gumi) in the field are being neglected.

Land for human life is essential because human life cannot be separated from the land from birth to death. Even though it is essential for everyone, people's views on land are not the same. The view of land as part of the natural environment can be immanent (holistic) and transcendent. Therefore, considering the vast natural conditions but limited when connected with the increasing population. The literature states that the main problem faced by an agrarian state is how to maintain, allocate, cultivate, manage and divide the land and its products in such a way. It is imperative to maintain inclusive resource management in sustainable economic development (Haseeb et al., 2021; Hayat & Tahir, 2021; Kostetska, Khumarova, Umanska, Shmygol, & Koval, 2020; Ahmed et al., 2020; Ahmad, 2019; Mangla et al., 2018). So that it can provide the greatest welfare and benefits for the community. This is the main problem that must be resolved for several decades sustainably and sustainably, which is regulated in a legal system (Crespi, 1998; Wiersema, 2008; Craig, 2017; Reid, 2021).

Indonesia, which consists of thousands of islands, both small and large, is inhabited by various ethnic groups with various cultural and customary features. The existence of these tribes is one of the priceless assets of the nation, as well as being the glue of the nation. Previous studies have stated that in indigenous communities, there is still the strong implementation of traditions and customary laws that are agreed upon as parts that are inherited from generation to generation (Reid, Cormack, & Paine, 2019). In this case, customary law is also intended to protect natural resources (Lanini & Yodo, 2021). It is not uncommon in various regions between religions, customs, cultures, and state laws to go hand in hand and support each other (James Anaya & Puig, 2017).

In Indonesia, customary law is still in the hands of indigenous peoples. As non-statutory laws, most of them are customary laws with their own character, including in North Maluku Province. As an expansionary province, it was originally the former four largest Islamic empires in Eastern Indonesia. Until now, the Sultanate of Ternate, Tidore, Jailolo and Bacan still exist. These four sultanates culturally have a powerful influence on the social norms of society (Amal, 2002). This

is evidenced by the many traditions, including land ownership rights that are used as agricultural land and plantations by indigenous peoples.

Basically, people must comply with government policies and regulations. However, indigenous peoples tend to comply more with customary law and social norms because they are considered juster. Indigenous peoples cannot calculate their perspective of fair compensation for socio-economic damages due to industrial development (Gassiy & Potravny, 2017). As a result, many tribal communities do not have land certificates because they are not legally registered, as stated in Law Number 24 of 1997 concerning the Transfer of Rights to Land. Also, social conflicts often occur between indigenous peoples and companies that end up suing companies that are suspected of taking their land rights. Unfortunately, due to weak evidence and the absence of land certificates, the court dismissed the indigenous peoples' claim. In the benefit-sharing paradigm, this also impacts the absence of compensation for losses of indigenous peoples due to industrial development (Gassiy & Potravny, 2019).

It is essential to contribute to the law of land ownership to achieve community welfare and legal protection of customary land. This is equally important, which requires stakeholders to conserve agricultural land and plantations and forest land in the territory of customary law. As has been regulated regarding ownership of natural resources, including land in the Law of the Republic of Indonesia No. 5 of 1960 concerning Basic Agrarian Principles, Article 2 states that the right to control of the state referred to in paragraph 1 of this article gives the authority to regulate and administer the designation, use, supply and maintenance of the said earth, water and space. In fact, it must apply throughout the jurisdiction of the Republic of Indonesia. Weak legal protection and the occurrence of social conflicts can cause suffering and trauma for natives (Daigle, 2019).

About the context of social science education, this research encourages the development of social behavior and wisdom. It was explained that this social education encourages public awareness in understanding knowledge about diversity, equality, and human dignity as individuals, social beings in social life, fostering critical and wise attitudes based on aesthetic and moral values (Krynski, 2019; Mason, 2019; Mullins, 2019; Ross, 2008). This is the novelty of previous studies, which discussed more factually customary land ownership. Previous studies on land ownership raised the problem of poverty alleviation and inequality. Recent studies reveal the point of view of social education by providing critical insights for rethinking land ownership and recognition by looking at its historical background (Cooks & Zenovich, 2021; Guerra et al., 2020). Another study

is about the legal analysis of Grant Sultan's existence as proof of land ownership (Zaidar, Yamin, & Bariah, 2020). Other research in the educational discourse examines the conceptual problem of the accumulation of customary land by the government as a material basis for land granting laws (Stein, 2020). Another study conducted by Ajala (2017), revealed social inequality and gender discrimination in land ownership. This study proposes land reform in terms of equity and productivity. Land tenure improves poverty and income inequality (Tekgüç, 2018). In addition, understanding the basic concept of customary land ownership as part of social education can provide broader and deeper insights, especially in solving socio-cultural problems wisely.

In essence, there is no neighboring community without conflict. Moreover, the times are increasingly diminishing human values that can trigger social conflicts (Andrews, 2019; Aronson et al., 2020; Lee & Lee, 2020). Previous studies have explained that social learning is by understanding social interactions that are responsible for empowering natural resources (Schusler, Decker, & Pfeffer, 2003; Soyer, 2019). This is a reference for understanding the importance of legal power and the social impact of protecting indigenous peoples. Other literature states that character strengthening through social education is a milestone in strengthening awareness in preserving natural resources and building diversity as a source of progress and local wisdom (Sadjim, Muhadjir, & Sudarsono, 2016; Tarman & Dev, 2018).

