

Struggle for Customary Rights and State Certification: Problems of Customary Land Grants

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Abstract: *overlapping conflict between customary land grants and land ownership certificates is a serious problem in the Indonesian land law system, reflecting the tension between customary law based on social-communal recognition and positive law oriented towards administrative certainty. This study uses a descriptive-analytical normative juridical approach through a literature review of the 1945 Constitution Articles 18B and 33, the 1960 UPA Articles 3 and 5, Government Regulation 24/1997, and the Constitutional Court decisions 35/PUU-X/2012 and 1012 K/Pdt/2023, combined with an analysis of empirical data on customary land grant cases in Central Kalimantan, Tana Toraja, East Manggarai, Sorong, and Baduy (2020-2024). The findings indicate that land ownership certificates have superior legal force in judicial practice due to the presumption of regularity mechanism, but are not immune to correction because Government Regulation 24/1997 allows for proof of conversion of old rights through non-formal evidence. Harmonization of customary law and positive law requires: first, recognition of customary evidence as prima facie evidence in land administration; second, strengthening coordination between the National Land Agency (BPN), the Regional Government (Pemda), and Customary Institutions; third, development of a restorative mediation mechanism that integrates customary leaders and district courts; fourth, reform of customary land registration policies and customary law literacy. This study concludes that substantive justice for indigenous communities can be achieved through operational legal pluralism without sacrificing legal certainty, by protecting customary rights as an integral part of the nation's cultural heritage that deserves to be respected and consistently protected in every aspect of national land policy.*

Keywords: *Customary Land Grants; Legal Harmonization; Land Ownership Certificates; Legal Pluralism; Substantive Justice*

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INTRODUCTION

Indonesia faces a complex struggle between customary rights and state certification in land management, particularly in cases of customary land grants that often clash with formal land title certificates. This phenomenon reflects a legal dualism rooted in colonial history to modern agrarian reform, where the 1960 Basic Agrarian Law (UUPA) recognizes customary customary rights but is limited by national interests, leading to overlapping claims. The background of this journal is structured in cohesive paragraphs of approximately 1,500 words, in accordance with Indonesian law journal standards that emphasize normative-sociolegal analysis, integration of primary data, and an academic structure with logical transitions without subheadings.¹

Indonesia is a country with diverse cultures, customs, and legal systems that coexist, with indigenous communities serving as a crucial pillar in shaping national identity.² This diversity is a historical legacy that has developed over centuries, with indigenous communities having their own rules, norms, and governance systems, including land ownership and management arrangements that make land an integral part of social, cultural, and spiritual life, not merely an economic asset.

However, modern state laws that establish land registration systems and grant property rights often conflict with customary law, especially when customary land is confronted with positive legal instruments

such as property rights certificates, thus creating a potential source of prolonged legal conflict. As emphasized by Fence M. Wantu, the emphasis on the principle of justice requires judges to accommodate the living law of the community in the form of customs and unwritten provisions, emphasizing that state law should not deny the existence of customary law as living law in resolving land issues. Historically, recognition of indigenous communities has existed since before independence, as stated in Article 33 paragraph (3) of the 1945 Constitution that land, water, and natural resources are controlled by the state for the prosperity of the people, implemented through the 1960 UUPA which recognizes customary rights as long as they still exist and are in the national interest.

³ This limiting phrase has sparked debate because it opens the opportunity for the government to assess customary rights, while the National Land Agency (BPN) policy emphasizes the formal legality of certificates, causing the risk of unregistered customary land overlapping with certified claims.

Uncertified sales and purchases are rampant in rural areas, giving rise to disputes where buyers are vulnerable to third-party claims, highlighting the gap between formal regulations and social realities that rely on traditional customary practices. The reform era launched agrarian reform programs and PnTSL for mass certification to reduce conflict and increase legal certainty, even though customary land is recognized by communities through agreements and

¹ FIKRI AL KHOLIS, "PERLINDUNGAN HUKUM MASYARAKAT PEMILIK HAK ATAS TANAH ADAT (Studi Kasus Putusan Nomor 2087 K/Pdt/2012)" (PhD Thesis, Universitas Islam Sultan Agung Semarang, 2024), <http://repository.unissula.ac.id/id/eprint/37161>.

² Isniyatin Faizah dkk., "Rekonsiliasi Waris Tiga Dimensi," *Proceedings of Annual Conference for Muslim Scholars* 9, no. 1 (2025): 1134–49,

<https://proceedings.kopertais4.or.id/index.php/ancoms/article/view/766>.

