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Contradictions between Land Certification Regulations and the Principles of Minangkabau Customary Law on Ulayat Land

Article	Abstract
<p>Author <u>Firyal Nurul Badriyah¹</u></p> <p>¹ UNESA Campus 5, State University of Surabaya, Surabaya</p> <p>Corresponding Author: [*]Firyal Nurul Badriyah, Email: 24111764017@mh.s.unesa.ac.id</p> <p>Data: Received: July 12, 2025 Accepted: July 20, 2025 Published: Sept 31, 2025</p> <p>DOI: https://doi.org/10.26740/lf.r.v1i2.48798</p>	<p>Objective: This study examines the normative contradictions between land certification regulations and the principles of Minangkabau customary law, particularly in relation to the recognition and protection of <i>tanah ulayat</i> as communal property. It seeks to evaluate the extent to which national and regional legal frameworks align with constitutional and statutory mandates to safeguard indigenous rights.</p> <p>Theoretical Framework: The analysis is grounded in the principles of legal pluralism and constitutional recognition of <i>hak ulayat</i> (Article 3 of the 1960 Basic Agrarian Law and Article 18B(2) of the 1945 Constitution), providing a conceptual lens to assess the harmony between state law and customary norms.</p> <p>Method: Employing a normative juridical approach, this research draws on statutory provisions, regional regulations, judicial decisions, and doctrinal scholarship.</p> <p>Results and Discussion: The findings reveal structural inconsistencies: national regulations, especially through the Complete Systematic Land Registration (PTSL) program, privilege individual certification, while West Sumatra Regional Regulation No. 18 of 2019 aims to preserve communal rights. Procedural requirements such as identification of registrants, signatures from clan members, and formal boundary delineation tend to undermine the collective essence of <i>tanah ulayat</i>. This dissonance has generated legal uncertainty, normative ambiguity, and heightened risks of conflict.</p> <p>Research Implications: Harmonization requires the development of technical mechanisms for communal registration, recognition of collective certificates, and participatory involvement of customary authorities.</p> <p>Originality/Value: This study contributes by offering a normative legal analysis that integrates constitutional mandates, statutory law, and adat principles, highlighting pathways to reconcile agrarian reform with indigenous tenure systems.</p> <p>Keywords: communal land; <i>tanah ulayat</i>; land certification; customary law; agrarian law</p>

INTRODUCTION

Communal land (*tanah ulayat*) in the Minangkabau customary law community holds a fundamental position as it serves both as a source of cultural identity and as a means of fulfilling livelihood needs. The communal ownership system has been regulated for generations through the customary principle that “*tanah pusako tinggi may not be sold, mortgaged, or transferred*” as a form of protection for future generations¹. This concept is in line with the recognition of *hak*

¹ Maiyestati and Zarfina, “Hak Ulayat Masyarakat Hukum Adat Eksistensi Dan Pengaturannya Di Sumatera Barat,” *Jurisprudencia* 6, no. 2 (2023): 12–26.

ulayat in Article 3 of the Basic Agrarian Law (UUPA) of 1960, which stipulates that the communal land rights of customary law communities are recognized as long as they continue to exist in practice².

National land regulations, particularly the Complete Systematic Land Registration program (PTSL), emphasize legal certainty through land certification. The implementation of certification based on individual ownership often creates disharmony with the communal principles of *tanah ulayat*. A study by Andrian et al. (2024) demonstrates that the transformation of *tanah ulayat* into individual ownership rights through the PTSL program in Solok City has resulted in the erosion of the communal values inherent in Minangkabau customary law³. These findings illustrate the ambivalence between the objectives of state regulation and the principles of customary law⁴.

The limitation of previous studies lies in the lack of an in-depth normative analysis regarding the contradictions between land certification regulations and customary law principles, particularly in the context of disharmony between national legislation and West Sumatra Regional Regulation No. 18 of 2019 on *Tanah Ulayat*. The study conducted by Zulmi and Harlina (2025) primarily emphasized the implications of *tanah ulayat* certification on the economic welfare of indigenous communities, without addressing in detail the normative disharmony between the Basic Agrarian Law (UUPA) and regional regulations⁵.