Based on the background of the problems raised, no previous studies have been found related to legal studies of land ownership of indigenous peoples in Indonesia and the possible social impacts on law enforcement. The researcher focuses on the positive law enforcement and customary law of Tola Gumi, which regulates land ownership of the Tobaru indigenous people. The Tobaru indigenous people are one of the Indonesian ethnic groups that still maintain their traditions and customary laws to survive. This is the novelty of this research, where no previous research has examined the social impact of communities on customary land ownership based on normative legal studies.

Research Questions

Based on the background of the study above, the research questions studied are:

(1) What is the positive legal protection regarding land rights as the right of indigenous peoples in Indonesia?

(2) What is the legal protection of land rights (Tola Gumi) for the welfare of indigenous peoples in Indonesia?

Literature Review

Social Welfare

Social welfare theory describes systematic knowledge that addresses welfare issues and efforts to solve social problems and ways of solving them. The purpose of this social welfare concept is to achieve a prosperous society (Midgley, 1997). There are three types of coverage in the context of social welfare issues, namely 1) the micro-level that investigates social interventions at the individual, family, and small group levels; 2) the mezzo level discusses social interventions at the community level; and 3) at the macro level, which discusses social interventions at the wider community level (Segal, 2010). More deeply, previous studies reveal the economic analysis of the law with the criteria of social welfare, which economists usually consider as a utility function where social welfare can be realized by applying justice, utility, and the Pareto principle (Chang, 2000).

According to Stoesz (1989), social welfare emphasizes the role of group interests in forming social, political, and economic forces in a structural institution to create a socially just, prosperous, and prosperous society together. The basic values and sources of business focused on social welfare are the values that become sources in determining the direction and goals of social welfare efforts. A theory that is in line with social welfare is the theory of the welfare state. This theory emphasizes the state's role in ensuring the welfare of the people (Roller, 1995). Five pillars of statehood must be realized: democracy, law enforcement, protection of human rights, social justice, and anti-discrimination (Holmwood, 2000; Schakel, Burgoon, & Hakhverdian, 2020; Tahili et al., 2021). The state must actively strive for prosperity, equality, and act fairly that can be felt by all its people (Spicker, 2012). In this case, state institutions and a constellation of social actors and culture contribute to social welfare (Pfau-Effinger, 2005).

The welfare state contains four meanings. First, well-being, which is a condition for the fulfillment of material and non-material needs. The conditions that occur when human life is safe and happy and receive protection from the main risks that threaten life (Sinn, 1995). Second, social services include social security, health services, education, housing, personal social services (Lundberg & Mark, 2001; Allmendinger & Leibfried, 2003). Third, social benefits are provided to poor people

and people with disabilities (Burkhauser, 2012; Bagenstos, 2003). Fourth, planned efforts in the form of providing social services and social benefits carried out by individuals, social institutions, and government agencies that aim to improve the quality of life of the poor (Quadagno, 1987; Arts & Gelissen, 2001; Sellers & Lidström, 2007; Pletnev, 2019; Öktem, 2020).

Indigenous Peoples' rights in the scope of social education

Theoretically, social education encourages public awareness to understand human dignity as individuals, social beings in social life (Ross, 2008). In this case, social education can foster a critical and wise attitude based on aesthetic and moral values (Asimeng-Boahene, 2010; Nimas Ayu, Pramesti, Pamadhi, & Garbo, 2019). Social education also studies diversity and equality related to cultural, economic, and societal phenomena (Halsey, Lauder, & Brown, P., & Wells, 1997). This is part of an effort to understand social life and provide broader and deeper insights, especially in solving socio-cultural problems wisely. In addition, studying interventions or social problems in society is intended to solve, identify, and organize potentials capable of realizing the community's welfare (Arnesen & Lundahl, 2006).

Customary communities have a system of values, customs, and the political rights of indigenous peoples or, in other terms, customary law communities. The concept of indigenous peoples is a general term for referring to certain communities with certain characteristics. Customary law communities are organized groups of people who act as a unit, live in a certain area, have rulers, have their respective customary laws and have their own wealth in the form of tangible or intangible objects, and control natural resources within their reach. They have a complex cultural system in their social order and have a strong relationship with their land and natural resources (Arizona & Cahyadi, 2013).

The 'primitive' and 'pre-modern indigenous peoples' view resource ownership, including land rights, as material and non-material values that have the purpose of being used to meet needs. It is different from the Western concept that recognizes the ownership of the value of resources (property) to profit (Small & Sheehan, 2008). Indigenous peoples are candidates for forest resource managers and have an important role in natural ecosystems. To realize this potential, legal recognition, mapping customary land use, and demarcation of customary territories are needed (Fox, 2002). Indigenous peoples need some degree of control over certain territories and resources. This is part of granting indigenous peoples' rights as the fulfillment of human rights. New

partnerships between indigenous peoples, communities, local and national governments, and international development for forest management(Davis & Wali, 1994).