³ RABIATUL QIFTIAH, "Rekonstruksi Regulasi Pengakuan Dan Perlindungan Hak Ulayat Atas Tanah Masyarakat Hukum Adat Yang Berbasis Nilai Keadilan" (PhD Thesis, Universitas Islam Sultan Agung Semarang, 2024), <http://repository.unissula.ac.id/38766/>.

historical evidence such as ancestral divisions or continuous use.⁴ Article 18B paragraph (2) of the 1945 Constitution and Article 3 of the Basic Agrarian Law confirm the recognition of customary rights, but customary land grants without written evidence are vulnerable to claims by BPN certificate holders, where the moral force of the grant is strong socially but weak formally, so that heirs often lose in court despite decades of customary law validity. This phenomenon raises fundamental questions about the protection of customary law, whether state law is sufficiently accommodating or actually erodes it through formal mechanisms, especially for high-value land in urban areas or strategic areas that encourage gaps in certificate claims. The conflict between the principles of positive legal certainty and customary substantive justice is clearly evident, where certificates provide administrative legality but ignore inherited factual control, demanding harmonization to close the gap in informal protection. This conflict impacts social stability, eroding customary trust in the state, policy resistance, and even horizontal tensions that threaten community ties and the sustainability of customary law.⁵

Customary land grants based on solidarity, mutual cooperation, and kinship are vulnerable without the deed of Government Regulation 24/1997, opening up opportunities for claims from outside parties despite customary law. From a human rights perspective, the 2007 UNDRIP, supported by Indonesia, affirms customary rights to

maintain traditional land, but implementation is hampered by a formal paradigm. Constitutional Court Decision 35/PUU-X/2012 declares customary forests not state-owned, emphasizing substantive justice; while Supreme Court Decision 1012 K/Pdt/2023 revokes former customary land certificates if evidence of inheritance is weak, highlighting the unclear legal relationship between the applicant and the original owner.

⁶Empirical cases strengthen the argument: in Central Kalimantan (2020-2023), a Dayak grant for public facilities became a SHM for oil palm plantations, triggering criminalization and protests; in Tana Toraja (2022-2024), an oral church grant was claimed by a family SHM, dissolving the civil process; East Manggarai (2021-2023), road grants overlapping with SHM, infrastructure blockade; Sorong Moi vs. palm oil (2020-2023), unilateral grants rejected by other clans, demonstrations and the National Human Rights Commission; Baduy tourism (2020-2022), grants converted into SHMs from outside, local government conflict. Customary protection is fundamental per the 1945 Constitution and UNDRIP, but partial because formal policies ignore social norms, so research identifies gaps and offers inclusiveness. Complexity increases when external grants are diverted by third parties legitimate to the state but socially illegitimate, triggering internal conflicts that threaten community integrity.

The state is obliged to recognize Article 18B of the Constitution and Article 5

⁴ MAWADDAH RAHMAH, "Reformasi Hukum Wakaf Tanah Dalam Dimensi Pluralisme Hukum Di Indonesia" (Master's Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, t.t.), diakses 19 Januari 2026, <https://repository.uinjkt.ac.id/dspace/handle/123456789/78614>.

⁵ Qurrota Aini Rahma Ramadhani dkk., "Harmonisasi Hukum Negara dan Norma Adat: Analisis Sosiologis

atas Penyelesaian Sengketa Tanah Adat di Indonesia," *Journal of Contemporary Law Studies* 2, no. 3 (2025): 209–22.

⁶ S. H. Setiawan Widiyoko dan M. Kn, *Hukum Tanah Adat Dan Pewarisan Pedoman Bagi Akademisi, Praktisi, Dan Aparat Desa* (Global Kreatif Media, 2026),

of the UUPA, but technical regulations are hampered by formalities. Harmonization is key in proving rights; recognizing the testimony of elders and traditional documents prevents legal seizures; the National Land Agency (BPN) strengthens coordination between customary institutions and data verification. Minimal outreach, high costs, and remote access discourage customary registration, opening external loopholes. Integrative policies require: regulatory harmonization, legal literacy, and the role of customary administration. Research focuses on the power of grants versus certificates; positive accommodation; effective dispute resolution without neglecting certainty. This conflict concerns customary dignity, identity, and sustainability; social justice solutions protect the nation's cultural heritage. The dualism of communal-spiritual customary law versus positive individualism continues post-UUPA, challenging modern registration dominated by certificates. Socio-legal research combining normative and empirical research shows the ambiguity of "indigenous communities" and individual priorities hinder harmony.

METHOD

This study uses a normative juridical approach with descriptive-analytical specifications to examine the problems of customary land grants versus state certification⁷, as is common in Indonesian legal journals that analyze positive legal norms, customary law concepts, and their harmonization. Primary data in the form of the 1945 Constitution Articles 18B and 33(3), UUPA 1960 Articles 3 and 5, PP 24/1997, and the decisions of the Constitutional Court 35/PUU-X/2012 and MA 1012 K/Pdt/2023 were collected through library studies of laws,

regulations, jurisprudence, and expert doctrines such as Fence M. Wantu and Boedi Harsono. Secondary data includes academic journals (e.g., Jurnal RechtsVinding, Jurnal Hukum dan Pembangunan), agrarian law books, and empirical case reports from Kompas.com and Komnas HAM, analyzed qualitatively with statute, conceptual, and case approaches to identify legal gaps and harmonization proposals. Data collection techniques were conducted through primary, secondary, and tertiary literature inventory, processed deductively to formulate the strength of customary grants, positive legal accommodations, and effective dispute mechanisms, ensuring validity through source triangulation to achieve substantive justice. This approach is relevant for norm analysis without intensive empirical fieldwork, in accordance with customary agrarian law research standards.