The regional regulation in principle seeks to bridge the need for legal certainty with the preservation of customary traditions; however, its implementation still raises normative issues regarding the validity of registering *tanah ulayat* as communal rights. Andrian et al. (2024) further found that the registration of *tanah ulayat* through the PTSL program often resulted in certificates issued under individual names, thereby diminishing the communal meaning of *tanah ulayat* as collective property protected by customary law⁶.

This article seeks to fill that gap by providing a normative analysis of the contradictions between land certification regulations and the principles of Minangkabau customary law. A normative approach is essential to assess the extent to which positive legal arrangements align with the principles of customary law, particularly in the context of recognizing *hak ulayat* as stipulated in Article 3 of the Basic Agrarian Law (UUPA). According to Mirwati et al. (2019), the implementation of the PTSL program in Minangkabau has not fully taken into account the communal principles of customary law, thereby creating potential legal and social conflicts⁷.

The main focus of this study is to examine the extent to which national and regional regulations are in harmony with the principles of customary law, as well as to identify the legal

² Siti Raga Fatmi, "Permohonan Tanah Ulayat Di Minangkabau Menjadi Tanah Hak Milik," *Lentera Hukum* 5, no. 3 (2018): 392, <https://doi.org/10.19184/ejrh.v5i3.8291>.

³ Ahmad Ghofirli Andrian et al., "Transformasi Hak Tanah Ulayat Kaum Menjadi Hak Milik Melalui Program Pendaftaran Tanah Sistematis Lengkap Di Kota Solok," *Karimah Tauhid* 4, no. 4 (2025): 2119–34, <https://doi.org/10.30997/karimahtauhid.v4i4.17457>.

⁴ Andrian et al.

⁵ Indah Harliina Zulmi Hendri, "KAJIAN PENSERTIPIKATAN BAGIAN TANAH ULAYAT BERDAMPAK TERHADAP KESEJAHTERAAN KAUM," *Jurnal Hukum Kenotariatan* 7, no. 1 (2021): 167–86.

⁶ Andrian et al., "Transformasi Hak Tanah Ulayat Kaum Menjadi Hak Milik Melalui Program Pendaftaran Tanah Sistematis Lengkap Di Kota Solok."

⁷ Yulia Mirawati Feronika, Azmi Fendri, "PELAKSANAAN PENDAFTARAN TANAH ULAYAT KAUM MELALUI PROGRAM PENDAFTARAN TANAH SISTEMATIS LENGKAP DI KECAMATAN BUNGUS TELUK KABUNG," *Jurnal Hukum Islam* 04, no. 0 (2019).

implications of regulatory disharmony. This analysis also seeks to test the consistency of land certification regulations with the principle of recognizing the rights of indigenous peoples within the framework of national agrarian law. In the study by Aqila, Widodo, and Tinambunan (2021), it was found that Indonesia's land administration system still faces "serious problems" when dual certificates are issued. In Decision No. 170/G/2018/PTUN.SMG, the court annulled one of the certificates due to overlapping rights, yet the mechanism of administrative accountability (*asas akuntabilitas*) was not fully employed as the primary basis of the judgment⁸.

The research problem lies in the conflict between land certification regulations and the communal nature of Minangkabau customary law. Lubis et al. (2022) emphasize that the integration of customary law into the national agrarian system remains hindered by the ambiguity of technical regulations, which in turn creates legal uncertainty for indigenous communities⁹. The objective of this study is to provide a normative analysis of these contradictions and to offer conceptual recommendations for the harmonization of national agrarian law with customary law.

Institutional innovation is also necessary. The establishment of independent verification bodies composed of adat representatives would enhance accountability and legitimacy in the recognition of ulayat. In parallel, legal education and participatory lawmaking should be expanded to ensure that indigenous communities actively shape land regulations. Studies on participatory agrarian reform underscore that inclusive law-making processes improve both legal certainty and social justice in land governance¹⁰. The perspective of Murniwati and Delyarahmi (2023) on the certification of *tanah pusaka kaum* in West Sumatra underscores this urgency, as certification practices that disregard customary law considerations diminish the communal essence of *tanah ulayat* and trigger socio-legal issues at the local level.¹¹

RESEARCH METHODS

This study employs a **normative legal research method**, as the primary focus is the analysis of contradictions between land certification regulations and the principles of Minangkabau customary law. The normative approach is directed at examining legal norms through statutory provisions, regional regulations, doctrinal writings, and legal principles, without engaging in empirical inquiry. The data are derived mainly from **library research**. Primary legal materials consist of the Basic Agrarian Law (UUPA) of 1960, implementing regulations, and West Sumatra Regional Regulation No. 18 of 2019 concerning *Tanah Ulayat*. Secondary legal materials include scholarly articles, books, and academic journals, while tertiary sources comprise legal dictionaries and encyclopedias.