The literature study states that the empowerment of customary rights is part of the original national identity included in the tribal Rubik, where the tribe has become the foundation for affirming the rights of indigenous peoples to land guaranteed by agreements or laws(Barcham, 2000).Therefore, indigenous peoples must be protected(Ferrante & Fearnside, 2020). According toHokowhitu (1970), indigenous peoples practice life experiences passed down from generation to generation from the point of view of indigenous existentialism. This is why they have their own characteristics compared to modern society. The rights of indigenous peoples are the collective rights of groups. Indigenous peoples have a legitimate claim to their group's right to meet their needs for their survival(Clinton, 1990; Sieder, 2011; Sasakamoose, et al. 2017; Ban & Frid, 2018).

Methods

Design

This study uses a qualitative research design to investigate the social phenomena of indigenous peoples related to land rights in the Tola Gumi Tobaru Tribe. The Tobaru tribe has characteristics that other tribes in Indonesia do not have. The Tobaru tribe highly upholds the customary law of land rights (Tola Gumi) which is managed for the welfare of the community through the agriculture and plantation sectors. A qualitative approach using content analysis rests on statutory rules or regulations (formal rules) and informal rules. This research is limited to understanding the law in the context of social science regarding land ownership as the right of indigenous peoples. This research focuses on analyzing the contents of Zhang and Wildemuth (2009) analytic theory which aims to understand and emphasize the concept of social welfare and protection of indigenous peoples through the Tola Gumi custom. The analyzed theme categories include (1) protection of indigenous peoples; (2) Land Rights Law in Tola Gumi.

Data and Sources of Data

This study uses secondary data sourced from primary legal sources supported by previous documents and literature. In particular, the collected documents focus on the economy and culture of the Tobaru Tribe, Ibu Utara District, West Halmahera Regency, North Maluku Province. Documents in the form of historical records of the Tobaru tribe at the Provincial Government Office of North Maluku and documentation related to the traditions and customary laws of the

Tobaru tribal elders. It is also sourced from primary laws derived from laws and regulations on land ownership law and scientific articles relevant to research to complement secondary data.

Focusing on two themes, namely land rights and social welfare, the primary legal data source in the formal law category consists of eight government regulations, namely: 1) The 1945 Constitution of the Republic of Indonesia; 2) Law Number 5 of 1960 concerning Basic Agrarian Regulations; 3) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration; 4) North Maluku Provincial Government Regulation Number 2 of 2018 concerning the Coastal Zone and Small Islands Zoning Plan of North Maluku Province 2018-2038; 5) Decision of the Constitutional Court of the Republic of Indonesia No. 35 / PUU-X / 2012; 6) Presidential Decree No. 111/1999 concerning Social Welfare Development for Remote Indigenous Communities; 7) Law Number 11 of 2009 concerning Social Welfare; and 8) Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation. Each includes five regulations addressing data sources that examine land rights and four regulations addressing social welfare. There are 2 sources of informal law, namely the 'Jou Se Ngofa Ngare' customary law and the Swapraja customary law. This secondary resource is intended to obtain information as described in table 1.

Table 1.
Research Data Sources

Primary legal sources	Source data	Information
Formal Law	<ol style="list-style-type: none"> 1. The 1945 Constitution of the Republic of Indonesia 2. Law Number 5 of 1960 concerning Basic Agrarian Regulations 3. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration 4. North Maluku Provincial Government Regulation Number 2 of 2018 concerning the Coastal Zone and Small Islands Zoning Plan of North Maluku Province 2018-2038 5. Decision of the Constitutional Court of the Republic of Indonesia No. 35 / PUU-X / 2012 6. Presidential Decree No. 111/1999 concerning Social Welfare Development for Remote Indigenous Communities 7. Law Number 11 of 2009 concerning Social Welfare 8. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation 	This is to find out about regulations that provide legal protection to customary community rights, especially the rights to ulayat land
Informal Law	<ol style="list-style-type: none"> 1. The customary law of <i>Jou Se Ngofa Ngare</i> 2. <i>Swapraja</i> customary law 	Informal laws related to land rights in Indonesia. And support the realization of social welfare

Instrument

The criteria for document reading and document analysis are as follows: (1) formal and informal laws related to legal protection of indigenous peoples' rights, particularly customary land rights (Tola Gumi); and (2) documents related to the welfare of the indigenous Tobaru tribe who implement Tola Gumi. Each theme is represented by at least one instrument item and is specifically used to collect data on the legal protection of the Tola Gumi practice and its social welfare impacts. This instrument focuses on secondary data so that there are no observations and interviews with indigenous peoples. The eligibility criteria are based on the prevailing laws and regulations in Indonesia and the applicable customary law in the Tobaru Tribe.

Data Collection Procedures

In the early stages, the researcher compiled a series of research by watching a documentary film about customary land ownership and the practice of Tobaru Tola Gumi. Then collect data in the form of text and images recorded in a research notebook to be converted into numerical and narrative data. The next stage is to find and find a suitable theme. The theme chosen was a study of the legal protection of indigenous peoples in Tola Gumi which was then arranged systematically so that it was easy to analyze using the content analysis method. Identification of themes takes place during the data collection process in accordance with the problem formulation. If it is one or less complete, a re-research will be carried out to find additional data sources; This is done to enrich the meaning in order to describe the actual object of study. The procedure used is to classify the data first by paying attention to data that are similar and those that have differences from one another. Then look for the relationship between these data, especially the factors that link them. The strategy of finding the law of land rights and social welfare is a legal and nomological-inductive construction by applying a coding system to all narrative data in order to find correct and correct data.