ANALYSIS AND DISCUSSION

Legal Power of Customary Land Grants and Ownership Certificates

Customary land grants are essentially born from communal values that place land as a community living space (*lebensraum*) rather than merely an economic object, so that the legitimacy of its ownership is primarily built through social recognition, history of control, and collective agreements (living law) that work effectively to bind community members, including in terms of transfer (grant) to relatives, religious institutions, or for the public interest. Within the framework of national law, recognition of customary rights of customary law communities does find a normative basis through Article 3 of the UUPA which states that customary rights are recognized as long as they still exist in reality

⁷ Zainuddin Ali, *Metode penelitian hukum* (Sinar Grafika, 2021).

and their implementation does not conflict with national interests, so that the UUPA dogmatically presupposes the existence of customary law as one of the material sources of agrarian law, but at the same time provides room for state discretion to assess the existence and "suitability" of its recognition.⁸ This recognition is also reinforced in Article 5 of the UUPA, which places customary law as the basis of national agrarian law, indicating that the Indonesian land ownership system is built on a foundation of legal pluralism, where the existence of customary law should be the primary reference in designing land policies, particularly related to the recognition, strengthening, and protection of indigenous peoples' rights to their land. However, in practice, these constitutional and legislative principles are often not clearly reflected at the operational application level, especially in the interactions of indigenous peoples with land officials and administrative systems that prioritize administrative formalities over the substance of social justice.⁹

Problems arise when customary land grants that are legitimate according to customary mechanisms enter the arena of positive legal evidence, because the land registration system is designed to produce legal certainty through orderly land administration; PP 24/1997 emphasizes that land registration aims to provide legal

certainty and legal protection for rights holders, provide information for interested parties, and organize orderly land administration, so that its legal logic is oriented towards publicity and administrative verification of physical-legal data. The principle of publicity carried by PP 24/1997 requires all land rights to be registered in order to have legal force recognized by the state and can be published to the wider community, so that in the perspective of the administrative system, unregistered land is considered to have no clear rights or legal certainty, even though in fact and socially the land has been controlled and utilized by a certain community for years.¹⁰ This transformation from a legal system based on social-communal recognition to a formalist-administrative registration system creates significant gaps in the protection of customary rights, as administrative mechanisms require written documentation, procedural verification, and recording in land databases that are often inconsistent with the way indigenous communities document and transmit their land rights.¹¹

In the design of the land registration system, certificates are positioned as a very strong evidentiary node because PP 24/1997 determines certificates as proof of rights that serve as strong evidence regarding the physical and legal data contained therein as long as they are in accordance with the

⁸ Monalisa Marta Siahaan, "Rekonstruksi Perlindungan Hukum Hak Pemegang Tanah Warisan Keluarga Rumah Bolon Damanik Berbasis Nilai Keadilan" (PhD Thesis, Universitas Islam Sultan Agung Semarang, 2025), <https://repository.unissula.ac.id/41017/>.

⁹ Tumisah Tumisah, "Rekonstruksi Pengaturan Pemberian hak Atas Tanah Bagi Masyarakat di Wilayah Pesisir Yang Berbasis Nilai Keadilan" (PhD Thesis, Universitas Islam Sultan Agung (Indonesia), 2023), <https://search.proquest.com/openview/003c07e366519c2284c58f917dc0435d/1?pq-origsite=gscholar&cbl=2026366&diss=y>.

¹⁰ I. Putu Agus Santia Wibawa dan I. Gede Perdana Yoga, "Implikasi Hukum Tanah Hak Milik Perseorangan Pada Radius Kesucian Pura Pasca Keputusan Bhisama Kesucian Pura," *Jurnal Media Akademik (JMA)* 3, no. 12 (2025), <https://jurnal.mediaakademik.com/index.php/jma/article/view/3602>.

¹¹ Nova Yarsina, "Rekonstruksi Regulasi Pendaftaran Tanah Ulayat Dalam Memberikan Kepastian Hukum Berupa Sertifikat Berbasis Nilai Keadilan" (PhD Thesis, Universitas Islam Sultan Agung (Indonesia), 2023).

measurement letter and land book, which in judicial practice often places certificate holders in a superior evidentiary position compared to holders of customary recognition-based rights that are not documented in the state administration system.¹² The superiority of this certificate is based on the principle that the certificate is the result of an administrative process that has gone through a series of stages of verification, announcement, and registration, so it is assumed to have gone through objective and careful procedures to ensure the accuracy of the data; with this logic, certificates have the "power of presumption" that makes every information contained therein considered true until proven otherwise, in contrast to customary evidence which is considered subjective and cannot be verified through modern administrative standards. This creates an evidentiary asymmetry where the certificate holder does not need to prove in detail that he is the legal owner, just show the certificate he owns, while the customary grant recipient must undertake much more difficult and complex evidentiary work to show that he is the owner or recipient of the legal rights according to customary law.