⁸ Hezron Sabar Rotua Tinambunan Atika, Hananto Widodo, "PEMBATALAN SERTIFIKAT GANDA HAK MILIK ATAS TANAH TERKAIT ASAS AKUNTABILITAS MELALUI STUDI KASUS PUTUSAN No.170/G/2018/PTUN.SMG," *Novum: Jurnal Hukum* 9, no. 170 (2018): 1–11.

⁹ Ikhsan Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat," *Tunas Agraria* 8, no. 2 (2025): 143–58, <https://doi.org/10.31292/jta.v8i2.401>.

¹⁰ Muhammad Junaidi and Universitas Semarang, "STATE RESPONSIBILITY FOR THE LEGISLATION PROGRAM OF INDONESIA CUSTOMARY LAW" 24, no. 6 (2021): 1–7.

¹¹ Rahmi Murniwati and Sucy Delyarahmi, "Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat," *UNES Journal of Swara Justisia* 7, no. 2 (2023): 739, <https://doi.org/10.31933/ujsj.v7i2.355>.

The analysis is conducted qualitatively using normative interpretation and systematic construction to assess the coherence between national land certification regulations and customary law principles. This method allows for a critical evaluation of whether positive law adequately accommodates the communal character of *tanah ulayat*. According to Christiani (2016), normative legal research treats “law as an object” and focuses on textual and doctrinal analysis rather than empirical validation¹². The application of this method is expected to provide a clear understanding of the normative position of land certification regulations, their disharmony with customary principles, and the formulation of conceptual recommendations for harmonization¹³.

ANALYSIS AND DISCUSSION

1. Contradictions in the Regulation of *Tanah Ulayat* Certification

1.1 *Tanah Ulayat* Certification in National Regulations

The Complete Systematic Land Registration (PTSL) program and other national land regulations place certification as the primary instrument to achieve legal certainty over land. However, in the context of *tanah ulayat*, which constitutes an ancestral right of indigenous communities, individual certification often creates normative tensions.

Several national legal provisions, such as Article 3 of the Basic Agrarian Law (UUPA), recognize *hak ulayat* “insofar as it still exists in reality.” Nevertheless, technical regulations such as Government Regulation No. 24 of 1997 on land registration do not clearly regulate how communal *tanah ulayat* should be certified without undermining its collective principles. Research by Feronika, Azmi, and Yulia (2019) shows that the implementation of PTSL in Bungus Teluk Kabung, Padang, encountered fundamental obstacles regarding the legal subject of certification, whether it should be registered under the name of the *Mamak Kepala Waris*, one member of the clan, or collectively. In practice, many parcels were registered under the names of individual members without the knowledge or approval of clan leaders and the *Kerapatan Adat Nagari*, leading to legal uncertainty and potential intra-community disputes¹⁴.

Chandra’s (2021) study further demonstrates that following the implementation of PTSL, many parcels of *tanah ulayat* were eventually certified under individual names, eroding the communal essence of *ulayat*¹⁵. Accordingly, national regulations appear insufficiently adaptive to the unique character of *ulayat* as a communal institution of customary law.

¹² Theresia Anita Christiani, “Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object,” *Procedia - Social and Behavioral Sciences* 219 (2016): 201–7, <https://doi.org/10.1016/j.sbspro.2016.05.006>.

¹³ D. Krismantoro, “THE LEGAL POSITION OF CUSTOMARY LAND IN NATIONAL LAND LAW AFTER THE ENACTMENT OF ATR/BPN MINISTERIAL REGULATION NUMBER 18 OF 2019,” *Edumity* 2, no. 4 (2023): 484–93.

¹⁴ Feronika, Azmi Fendri, “PELAKSANAAN PENDAFTARAN TANAH ULAYAT KAUM MELALUI PROGRAM PENDAFTARAN TANAH SISTEMATIS LENGKAP DI KECAMATAN BUNGUS TELUK KABUNG.”