The data collected were then grouped according to the formulation of the problem. RQ 1 consists of 5 considering data [data 1, 2,3,4, and 5], and RQ 2 consists of 10 considering data [data 6,7,8,9,10,11,12,13,14, and 15].

In addition to the data collection above, this study also uses props from the discipline of law, which are interpreted as social symptoms that focus on land rights issues (Tola Gumi) and social welfare. Therefore, in looking for clues to the causal conditions of social problems, it is necessary to bring together several of these disciplines to strengthen the analysis and broaden the view of the Tola Gumi tradition and its impact on the welfare of the Tobaru indigenous people.

Data Analysis Techniques

After the researcher has collected data relevant to the theme, the researcher then begins a content analysis of the data. The data analysis technique used refers to the data analysis theory of Zhang and Wildemuth (2009) . In the analysis process, the first step taken is to classify the data that has been collected then convert it into numeric and text into narrative data. Next is the theme identification process, which collects data in the unit of analysis by the research question and reduces data that is not by the research theme. Third, make coding system rules according to the theme. Fourth, data verification by applying a coding system to all narrative data, double-checking the incorrect data and revising it. Fifth, providing coding data through triangulation techniques to establish fixed data. These five stages are carried out to determine the validity of the data so that it is truly valid by the research objectives. The fifth is data analysis or interpretation. Data interpretation is carried out by sorting the data into patterns, categories, and basic unit descriptions so that themes are found and formulated correctly. Sixth, to obtain conclusions from all analyzed data.

Positive Indonesian Law Concepts Regarding Land Rights as Rights of Indigenous Peoples

The first findings reveal the positive legal protection of land rights as the right of indigenous peoples in Indonesia. Our finding indicate , the positive legal concept in Indonesia regarding land rights as the right of indigenous peoples which the researchers reviewed consists of five laws and regulations, namely:

1. The 1945 Constitution of the Republic of Indonesia

The rights of indigenous peoples are recognized in the law of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia Article 18B paragraph (2). considering data 1.

- (1) In this statutory regulation, it is explained that the State respects the community and its customary law and traditional rights. The realization of the recognition of the rights of indigenous peoples has been regulated in this law by referring to the 1945 Constitution. This applies as long as the indigenous peoples are still living in the Unitary State of the Republic of Indonesia.

This article provides a clear constitutional position for indigenous peoples about the State and a constitutional basis for state administrators on how indigenous peoples should be treated. Recognition and respect for the identity and traditional rights of indigenous peoples are constitutional rights of indigenous peoples.

The literature states that state administration emphasizes the role of the state in forming social, political, and economic forces to create socially just, prosperous, and prosperous societies together (Holmwood, 2000; Pfau-Effinger, 2005; Roller, 1995; Schakel et al., 2020; Spicker, 2012; Stoesz, 1989). Despite the times, cultural identities and rights of traditional communities are respected by the times and civilizations. The previous research emphasized the role of the state in factually creating social welfare. In this finding, normative legal studies deepen the context of the state's role in the form of statutory regulations on land ownership that is used as agricultural and plantation land to improve the welfare of indigenous peoples. Of course, this must be done with the right strategy and regulatory policies. Previous studies have stated that land empowerment efforts require correct regulatory strategies and policies with various factors involved (Yusriyadi & Aminah, 2019).

2. Law Number 5 of 1960 concerning Basic Agrarian Principles of Government Regulation

From the primary legal analysis that has been carried out, land rights in Indonesia are classified based on the type of land rights, individuals or groups of people, the legal entity that can hold them, and the specific period of validity of ownership of the land. The right to fully control land is the state as stated in article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (BAP). considering data 2,

- (2) It is explained that sources originating from the earth, air, and space, including natural resources contained therein, are fully controlled by the state as state property rights and public property rights. This is done as a form of power with the aim of the welfare of all Indonesian citizens.

In Article 2 paragraph (2) of the BAP, the State's right to control gives the authority to, considering data 3.

- (3) *“a. Organizing the designation, use, supply, and maintenance of the earth, air, and space; b. Determine and maintain legal relationships between people and earth, air and space; c. determine and regulate legal relationships between people and legal actions concerning the earth, air, and space.”*

In Article 4 paragraph (1) of the BAP, it is explained that on the basis of the right to control from the state, the types of land rights, which are called land rights, are determined. Land rights are given to and owned by people, both individuals, collectively, and legal entities.

In Article 16 paragraph (1) of the BAP, seven land rights are primary in nature. Of the seven rights, land rights for indigenous peoples fall into categories, namely property rights, management rights, land opening rights, rights to collect forest products, and other rights that are not included in the above rights stipulated by law. -invited. State-recognized ownership rights are land rights registered with the National Land Office, meaning that indigenous peoples must register land and have land certificates. Even though indigenous peoples are Indonesian citizens who have ownership rights and conditions, they must legally register land and have a legal title.

3. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration

Customary communities obtain management rights and collect forest products on state land that can be managed for a certain period. Previously contained in Article 45 paragraph (1) Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Rights, revoked by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration CHAPTER IV Business Use Rights, Building Use Rights, and Land Use Rights Part One Business Use Rights Article 26 (1), (2) and (4), considering data 4.

- (4) *“(1)An application for an extension of the tenure of the right to cultivate can be submitted after the age of the plant, or another business is effective, or no later than before the expiration of the right to cultivate; (2) An application for renewal of the right to cultivate is submitted no later than 2 (two) years after the expiration of the period of the right to cultivate.”*

4. The Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry

This statutory regulation requires indigenous peoples to renew their rights and extend the period of their rights. In terms of provisions and legislation as stated in the Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry Article 67 paragraph (1), considering data 5.

- (5) *“...three typologies of customary communities are referred to as customary law communities, namely communities that meet the following elements: a) the community is still in the form of a community, b) has an institution in the form of a customary ruler, c) there is a clear legal area, d) there are institutions and equipment law, especially the customary judiciary which is still adhered to, e) still collects forest products in the surrounding forest area to fulfill their daily needs.”*

As an agricultural country, land rights in Indonesia can be called basic human needs because ownership is welfare-oriented. The welfare state can be realized by supporting the rights of indigenous peoples, namely: 1) meeting material and non-material needs; 2) providing social security, health services, education, housing, personal social services; 3) provide social benefits to the poor; 4) provide social services and social benefits to improve the quality of life of the poor (Allmendinger & Leibfried, 2003; Arts & Gelissen, 2001; Bagenstos, 2003; Burkhauser, 2012; Lundberg & Mark, 2001; Öktem, 2020; Pletnev, 2019; Quadagno, 1987; Sellers & Lidström, 2007; Sinn, 1995). For equal distribution of land rights, the state's role is needed because the equal distribution of land ownership aims to create a welfare state.

The concept of Land Rights Law (Tola Gumi) in Tobaru Indigenous People in Indonesia for social welfare

The second finding reveals the legal protection of land rights (Tola Gumi) for the welfare of indigenous peoples in Indonesia. The results of data analysis revealed that the legal concept of land rights is aimed at social welfare. Researchers refer to four formal laws and two informal laws that apply in Indonesia. The four formal laws consist of:

1. The 1945 Constitution of the Republic of Indonesia

The Indonesian government seems to be trying to provide a quick response in formulating policies to achieve social welfare, both through land rights and social welfare promotion. As stated in the 1945 Constitution of the Republic of Indonesia mandates data considering 6.

- (6) This law stipulates that the Indonesian state has the responsibility to protect and promote the welfare of the wider community. The goal of the responsibility imposed on the state is to realize social justice and, of course, for indigenous peoples as the original inhabitants of Indonesia.

2. Presidential Decree No. 111/1999 concerning Social Welfare Development for Remote Indigenous Communities

In the Decree of the President of the Republic of Indonesia Number 111 of 1999 concerning Social Welfare Development for Remote Indigenous Communities, Article 2, considering data 7.

- (7) *“The development of social welfare for remote communities aims to empower remote indigenous communities in all aspects of life and livelihood so that they can live naturally, physically, spiritually, and socially so that they can play an active role in development, which is carried out by paying attention to local customs.”*

The empowerment of customary rights in the form of fostering social welfare is part of the original identity of the Indonesian people. Thus the affirmation of the rights of indigenous peoples to land is guaranteed by agreement or law (Barcham, 2000).

3. North Maluku Provincial Government Regulation Number 2 of 2018 concerning the Coastal Zone and Small Islands Zoning Plan of North Maluku Province 2018-2038

North Maluku Provincial Regulation Number 2 of 2018 concerning the Zoning Plan for Coastal Areas and Small Islands of North Maluku Province 2018-2038 also deals with social welfare. CHAPTER III Objectives, Policies, and Strategies for the Zoning Plan for Coastal Areas and Small Islands of the Province Part One Objective Article 5, considering data 8.

- (8) *“The North Maluku Province Coastal Zone and Small Islands Zoning Plan aims to achieve harmonious and synergistic management of the coastal areas and small islands of North Maluku Province in accelerating and developing collaborative economic growth, social welfare, and competitiveness of coastal communities. integrated, orderly, and sustainable.”*

4. Law Number 11 of 2009 concerning Social Welfare

This can also be seen from the emergence of new regulations since 2020. The overall implementation regulations of Law Number 11 of 2020 concerning Work Copyright are directed at strengthening Management Rights, Land Rights, Apartment Units, granting rights to Land Spaces, and Spaces. Underground, including by accelerating digital technology-based Land Registration. CHAPTER 1 General Provisions Article 1, considering data 9.

- (9) *“Job creation is an effort to create work through efforts to facilitate, protect and empower cooperatives and micro, small and medium enterprises, increase the investment ecosystem and ease of making business and Government investment and accelerate national strategic projects.....”*

Unfortunately, not all indigenous and tribal peoples can feel the impact and legal protection of this regulation—especially indigenous peoples in remote areas who do not have adequate internet access and socialization.