Furthermore, PP 24/1997 also contains a protection mechanism for buyers/certificate holders in good faith through the provision that if the certificate has been legally issued in the name of the party who obtained it in good faith and actually controls the land, then other parties who feel entitled cannot demand the implementation of their rights if within 5 years from the issuance of the certificate they do not

submit a written objection to the certificate holder and the Head of the Land Office or do not sue in court, so that this certainty regime has the potential to "lock" customary claims that are late in entering the formal channel even though in fact they have been alive for a long time. This¹³ *limitation period* mechanism, although intended to provide legal certainty for certificate holders, in reality can work as a "wall" that blocks access to justice for indigenous communities who only become aware of or are only able to file a lawsuit after 5 years have passed, especially considering the limited access to legal information, low legal literacy, and limited economic resources that indigenous communities often experience.

This situation is exacerbated by the fact that in many cases, indigenous communities do not know that their land has been certified in the name of another party until long after the certificate is issued, so that the 5-year period has passed before they have the opportunity to file an objection.¹⁴

In the context of grants, formal issues are exacerbated because registration of transfers of land rights resulting from grants can in principle only be carried out if evidenced by a deed made by a PPAT (except in certain circumstances determined by the Minister), so that customary grants made orally, through customary symbols, or stated in community documents that are not PPAT deeds become difficult to register, and as a result are "invisible" in the registration system even though they "exist" and are strongly recognized within the community. The

¹² S. H. Achmad Fitrian dkk., *Hukum Perdata Dan Hak Asasi Manusia: Menjamin Keadilan Individu* (PT. Nawala Gama Education, 2025).

¹³ Aghna Fushshilia Ilma Alim, "Penyelesaian Sengketa Warisan Berlandaskan Keadilan Dan Kepastian Hukum Dalam Prespektif Kitab Undang-Undang Hukum Perdata," *Dinamika* 31, no. 2 (2025).

¹⁴ Andi Surya Nusantara Djabba, "Aspek Hukum Pengaturan Mengenai Hak Guna Usaha Pasca Berlakunya Undang-Undang Cipta Kerja" (PhD Thesis, Universitas Hasanuddin, 2022), <https://repository.unhas.ac.id/id/eprint/23654/>.

requirement for a PPAT deed is based on the principle that every transfer of rights must be evidenced by an authentic document prepared by a government-appointed official, so that there is a "distance" between the customary way of transferring rights and the positive legal way of recording the transfer; customary grants made through customary rituals, oral statements before customary leaders, or through the signing of non-PPAT documents cannot be directly registered because the administrative system requires a uniform format and can be verified according to national administrative standards.¹⁵

As a result, many customary grants that have been in place for decades and are recognized as valid by the community remain "unregistered" in the national land administration system, so that the legal status of the grant recipients under state law is unclear or even unrecognized, even though they have de facto exercised ownership and control rights over the land.¹⁶

Positive law actually provides a conceptual gap to accommodate non-formal proof of old rights because PP 24/1997 opens the possibility of proving land rights originating from the conversion of old rights through written evidence, witness statements, and/or the fact of physical possession for 20 years or more consecutively in good faith and openly and supported by reliable witnesses, and not disputed by the customary law community/village/sub-district or other parties.¹⁷ This provision opens the

opportunity for customary grant recipients to prove their rights through the "conversion of old rights" route by showing: first, written evidence that can come from customary documents, community statements, or family records; second, testimony from customary elders, family, or community members who can tell the history of the grant and land possession; third, the fact of physical possession for 20 years or more that shows the continuity of land use by the grant recipient; fourth, good faith demonstrated by the absence of signs of unauthorized takeover or unlawful acts; and fifth, recognition from the customary community or village that the possession is legitimate according to local norms. Methodologically, this provision can be read as an entry point for integrating the testimony of customary elders, local knowledge structures, and the history of customary-based tenure as part of the standard of proof of "old rights," so that in administrative and litigation practices, customary grant recipients have a legal basis to submit the necessary informal evidence.¹⁸

The resulting gap is not simply due to the absence of enabling legal norms, but rather to the unequal power of proof between those holding certificates and those relying on customary evidence. In practice, those with certificates often benefit from the presumption of *regularity*, while recipients of customary grants must undertake "layered evidentiary work" to convince judges that their factual control and social legitimacy are worthy of

¹⁵ SONY IRAWAN HAMID, "Implikasi Hukum Perjanjian Perdamaian Sengketa Waris Yang Di Buat Di Hadapan Notaris Di Kabupaten Kolaka, Provinsi Sulawesi Tenggara" (PhD Thesis, Universitas Islam Sultan Agung, 2025), <https://repository.uinissula.ac.id/44523/>.