¹⁵ Masyarakat Hukum Adat and Abdul Haris, “Problematika Dan Solusi Pendaftaran Tanah Ulayat Masyarakat Hukum Adat,” 2024.

1.2 Implementation of West Sumatra Regional Regulation No. 18 of 2019

West Sumatra Regional Regulation No. 18 of 2019 on *Tanah Ulayat* attempts to balance customary land protection with the formal demands of land registration¹⁶. Nonetheless, practical implementation continues to show that registering *ulayat* as communal rights remains legally fragile and normatively inconsistent.

According to Chandra (2022) in *Permasalahan Tanah Ulayat Pasca Kegiatan Pendaftaran Tanah Sistematis Lengkap di Sumatera Barat*, after PTSL, many *ulayat* lands are formally recognized only as “existing *ulayat*” without clear procedural definitions for communal registration, causing ambiguity in legal status¹⁷.

Andrian et al. (2024) find in Kota Solok that while *Perda* No. 18/2019 theoretically supports *ulayat* registration, in practice, certification often defaults to individual ownership. This happens when villagers cannot meet communal registration criteria or when local land offices interpret technical requirements in ways favoring private title-holders¹⁸.

Murniwati & Delyarahmi (2023) show that in Minangkabau, many *tanah pusaka kaum* originally communal have been converted into economic assets via formal registration mechanisms, reducing their communal character. They document that although *Perda* provides for *ulayat* registration, the requirement for individual signatures or proof from anggota kaum often becomes a barrier¹⁹.

Taken together, these findings indicate that even with the enactment of Regional Regulation No. 18 of 2019, technical and procedural requirements such as identifying registrants, obtaining signatures from clan members, defining *ulayat* boundaries, and securing customary verification continue to favor individual-based models. As a result, the legitimacy of communal *ulayat* registration is weakened, since the regulatory framework structurally privileges formats that diminish collective rights²⁰.

1.3 Disharmony between National and Regional Regulations

Frequent tension emerges between national and regional regulations in managing *tanah ulayat*, leading to normative ambiguity. National norms that promote individual land certification often clash with regional regulations (*perda*) that strive to preserve *ulayat* as communal rights. This dissonance reflects structural inconsistencies in policy implementation across governance levels²¹.

The study “*Tantangan dan Solusi dalam Pengakuan Hak Ulayat*” in **Tunas Agraria** highlights that although Article 18B(2) of the 1945 Constitution and the Basic Agrarian Law (UUPA) formally acknowledge *hak ulayat*, the absence of clear technical

¹⁶ Wayan Dedy Juniawan et al., “Tantangan Kebijakan Penataan Spasial Pada Tanah Ulayat Adat: Studi Kasus Di Provinsi Bali,” *Development Policy and Management Review (DPMR)* 2, no. 2 (2023): 157–73, <https://doi.org/10.61731/dpmr.vi.26485>.

¹⁷ Adek Chandra, “Permasalahan Tanah Ulayat Pasca Kegiatan Pendaftaran Tanah Sistematis Lengkap Di Sumatera Barat,” *Tunas Agraria* 5, no. 2 (2022): 77–93, <https://doi.org/10.31292/jta.v5i2.174>.

¹⁸ Andrian et al., “Transformasi Hak Tanah Ulayat Kaum Menjadi Hak Milik Melalui Program Pendaftaran Tanah Sistematis Lengkap Di Kota Solok.”

¹⁹ Murniwati and Delyarahmi, “Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat.”

²⁰ Prihatini PurwaningsihLatifah Ratnawaty, “PROSES PELAKSANAAN PENDAFTARAN HAK ULAYATMASYARAKAT HUKUM ADAT MINANGKABAU,” *Jurnal Hukum & Hukum Islam* 4, no. 1 (2017).

²¹ Kemen ATR, “PerATR 18/2019,” No.1127 Menteri Agraria dan Tata Ruang § (2019).

provisions fuels agrarian conflicts involving indigenous communities, government actors, and private entities. The research shows that lack of definitive mechanisms for verification and registration obstructs the protection of *hak ulayat* and triggers conflict, as exemplified in the Rempang case²².