In positive law in Indonesia, it is explained that land rights must be managed to meet the needs of life. In the customary law, the Tobaru tribe is called Tolagumi. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

(10) *“The holder of the right to cultivate is obliged to: a. Carrying out agricultural, fishery and/or livestock business according to the designation and requirements as stipulated in the decision to grant rights no later than 2 (two) years after the right is granted.....”*

Furthermore, the statutory regulation refers to it as 'ulayat land'. This is contained in CHAPTER I General Provisions Article 1 (13), considering data 11.

(11) *“Ulayat Land island is in the territory of the customary law community which according to reality is still there and is not attached by any land rights.”*

Management rights originating from Ulayat Land are assigned to customary law communities. This is stated in CHAPTER III Management Rights Part Two Subject Management Rights Article 5 (2). A Ministerial decree stipulates this customary land management right. To obtain management rights, indigenous peoples must also receive support from the local government. Unfortunately, until 2021, the Ulayat Land, which is being fought to be managed optimally by the customary community, there is no government support in the form of regional government regulations and district head decrees relating to indigenous peoples. Whereas in fact, in the latest statutory regulations, the Minister has the duty to carry out supervision and control over land rights in stages. This is done to ensure that the Ulayat Land Management Rights are truly capable of improving the economy of indigenous peoples, not companies that only have reclamation permits or only certain groups.

5. Decision of the Constitutional Court of the Republic of Indonesia No. 35 / PUU-X / 2012
In mid-June 2013, the Constitutional Court of the Republic of Indonesia made decision No. 35 / PUU-X / 2012, considering data 12.

(12) Specifically, this decision of the constitutional court explains that forests within Indonesia's customs territory are no longer State Forests but become forests that become customary land ownership rights for customary communities.

The indigenous peoples welcomed the CC35 ruling and started a movement to rehabilitate customary areas that have been damaged by companies holding permits issued by the State. The

literature explains that indigenous peoples view resource ownership, including land rights, as material and non-material values that have the purpose of being used to meet their daily needs (Small & Sheehan, 2008). Indigenous peoples are candidates for forest resource managers and have an important role in natural ecosystems. Therefore, legal recognition, mapping customary land use, and demarcation of customary territories are needed (Fox, 2002). Indigenous peoples need some degree of control over certain territories and resources. This is part of granting indigenous peoples' rights as the fulfillment of human rights. New partnerships between indigenous peoples, communities, local and national governments, and international development for forest management (Davis & Wali, 1994). It is possible that they really hope that CC35 can improve welfare through land rights because, so far, indigenous peoples have been very dependent on forest resources, especially the indigenous communities around the forest that are classified as poor.

In January 2018, the North Maluku Indigenous Peoples Alliance (AMAN) had proposed 18 customary forests to the local government. These proposals include the customary forests of Pagu in North Halmahera), Banemo (Central Halmahera), and Fritu (Central Halmahera). Unfortunately, none of this materialized because there was no support from the Regional Government or the Regent's Decree. Finally, the submission was challenged. Problem The decision of the CC35 regarding customary forests is difficult because there is competition for natural resources, especially forests and mining. Another view, the CC35 decision was slow to proceed because it was declaratory or non-executorial (AMAN, 2013). The literature study explains that the concept of customary land use mapping is often constrained by political power where hierarchical rights overlap one another. More deeply, according to menurut Fox (2002), "who does the mapping of customary land is not as important as who controls the map."

The CC35 decision is considered ambiguous. On the one hand, this ruling provides space for indigenous peoples to obtain customary land rights and natural resources from the regional government in the form of an Indigenous Peoples Regional Regulation or a Regent Decree. However, on the other hand, it provides space for the people to hold hostages due to the low level of support from the local government. Since the existence of CC35, proposals for candidates for customary forest in North Maluku have been proposed by the Customary Territory Registration Agency (BRWA) in 31 polygons of customary areas covering an area of 1,145,383 hectares (The Constitutional Court of the Republic of Indonesia, 2015).

6. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation

Customary law communities have strong ties to the land, the local government should support land rights for the welfare of the community. Implementing regulations of Law Number 11 of 2020 concerning Job Creation Article 1 Number 33, Considering data 13.

(13) “*Customary law communities are a group of people who have traditionally lived in certain geographic areas in the Unitary State of the Republic of Indonesia because of their ancestral ties, strong relationships with land, territories, natural resources, have customary government institutions, and customary law structures in their customary territory by the provisions of laws and regulations.*”

7. The customary law of *Jou Se Ngofa Ngare*

In the philosophy of the customary law of the MolukuKieRaha Sultanate, customary law must defend individual interests without harming common interests and on the contrary defend common interests without harming personal interests. This provision is reflected in the fatwa of customary law in the Sultanate of MolukuKieRaha, Considering data 14.

(14) “*Jou Se Ngofa Ngare* (what is in you is in me and vice versa what is in me, is also in you).”

This fatwa is considered a "Common Platform" that is accommodating to diversity. In people's lives, the legal fatwa of *Jou Se Ngofa Ngare* is not only a cultural custom until today, but also as religious and philosophical values which are always used as a basis for thinking and acting (Asyhari, 2008). The indigenous peoples are aware of the meaning and meaning of the sentence in *Jou Se Ngofa Ngare* as the basis of customary law. Therefore, all the wisdom of thinking and habits of action all depart from the "customary constitution" (Amas Dinsie & Taib, 2008).