¹⁶ S. H. Jabalnur, *Hak Ulayat Masyarakat Hukum Adat Di Wilayah Taman Nasional (eksistensi Dan Perlindungan Hukumnya)* (Scopindo Media Pustaka, 2020).

¹⁷ Uslyfatul Khair, Andi Sukmawati Assaad, dan Muhammad Arif, "Tana Pabbere Orang Tua Kepada Anak yang Berkeadilan Gender," *Jurnal Tana Mana* 6, no. 2 (2025): 277–88.

¹⁸ Guruh Pascalistya, Laily Ratna, dan Andri Zulpan, "Tinjauan Hukum Akibat Penjualan Harta Waris Tanpa Persetujuan Ahli Waris: Studi di Pengadilan Agama Curup Berdasarkan Putusan NO. 85/PDT. G/2023/PA. CRP," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 3578–89.

being treated as rights worthy of protection.

¹⁹ The recipient of customary grants must prove: that the grant was indeed valid according to customary law; that they have physically controlled the land consecutively; that such control is known and recognized by the customary community; that the recipient acted in good faith; and that there were no objections from other parties during the relevant period. This burden of proof is very heavy, especially considering that much customary evidence is "oral" or "implicit," making it difficult to document in a form that meets formal legal evidentiary standards. This condition often gives rise to distributive injustice because indigenous communities often have limited access to PPATs, land offices, procedural information, litigation costs, and even access to judicial institutions, leaving them in a very weak position when facing opponents who have more adequate certificates and economic resources.

Jurisprudential reality shows that certificates are indeed very strong but not immune to correction. A study of Supreme Court Decision Number 1012 K/Pdt/2023 shows that disputes over "former customary land rights" can lead to the cancellation or at least weakening of the certificate holder's position when the applicant's legal relationship with the original owner/ownership history is not sufficiently proven or there are evidentiary flaws. ²⁰This

decision indicates that although certificates have high legal force, this power is not absolute or uncontestable. If it can be proven that the certificate was issued based on inaccurate data or flawed procedures, or if it can be shown that the land was previously customary land rights with a valid transfer under customary law, then the certificate can be corrected or even canceled. Therefore, certificates are understood as strong evidence that can still be refuted through contrary evidence in the judicial process. This means that recipients of customary grants are not completely "closed" from access to justice if they can present sufficiently strong evidence to demonstrate the validity of the grant and its legal status.²¹

This jurisprudential finding in Supreme Court Decision Number 1012 K/Pdt/2023 fundamentally challenges and corrects the doctrine of the presumption of regularity that has been a main pillar of a certificate's strength in the land administration system. Previously, the presumption of regularity gave procedural privileges to certificate holders by assuming all issuance processes were lawful until proven otherwise. However, this decision shows that this assumption cannot be an impenetrable shield against socio-legal realities. The Supreme Court implicitly asserts that a certificate's strength as strong evidence does not erase the state's obligation to conduct land registration

¹⁹ Ramli Daniel Christian Siregar, Maria Kaban, dan Utary Maharany Barus, "Analisis Yuridis Pembuktian Kedudukan Ahli Waris atas Harta Warisan Kepemilikan Tanah Adat Batak Toba:(Studi Putusan Mahkamah Agung Nomor 628 PK/PDT/2020)," *Jurnal Hukum Lex Generalis* 6, no. 6 (2025), <https://rewangrencang.com/ojs/index.php/JHLG/article/view/1649>.

²⁰ Richi Shopia Purba, Hasim Purba, dan Rosnidar Sembiring, "Peralihan Hak Kepemilikan Harta Warisan Melalui Perbuatan Melawan Hukum dalam Sistem Kewarisan:(Studi Putusan Mahkamah Agung Nomor

464 K/Pdt/2020)," *Jurnal Hukum Lex Generalis* 6, no. 6 (2025), <https://ojs.rewangrencang.com/index.php/JHLG/article/view/1634>.

²¹ MUHAMMAD ROZI, *Sengketa Kepemilikan Rumah Tinggal Antara Suami Dan Mertua Pasca Meninggalnya Istri Di Masyarakat Penawar, Kecamatan Sitinjau Laut Kabupaten Kerinci*, t.t., diakses 19 Januari 2026, <https://repository.iainkerinci.ac.id/system/files/2025-12/SKRIPSI%20MUHAMMAD%20ROZI.pdf>.

that is accurate and reflects material truth. This contradiction births an important development in Indonesian jurisprudence: the presumption of regularity shifts from a mere "formal assumption" to an "assumption that can be tested for its substantial truth." This means the regularity attached to a certificate is not absolute but a legal hypothesis that must yield to evidence, especially when facing customary land rights claims constitutionally recognized under Article 3 of the UUPA. This development aligns with Article 5 of the UUPA, which places customary law as the primary source, demanding that administrative processes orient not only towards orderly recording but also towards communal justice. Thus, this jurisprudence opens a dialogue between positive law and living law, where courts dare to deconstruct administrative rigidity to accommodate historical evidence and social recognition the very foundations of land ownership in customary law communities.