A concrete example of this normative conflict occurs on Rempang Island, where local indigenous communities maintain *ulayat* claims despite the pressure of state-driven certification systems prioritizing individual title. In the article “*Status Hukum Hak atas Tanah Ulayat Pulau Rempang*”, Nasrudin (2023) documents how the formal land certification process has marginalized communal claims by converting *ulayat* into titles held by individuals or corporate entities, thereby undermining the collective legal status of the community²³.

Consequently, the regulatory misalignment between national and regional laws hampers comprehensive handling of *ulayat* certification. The lack of harmony not only creates normative contradiction but also exacerbates legal uncertainty, leaving indigenous communities vulnerable to dispossession and weakening the state’s constitutional mandate to recognize and protect *hak ulayat*²⁴.

2. Principles of Minangkabau Customary Law in the Perspective of Communal Land Rights

2.1 *Hak Ulayat* as Identity and Communal Right

Within Minangkabau culture, *tanah ulayat* is more than just a material asset it embodies collective identity of the *kaum* (clan) and *nagari* (customary polity). Citrawan (2020) documents that under Minangkabau customary law, *tanah ulayat* ownership is inherently communal: members of the *kaum* do not hold individual titles to portions of the *ulayat*, but share collective stewardship over the land²⁵.

The article “*Hukum Tanah Adat/Ulayat*” reinforces this perspective, explaining that alienation of *ulayat* land via sale, mortgage, or transfer is taboo under Minangkabau adat. Thus, regulatory schemes that permit the conversion of *ulayat* rights into individual titles threaten to sever the communal relationship between community and land²⁶.

In this context, the communal principle of *ulayat* must be preserved if its social and historical significance is to remain alive. Legal frameworks and policies should therefore accommodate not override the collective character of *ulayat* ownership, ensuring that customary ethos continues to guide land governance²⁷.

²² Lubis et al., “Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat.”

²³ Nasrudin, “Status Hukum Hak Atas Tanah Ulayat Pulau Rempang Dikaitkan Dengan Undang-Undang Nomor 5 Tahun 1960 Tentang Pokok-Pokok Agraria,” *Mahkamah Keadilan* 1, no. Volume 1 Nomor 2. 2023. (2023): 34–43, <https://jurnal.uic.ac.id/MK/article/view/220>.

²⁴ Rika Lestari and Djoko Sukisno, “Kajian Hak Ulayat Di Kabupaten Kampar Dalam Perspektif Peraturan Perundang-Undangan Dan Hukum Adat,” *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021): 94–114, <https://doi.org/10.20885/iustum.vol28.iss1.art5>.

²⁵ Fitrah Akbar Citrawan, “Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau,” *Jurnal Hukum & Pembangunan* 50, no. 3 (2021): 586, <https://doi.org/10.21143/jhp.vol50.no3.2766>.

²⁶ Arina Novizas Shebubakar and Marie Remfan Raniah, “Hukum Tanah Adat/Ulayat,” *Jurnal Magister Ilmu Hukum* 4, no. 1 (2021): 14, <https://doi.org/10.36722/jmih.v4i1.758>.

²⁷ Rury Febrina et al., “Collaborative Governance in Recognizing Customary Law Communities And Customary Communal Land Rights in Kampar Regency,” *Journal of Governance and Public Policy* 8, no. 2 (2021): PROOFREAD, <https://doi.org/10.18196/jgpp.v8i2.11104>.

2.2 Conflict between Individual and Communal Ownership

The application of individual certification to *ulayat* land frequently produces conflict between newly recognized individual owners and the wider customary community. Once *ulayat* parcels are titled under individual names, some clan members lose their rights over the remaining uncertified land, thereby eroding the collective basis of ownership²⁸.

In many regions, legal frameworks compel communities to convert communal holdings into individual status to satisfy registration requirements. For example, in some cases over *ulayat* adjudicated for *Hak Guna Usaha* (HGU), the land must first be converted into state land before it can obtain an HGU certificate effectively dissolving communal title in favor of individual rights. This pattern emerges in cases involving overlapping claims between indigenous communities and state/private actors²⁹.