The customary law of *Jou Se Ngofa Ngare* (what is in you is in me and what is in me is also in you) is implemented in land ownership. Land ownership in the indigenous Tobaru community through the *Tola Gumi* tradition. *Tola Gumi* for the Tobaru Adat community is building a person's legal ownership rights over certain land. According to the *Tola Gumi* tradition, a land ownership status is a legal act that is not prohibited at all in community life as long as it does not violate the ownership rights of others. In the language of the Tobaru indigenous people, *Tola Gumi* means cutting the rope. Meanwhile, in terms of marking the land as a sign of ownership and having robust community recognition, that is why the ancestral heritage is still held today. *Tola Gumi* comes from the Ternate language, which has become the language of the Tobaru indigenous people which

means a guide for someone who will own the land. Through Tola Gumi, the ownership rights of that person cannot be disturbed by anyone.

Tola Gumi is carried out in simple steps, not complicated because it has become the custom of the Tobaru indigenous people. There is no customary ritual process; it is enough to go to the forest to choose a location for planting, as long as other people on the land give no signs. However, before implementing the *Tola Gumi* tradition, the steps are taken in obtaining land tenure rights first go through the Songa stage, namely an attempt to control a plot of land by marking trees on the land that they want, and thus it is already a barrier for those who wish clearing the forest (Asyhari, 2008).

According to the customary law of the Tobaru people, the status of land or gardens that are owned through the *Tola Gumi* tradition is permanent and can be inherited by every descendant of the person who practices the *Tola Gumi* tradition. The driving factors for the Tobaru indigenous people to still implement *Tola Gumi* include: *Tola Gumi* is open, *Tola Gumi* can only be done on land that does not have an owner, and *Tola Gumi* is permanent and can be inherited by everyone. Therefore, ownership rights obtained through the *Tola Gumi* tradition have become a source of law for everyone to obtain ownership rights to land/land designated for farming. The people of the Tobaru tribe depend on the land they manage. So that their welfare is very dependent on the land. Indigenous peoples practice life experiences that are passed down from generation to generation. This is why they have their own characteristics compared to modern society. The rights of indigenous peoples are the collective rights of groups. Indigenous peoples have a legitimate claim to their group's right to meet their needs for their survival (Clinton, 1990; Sieder, 2011; Sasakamoose, et al. 2017; Ban & Frid, 2018).

8. *Swapraja* customary law

Although according to the provisions of normative law there are already laws of the Republic of Indonesia No. 5 of 1960 concerning Basic Agrarian Regulations, land rights that were in effect previously. For the problem of resistant ownership using the *Swapraja* Law still applies in the sultanate, considering data 15.

- (15) "There are five types of land rights, namely: (1) *Aha Kolano*, (2) *Raki Kolano*, (3) *Aha Soa*, (4) *Aha Cucatu*, (5) *Gura Gam*. Meanwhile, the right to obtain land (called *eto*) is carried out in 4 ways."

Previous studies have explained that *Tola Gumi* is still alive in the Tobaru indigenous people in the West Halmahera region (the territory of the Jailolo Sultanate, North Maluku). This tradition allows a person to have rights to the land found in the Tobaru tribe community (Alting, 2018).

From the results of the analysis that has been carried out based on previous studies and primary legal evidence; It seems that the community has tried hard by making legal efforts, and law enforcement there is *Tola Gumi* to realize the welfare of indigenous peoples. Unfortunately, various problems related to land ownership for indigenous peoples often arise. The literature mentions injustice and ownership conflicts (Manaf, Ramli, & Saad, 2020; Samsudin et al., 2021). Other studies have highlighted the importance of the ability of the Party, Judicial elections, and Represent to succeed in the State High Court in fighting for *ulayat* land (Reid, 2021). However, this study found different results that the main problem of land ownership of the Tobaru tribe is because the local government has not fully supported the land rights of the customary law community, especially the Tobaru tribe. This can be seen from the absence of a regional government regulation through a District Head Decree supporting customary land rights. More in the literature reveals that the community has a big role in advancing the development and protection of resources, river water quality, and forest conditions (Alvim et al., 2020). For this reason, it is essential for the efforts of the central and regional governments to support the legal protection of land rights for indigenous peoples.

As stated by previous research, the community is given protection by state law (Valentina et al., 2018; Mackay & Mackay, 2020). Protection and recognition of the customary rights of indigenous peoples is a constitutional obligation as stipulated in the 1945 Constitution (Hammar, 2018). More deeply, this research finds that legally, the government also does not question the existence of customary law over customary land ownership as long as it does not conflict with government policy. This is indicated by the existence of statutory regulations regarding customary law. It's just that it must be supported by positive law.