The issue of customary land grants should be placed within a framework of harmonized evidence: not negating certificates (because a system of certainty is still needed), but rather establishing a "prima facie evidence" standard for customary evidence such as testimony from customary elders, participatory maps of customary territories, minutes of customary deliberations, or community documents so that from the administrative stage (adjudication, legal data collection, and announcement) such evidence is assessed as equally relevant to preventing the issuance of certificates on land that has been socially "granted" and controlled by the grantee. The

concept of "*prima facie evidence*" refers to evidence sufficient to prove a claim unless there is opposing evidence, so that customary evidence presented early in the administrative process can be used to block or halt the issuance of potentially overlapping certificates. With this approach, indigenous communities do not need to wait for certificates to be issued before suing, but can instead submit evidence of the grant during the land registration process, thereby preventing certificate issuance or at least providing a note regarding the existence of customary claims.²²

Legal certainty is not synonymous with material truth, because PP 24/1997 itself establishes a registration system that aims to provide certainty and protection based on recorded data (land books, measurement letters, registration maps), so the quality of certainty is highly dependent on the quality of data verification. If the verified data is incomplete or inaccurate due to ignoring local knowledge regarding customary grants, then the resulting certificates can create administrative certainty that "deviates" from substantive justice, where certainty exists only in an administrative-formal manner but does not correspond to the factual conditions and socio-legal realities prevailing on the ground.²³ Therefore, harmonizing PP 24/1997 with the principle of legal pluralism and Article 3 of the UUPA requires reform at the implementation level, particularly in the legal data collection stage (*adjudication*), so that data verification is not only based on administrative records or claims from parties who own documents, but also involves local indigenous communities as a primary source

²² Muhammad Yusuf, Nurhaedah Nurhaedah, dan Syamsul Alam, "Analisis Hukum Hak Legitime Portie Dalam Sistem Hukum Waris Perdata Indonesia," *LEGAL DIALOGICA* 1, no. 1 (2025): 1–15.

²³ Geunta Farabi Yuzka dan Bustamam Usman, "Kewenangan Keuchik Dalam Penerbitan Surat Keterangan Tanah Dalam Perspektif Siyasa Idariyah," *Journal of Indonesian Comparative of Syari'ah Law* 8, no. 3 (2025): 675–98.

of knowledge regarding the history of land ownership and transfer of rights.

The government also has administrative instruments to handle land cases through Regulation of the Minister of ATR/Head of BPN Number 21 of 2020, so that institutionally there is room for non-litigation resolution and administrative corrections that can be used as an initial protection path for customary grant recipients when there are indications of overlapping or procedural errors in the issuance of rights. This administrative mechanism, if optimized by involving customary institutions and the principles of restorative justice, can be a gateway to faster, cheaper, and more acceptable resolution for both parties, eliminating the need for a lengthy and expensive litigation process.

The discussion of the strength of customary land grants versus state certificates ultimately demands a shift from the question of "which is stronger" to "how can the evidentiary and administrative system ensure that no socially legitimate rights are lost legally *and formally*," through strengthening land due diligence involving customary communities, recognizing non-formal evidence as sufficient initial evidence, and utilizing the norms of PP 24/1997 on proving old rights and judicial control as reflected in judicial practice to balance administrative certainty with substantive justice.

Harmonization Mechanism of Customary Law and Positive Law

The harmonization mechanism between customary law and positive law is a strategic necessity to prevent overlapping claims over customary land grants and uphold the

principle of substantive justice mandated by Article 18B of the 1945 Constitution, but its implementation still faces serious obstacles due to the dominance of the formalistic paradigm held by the National Land Agency in national land administration. Constitutionally, Article 18B paragraph (2) of the 1945 Constitution clearly mandates that the state recognizes and respects the unity of customary law communities and their traditional rights, so that this recognition is not merely declarative but contains the state's obligation to actively protect customary rights in every aspect of legal development and public policy, including in land administration and dispute resolution.²⁴ However, in practice, the National Land Agency as the central institution that manages the national land system still tends to prioritize administrative formalities, certificate-based legal certainty, and systematic registration logic that "alienates" non-formal evidence that lives in customary communities. This situation creates a large gap between the state's constitutional commitment to respect indigenous rights and the realization of legal protection at the operational level, so that indigenous communities often feel that the state only "recognizes them on paper" without providing concrete protection.²⁵

The legal pluralism approach offers a relevant conceptual framework to address this gap, recognizing that in a modern society like Indonesia, more than one legal system applies simultaneously and influences each other. A study of legal pluralism in the context of Minangkabau customary land shows that the coexistence of customary law and national law is not only possible but also necessary,

²⁴ H. Sri Jaya Lesmana dan MH SH, *Hukum Adat Indonesia* (PT. Bidara Cendekia Ilmi Nusantara, 2020),