The study “*Pola Penyelesaian Sengketa Tanah Ulayat di Sumatera Barat*” by Titin Fatimah and Hengki Andora (2018) describes how internal divisions often fuel conflict: some members of the *kaum* insist on getting individual titles for security or economic purposes, while others seek to maintain the communal status of *ulayat*. Such fragmentation often escalates into formal lawsuits or unresolved disputes, demonstrating the tension between adat communal principles and state certification systems³⁰.

The conversion from communal to individual ownership not only fragments *ulayat*, but also undermines the social underpinnings of Minangkabau customary law. Once land is individualized, its function as a shared cultural and economic resource is diminished, putting at risk the continuity of communal rights across generations, which shows communal property losing its collective economic role under pressure of external regulation, and *Analisis Yuridis Sengketa Tanah Ulayat di Lubuk Basung* (Maulana & Fitriasih 2022), where individual certificates issued without communal consent led to social disputes and weakened adat control³¹.

2.3 Social-Judicial Impacts of Certification

Certification of *ulayat* land has unleashed several juridical consequences: the loss of *ulayat* status as a shared right, internal conflicts within the *kaum*, and clashes with state or private interests. This problem is consistent with the study of Hezron Sabar Rotua Tinambunan and colleagues, which analyzed cases of overlapping land certificates and underscored the principle of accountability (*asas akuntabilitas*) as a safeguard against administrative negligence in land registration³². Their findings demonstrate that

²⁸ Liga Rahayu, “Problematika Penyelesaian Konflik Tanah Ulayat Masyarakat Adat Di Kabupaten Kampar (Studi Kasus : Desa Gunung Sahilan Kecamatan Gunung Sahilan Kabupaten Kampar Tahun 2012-2013),” *Angewandte Chemie International Edition*, 6(11), 951–952., 2017, 1–14, <https://media.neliti.com/media/publications/31263-ID-problematika-penyelesaian-konflik-tanah-ulayat-masyarakat-adat-di-kabupaten-kamp.pdf>.

²⁹ Adonia Ivonne Laturette, “Penyelesaian Sengketa Hak Ulayat Pada Kawasan Hutan,” *Sasi* 27, no. 1 (2021): 102, <https://doi.org/10.47268/sasi.v27i1.504>.

³⁰ Titin Fatimah and Hengki Andora, “POLA PENYELESAIAN SENGKETA TANAH ULAYAT DI SUMATERA BARAT (Sengketa Antara Masyarakat Dengan Investor),” *Jurnal Ilmu Hukum* 5, no. 1 (2014): 11, <https://doi.org/10.30652/jih.v4i1.2085>.

³¹ Adella Maulana and Surastini Fitriasih, “Analisis Yuridis Sengketa Tanah Ulayat Di Lubuk Basung Sumatra Barat,” *The Juris* VI, no. 1 (2022): 127–36, <http://ejournal.stih-awanglong.ac.id/index.php/juris>.

³² Atika, Hananto Widodo, “PEMBATALAN SERTIFIKAT GANDA HAK MILIK ATAS TANAH TERKAIT ASAS AKUNTABILITAS MELALUI STUDI KASUS PUTUSAN No.170/G/2018/PTUN.SMG.”

neglecting accountability not only generates legal uncertainty but also undermines public confidence in the state's agrarian governance. A similar concern emerges in the certification of *ulayat* land: in the absence of accountability, the communal rights of indigenous communities are placed at risk, and the potential for social conflict becomes unavoidable³³.

In various cases, over-active certification processes on *ulayat* land have prompted lawsuits among clan members or between indigenous communities and individual title-holders. For instance, in Minangkabau, traditional adat institutions often act as mediators in *ulayat* disputes, yet legal certification tends to reduce the authority of customary law. The study *Dilema Pemanfaatan Tanah Ulayat untuk Investasi di Sumatera Barat* (Nurdin 2015) records that investment-oriented land regimes often privilege formal titles over communal customary claims, leading to friction and marginalization of communal stakeholders³⁴.

Moreover, certification without due regard to customary law has eroded trust among communities toward the national legal system, and weakened *hak ulayat*. In the article *Kajian Pensertifikatan Bagian Tanah Ulayat Berdampak Terhadap Kesejahteraan Kaum* (Zulmi & Harlina 2025), it is shown that parts of *ulayat* land in Minangkabau have decreased significantly, with generational inheritances at risk, because current registration practices favor individual titles, leaving communal ownership precarious³⁵.