Whereas in other areas, local regulations have been made. For example, the Regional Regulation of the City of Ternate Number 13 of 2009 concerning Protection of Customary Rights and Culture of the Indigenous Peoples of the Sultanate of Ternate. There is only one regional regulation in the North Maluku region regarding the welfare of indigenous peoples, namely the North Maluku Provincial Regulation Number 2 of 2018 concerning the Coastal Zone and Small Islands Zoning Plan of North Maluku Province 2018-2038. However, this regulation still focuses on indigenous

peoples in coastal areas rather than on land rights. Therefore, the authorities, in this case, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) and Regional Governments, need to immediately develop a program for implementing appropriate social welfare development and formulate government regulations and carry out the realization of laws in favor of customary law communities. This is a shared responsibility. If left unchecked, social conflict may occur which will result in the realization of a just and prosperous community welfare.

Previous research has shown that indigenous peoples experience injustice and land tenure conflicts. The regional laws and regulations on customary land rights emphasize the role of the central and local governments in realizing the welfare of indigenous peoples. A new finding shown in this study is that the role of the central government in regulation has provided legal protection. However, unfortunately, local regulations in several regions in Indonesia supporting the welfare of indigenous peoples are still low. This is indicated by the absence of a regional regulation for the Tobaru Tribe regarding customary land rights (Tola Gumi). It is important to study the activities of indigenous peoples, especially the Tola Gumi. These findings provide important knowledge that community welfare can be realized with the support of stakeholders, especially regulations between central and local governments that support one another.

Conclusion

The first section's findings that examine the positive law regarding the protection of customary rights (Tola Gumi) in the Tobaru tribe show that the laws and regulations that have been regulated by the state regarding land ownership fully support the rights to the land of indigenous peoples. The state provides legal protection for indigenous peoples who take care of legal rights over customary land ownership to empower the common welfare. However, at the regional level, the researchers did not find any regional regulations that support this. Regional regulations have not fully fulfilled the mandate of the Constitutional Court decisions regarding customary land rights. The concept of positive legal protection in Indonesia regarding land rights as the right of indigenous peoples is contained in the five regulations of the Republic of Indonesia government, namely the 1945 Constitution of the Republic of Indonesia; Law Number 5 of 1960 concerning Basic Agrarian Principles of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration; North Maluku Provincial

Government Regulation Number 2 of 2018 concerning the Zoning Plan for Coastal Areas and Small Islands of North Maluku Province 2018-2038; and the Constitutional Court (MK35) decision on customary forests. These five regulations support legal protection and provide customary law communities with management rights over customary forests.

Second, the law of the land rights (*Tola Gumi*) for the welfare of indigenous peoples in Indonesia is contained in four formal laws consisting of the 1945 Constitution of the Republic of Indonesia; Presidential Decree No. 111/1999 concerning Social Welfare Development for Remote Indigenous Communities; and Law Number 11 of 2009 concerning Social Welfare; Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation. And two informal laws, namely *Jou Se Ngofa Ngare* customary law and *Swapraja* customary law.

The limitation of this study lies in the object of research, namely the Tobaru tribe, which is located in West Halmahera Regency, North Maluku Province, Indonesia. In addition, the research theme is only aimed at regulations related to the legal protection of Tola Gumi customary land ownership. In Indonesia, there are quite a number of other tribes who have the same problem but with different contexts. Researchers found that North Maluku local government regulations have not guaranteed the implementation of legal protection and the welfare of indigenous peoples as a whole, especially for the Tobaru tribe. This is also evidenced by the fact that the Constitutional Court Decision (CC35) has not been realized in the North Maluku region until 2021. The implication of this research is that the central government's efforts to encourage local governments to pay more attention to tribal communities who are classified as poor. Indigenous peoples really need land rights because they are very dependent on land. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Regional Government as soon as possible the realization of laws that favor indigenous peoples. Future research can be carried out by examining more deeply the rights of indigenous peoples in terms of the international legal system.

Pedagogical Implication

The theme of social education regarding the practice of Tola Gumi has not been widely taught in schools and colleges. In fact, knowledge about the legal protection of customary land rights (*Tola Gumi*) is very important to be studied considering that this is a form of human rights and as an effort to improve community welfare. Teaching must include curriculum, teaching materials, cooperative-based teaching models where the material being studied is in the form of material written. Learning objectives about the protection of the law and the practice of Tola Gumi is more

for conceptual mastery. In addition, the field trip learning method is related to the lives of indigenous peoples, so that students are able to learn about indigenous peoples' activities.

The role of local government in supporting the welfare of indigenous peoples is still low. Although legal efforts and empowerment of customary land areas have been made, they have not yielded the results they should. In this finding, the study of the normative law and customary law of the Tobaru tribe deepens the context of the role of the central government in the form of laws and regulations on land ownership that is used as agricultural and plantation land to improve welfare. Of course, this must be done with the right strategy and regulatory policies. When examined in the scope of social education, this research encourages public awareness in understanding knowledge of human dignity as social beings who have different customary laws and traditions. In this case, the findings are expected to foster a critical and wise attitude towards the protection of indigenous peoples' laws and the preservation of nature-based on aesthetic and moral values. The findings also support efforts to study diversity and equity associated with cultural, economic, and societal phenomena. This is part of an effort to understand social life and provide broader and deeper insights, especially in solving socio-cultural problems wisely. In addition, studying interventions or social problems in society is aimed at solving, identifying, and organizing potentials capable of realizing the welfare of indigenous peoples throughout Indonesia.

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