²⁵ S. H. Suyono Sanjaya, M. H. Sp N, dan S. H. Yuniar Rahmatiar, *PENGADAAN TANAH UNTUK*

KEPENTINGAN UMUM ASPEK HUKUM DAN SOSIAL (Untuk Kepentingan Umum Dan Swasta) (Penerbit K-Media, 2025).

because each community group has a different understanding of customary land and its ownership.²⁶ In the Minangkabau context, customary land is understood at several levels: nagari customary land (collectively owned by the nagari), tribal customary land (owned by members of the tribe), kaum customary land (owned by matrilineal families), and rajo customary land (land of the rajah/leader), so that the ownership structure is very complex and cannot be generalized with the category of "property rights" in positive law. Farmers who have cultivated customary land for more than 20 years view land registration as a potential threat to their individual property rights, while customary institutions such as the Nagari Customary Council (KAN) and Bundo Kanduang view registration through the lens of protecting customary-based communal ownership systems, while local governments and customary supervisory bodies tend to support registration as a form of formal state legitimacy. These differing perspectives demonstrate that harmonization cannot be achieved solely through normative harmonization or harmonization "from above," but must involve multi-stakeholder dialogue that accommodates diverse interests.²⁷

Coordination between the National Land Agency (BPN) and local governments is a practical key to achieving this harmonization, as the BPN serves as the technical institution for national land registration, while local governments possess local knowledge and administrative authority

at the regional level. In practice, this coordination is often weak or unsystematic, resulting in many customary lands being registered in the names of individuals or third parties without verification by customary institutions or local governments regarding their true status.²⁸ A concrete example is the Dayak case in Central Kalimantan (2020-2023), where customary land that should have been granted for public facilities was instead issued as a Freehold Certificate (SHM) or Cultivation Rights (HGU) for a palm oil company, triggering the criminalization of customary leaders and mass protests from the community. A similar case in Sorong, where Moi customary land was unilaterally granted by one clan, then another party within the clan emerged with a government-issued certificate, resulting in demonstrations and the intervention of the National Human Rights Commission (Komnas HAM). These two cases demonstrate that the failure of BPN-local government coordination is not merely an administrative issue, but also causes real harm and deep social conflict. Regulation of the Minister of ATR/Head of BPN Number 14 of 2024 concerning Customary Land Registration has attempted to strengthen this coordination by regulating three legal forms of administration and registration of customary land, but in practice there is still a misalignment between the capabilities and willingness of local governments to implement this regulation.²⁹

Restorative justice offers a more inclusive alternative to resolving customary

²⁶ Dian Kemala Dewi, *Fondasi Ilmu Hukum: Teori, Asas, Dan Sistem Hukum* (Serasi Media Teknologi, 2025).

²⁷ Retno Kusniati, "Transformasi Hukum Internasional ke dalam Hukum Nasional Terkait Hak Masyarakat Hukum Adat atas Pembagian Keuntungan (Access and Benefit Sharing) Pemanfaatan Sumber Daya Genetik: Studi Perbandingan Antara Indonesia dan Thailand"

(PhD Thesis, DOKTOR ILMU HUKUM, 2022), <https://repository.unja.ac.id/34217/>.

²⁸ AL KHOLIS, "PERLINDUNGAN HUKUM MASYARAKAT PEMILIK HAK ATAS TANAH ADAT (Studi Kasus Putusan Nomor 2087 K/Pdt/2012)."

²⁹ QIFTIAH, "Rekonstruksi Regulasi Pengakuan Dan Perlindungan Hak Ulayat Atas Tanah Masyarakat Hukum Adat Yang Berbasis Nilai Keadilan."

land grant disputes, based on reconciliation rather than the adversarial decisions often made by formal litigation. This restorative approach focuses on restoring social relationships disrupted by the dispute, rather than simply deciding who is right or wrong. This makes it particularly suitable for customary land disputes, where the disputing parties are often members of communities who must continue to live side by side after the dispute is resolved. In practice, in some regions, customary land disputes are resolved through customary deliberations (*rembug gunung*), cleansing rituals (*nyongkolan tanah*), and symbolic mediation that emphasizes kinship and reconciliation. Customary institutions such as the Bayan Customary Council and the Tanjung Customary Council play a key role as mediators and facilitators in the conflict resolution process, emphasizing local values such as harmony, *rembug*, mutual assistance, and mutual cooperation. This mediation process is usually carried out in stages, starting with informal mediation by small customary leaders, then escalating to major customary leaders if the initial mediation is unsuccessful, so it is more flexible and can be adapted to local characteristics compared to rigid formal litigation procedures. Research shows that of the various cases of customary land disputes in Lampung that have been recorded, all involved mediation, both informal (customary) and formal (court), and the results of mediation are generally in the form of compromises such as material compensation, recognition of customary rights, profit-sharing agreements, or project transfers, indicating that this approach is more directed at creating a balance of interests rather than the full return of rights.³⁰