Socially, fragmentation of *ulayat* leads to internal *kaum* conflicts and economic disparities among indigenous members. The study *Faktor Penyebab Konflik Tanah Ulayat antara Peladang Pendatang vs Masyarakat Adat di Desa Tamiai, Kabupaten Kerinci* (Syamsuddin, Dewi, Indrawadi 2019) documents how competition over *ulayat* land use, combined with different understandings of adat and individual claims, intensifies divisions and sometimes provokes open confrontation³⁶.

3. Normative Legal Analysis of Regulatory Disharmony

3.1 Compatibility of Regulations with Article 3 of the 1960 Basic Agrarian Law

Article 3 of the Basic Agrarian Law (UUPA) provides that the *hak ulayat* of indigenous customary law communities is recognized “*sepanjang menurut kenyataannya masih ada*” (as long as it continues in reality). This clause places both constitutional and statutory obligations on national and regional regulations to respect and protect the existence of *ulayat*. However, despite this formal recognition, many technical regulations prioritize individual certification without adequately

³³ D. O. Setiabudhi et al., “Collective Land Certification Policy for Improving Good Land Governance,” *IOP Conference Series: Earth and Environmental Science* 343, no. 1 (2019), <https://doi.org/10.1088/1755-1315/343/1/012068>.

³⁴ Zefrizal Nurdin, “Dilema Pemanfaatan Tanah Ulayat Untuk Investasi Di Sumatera Barat Pada Norma Dan Implementasi,” *Jurnal Media Hukum* 22, no. 1 (2015), <https://doi.org/10.18196/jmh.2015.0049.95-109>.

³⁵ Zulmi Hendri, “KAJIAN PENSERTIPIKATAN BAGIAN TANAH ULAYAT BERDAMPAK TERHADAP KESEJAHTERAAN KAUM.”

³⁶ Syamsuddin Anas, Susi Fitria Dewi, and Junaidi Indrawadi, “Faktor Penyebab Konflik Tanah Ulayat Antara Peladang Pendatang Vs Masyarakat Adat Di Desa Tamiai Kabupaten Kerinci,” *Jurnal Sosiologi Reflektif* 14, no. 1 (2019): 131–50, <https://doi.org/10.14421/jsr.v14i1.1702>.

accommodating communal registration, indicating that positive law has not yet fully operationalized the spirit of Article³⁷.

An in-depth normative study in *Tantangan dan Solusi dalam Pengakuan Hak Ulayat* notes that although Article 18B(2) of the 1945 Constitution and UUPA recognize *ulayat*, the absence of clear and binding verification and registration mechanisms has created legal uncertainty and contributed to agrarian conflicts across Indonesia³⁸.

Another example emerges from the status dispute of *ulayat* in Rempang Island. In *Status Hukum Hak atas Tanah Ulayat Pulau Rempang*, Nasrudin documents how despite the theoretical recognition in UUPA, inconsistent implementation and uneven registration practices resulted in ambiguous legal status for *ulayat* lands, favoring individual titles over communal ones³⁹.

Further, the *Problematika Penyelesaian Konflik Tanah Ulayat Masyarakat Adat* study reveals that conflicts over *ulayat* lands are frequent when technical norms (such as boundary delineation, identity of claimants, procedural criteria) do not respect customary tenure systems. This demonstrates that the formal recognition in UUPA often remains superficial when technical law fails to integrate communal characteristics⁴⁰. Taken together, these cases show that national regulations often fail to truly accommodate the communal nature of *ulayat* as intended by Article 3 UUPA. Instead, technical norms emphasize individual titles and certification mechanisms that are at odds with the collective, historical, and cultural character of customary land tenure.

3.2 Contradiction with the Communal Principle of Customary Law

Minangkabau customary law maintains that *ulayat* land is owned collectively by the *kaum* and may not be fragmented into individual rights without communal consent. Legal regulations that facilitate individual registration directly contradict this principle, transforming collective heritage into private property. This contradiction represents not only a legal mismatch, but also a cultural dissonance between state law and *adat*. The article *Hukum Tanah Adat/Ulayat* points out that allowing sale or mortgage of *ulayat* undermines the communal ethos and severs customary ties⁴¹.