Combining customary mediation mechanisms (involving customary leaders and elders) with the formal legal system (district courts) can create a "bridge" that allows customary land grant disputes to be resolved while respecting customary law while also ensuring legal certainty recognized by the state. In this model, the first stage of the dispute is handled through customary mechanisms with a customary leader as mediator, allowing the process to take place in a familiar environment and using language and values understood by the customary community. If customary mediation results in an agreement, this agreement can be documented and legally recognized through formal mechanisms such as a deed of mediation or a deed of declaration before a Land Deed Official (PPAT), allowing the results of customary mediation to be converted into rights recognized by the positive legal system. If customary mediation is unsuccessful or if a party does not accept the mediation outcome, the case can be escalated to a formal mechanism in the district court, with a complete record of what has been attempted at the customary level, providing the judge with more complete information about the social context and previous efforts.³¹ This hybrid model has shown positive results in several regions, primarily because it reduces the burden on the courts while still providing access to justice for indigenous communities.

Policy reforms in several directions are needed to ensure that legal harmonization is truly realized operationally, starting with accelerating formal recognition of customary land at the local government level through Regional Regulations (*Perda*) or regional decrees that recognize the status and

³⁰ RAHMAH, "Reformasi Hukum Wakaf Tanah Dalam Dimensi Pluralisme Hukum Di Indonesia."

³¹ Ramadhani dkk., "Harmonisasi Hukum Negara dan Norma Adat."

boundaries of customary land by involving customary institutions as the main parties in the verification process. Regional regulations regarding customary land, such as the Minangkabau Customary Land Regulation No. 6 of 2008, are an important step in providing local legal certainty and clarity on the status of various levels of customary land (nagari, suku, kaum, rajo), so that they can become the basis for consideration in administrative processes at the National Land Agency (BPN). Second, an intensive program of socialization of customary law is needed for indigenous communities regarding land registration procedures, registration fees, and their rights in the positive legal system, because the lack of understanding of administrative formalities among indigenous communities is one of the factors why they are reluctant or late in registering land. Third, the BPN needs to establish a special unit for handling customary land disputes that combines land expertise and a deep understanding of customary legal pluralism, so that it can provide services that are responsive to the specifics of customary claims. Fourth, the government needs to develop a land data verification system that involves customary institutions as partners in adjudication (initial legal data collection), so that customary evidence can be integrated from the initial stages of the registration process before certificates are issued. Fifth, the restorative justice paradigm needs to be established as the primary reference for resolving customary land disputes, so that mediation and reconciliation channels receive priority and funding support equal to litigation channels.³²

The success of harmonization also depends heavily on strengthening the capacity

of customary institutions themselves, including training on positive law, land administration procedures, and modern dispute resolution mechanisms, so that customary leaders can act as bridges connecting customary communities with the state legal system. Documentation of customary rights needs to be improved through community empowerment programs to create participatory maps, minutes of customary deliberations, and other community documents that can be recognized as initial evidence in the administrative process. Synergy across ministries/agencies and regional governments needs to be strengthened through regular formal coordination mechanisms, not just ad hoc ones when problems arise. This allows the National Land Agency (BPN), the Ministry of Home Affairs, the Regional Land Office, and customary institutions to work together to plan and implement land registration policies that accommodate customary rights. With this series of integrated policy reforms and harmonization mechanisms, it is hoped that customary land grants will receive adequate legal protection without sacrificing the legal certainty offered by the national registration system, thereby achieving substantive justice for customary communities along with administrative certainty for all parties with an interest in the land.

CONCLUSION

The overlapping conflict between customary land grants and land ownership certificates reflects a fundamental struggle between two different legal systems in establishing the legitimacy of rights: customary law, built on social-communal recognition, historical ownership, and

³² Siahaan, "Rekonstruksi Perlindungan Hukum Hak Pemegang Tanah Warisan Keluarga Rumah Bolon Damanik Berbasis Nilai Keadilan."

collective agreements, versus positive law, which is oriented towards administrative certainty based on formal registration and certificates. Although certificates have high legal force, their superiority is not absolute, as Government Regulation 24/1997 and court decisions indicate that certificates can be corrected if there are procedural flaws or sufficiently strong evidence of customary ownership. Harmonizing customary law and positive law requires a paradigm shift from the question of "which is stronger" to "how to create a system that integrates both sources of legitimacy," through: first, recognizing customary evidence as prima facie evidence in the land administration process; second, strengthening coordination between the National Land Agency (BPN), the Regional Government (Pemda), and Customary Institutions in data verification; third, developing a restorative mediation mechanism that combines customary leaders and the district court; fourth, policy reform in customary land registration, customary law literacy, and strengthening the capacity of customary institutions. With a comprehensive and integrated harmonization approach, substantive justice for indigenous peoples can be realized without sacrificing legal certainty recognized by the state, while protecting the identity, dignity, and sustainability of indigenous cultural heritage as an integral part of Indonesia's pluralist legal system.

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