Indonesia's land administration regulations such as Government Regulation No. 24 of 1997 and the PTSL program tend to institutionalize individual ownership by specifying a single title-holder on land certificates. This mechanism frequently disregards communal land systems and prompts *adat* communities to adapt to a system that fails to reflect their collective ownership norms. Research into *Pola Penyelesaian Sengketa Tanah Ulayat di Sumatera Barat* reveals that many disputes arise because formal rules

³⁷ Lubis et al., "Integrasi Hukum Adat Dalam Sistem Hukum Agraria Nasional: Tantangan Dan Solusi Dalam Pengakuan Hak Ulayat."

³⁸ Lubis et al.

³⁹ Nasrudin, "Status Hukum Hak Atas Tanah Ulayat Pulau Rempang Dikaitkan Dengan Undang-Undang Nomor 5 Tahun 1960 Tentang Pokok-Pokok Agraria."

⁴⁰ Rahayu, "Problematika Penyelesaian Konflik Tanah Ulayat Masyarakat Adat Di Kabupaten Kampar (Studi Kasus : Desa Gunung Sahilan Kecamatan Gunung Sahilan Kabupaten Kampar Tahun 2012-2013)."

⁴¹ Shebubakar and Raniah, "Hukum Tanah Adat/Ulayat."

require a single legal owner, whereas customary practice expects collective decision-making⁴².

From a normative perspective, regulations that prioritize the certainty of individual land titles over communal rights without providing specific legal safeguards for *ulayat* undermine principles of justice and the constitutional mandate to respect tradition. Hamzali Yaqub argues that when state law disregards the collective nature of customary rights, it not only generates legal disputes but also contributes to the alienation of indigenous communities⁴³.

3.3 Juridical Consequences of Regulatory Contradictions

Regulatory contradictions between state norms and communal customary principles generate significant juridical consequences: legal uncertainty, certificate invalidation, administrative disputes, and community disenfranchisement. For instance, overlapping certificates may be annulled by courts, yet the deeper normative inconsistency remains unresolved. In the *Sejarah Hukum Tanah Ulayat dan Model Penanganan Konflik* study, data from 2015–2019 showed that there were 220 land disputes involving *ulayat* and 174 cases litigated, underscoring systemic instability in customary land governance⁴⁴.

If regulatory harmonization does not occur, *ulayat* registrations may be considered legally flawed and inadequate to safeguard collective Indigenous property rights. The article *Upaya Hukum Terhadap Penyelesaian Sengketa Tanah Ulayat* highlights that conflicts often stem from overlapping or unclear laws; some plaintiffs win in court, but such victories do not eliminate the structural mismatch between customary and statutory systems⁴⁵.

Over time, indigenous communities are threatened with progressive loss of their ancestral lands because positive law facilitates transfers and conversion of *ulayat* into individual holdings contrary to customary principles. In conflict cases involving palm oil companies, *Penyelesaian Konflik Hak Ulayat Melalui Sanksi Adat* documents how lack of legal accountability leads to dispossession and social disruption for customary landholders⁴⁶.

⁴² Syofiarti Kurna Warman, “Pola Penyelesaian Sengketa Tanah Ulayat Di Sumatera Barat (Sengketa Antara Masyarakat Vs Pemerintah),” *Masalah-Masalah Hukum* 41, no. 3 (2012): 407-415–415.

⁴³ Nurdayati dkk, “RESOLUSI KONFLIK TANAH ULAYAT (Studi Kasus Tanah Ulayat Di Desa Bakung Ilir, Kecamatan Gedong Meneng, Kabupaten Tulang Bawang)” (Universitas Lampung, 2021).

⁴⁴ M. Sofyan Pulungan, “Menelaah Masa Lalu, Menata Masa Depan: Sejarah Hukum Tanah Ulayat Dan Model Penanganan Konflik Sosialnya,” *Undang: Jurnal Hukum* 6, no. 1 (2023): 235–67, <https://doi.org/10.22437/ujh.6.1.235-267>.

⁴⁵ Ayu Meiranda et al., “Upaya Hukum Terhadap Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Kampar Guna Menjaga Keamanan Nasional,” *Jurnal Analisis Hukum* 6, no. 1 (2023): 99–114, <https://doi.org/10.38043/jah.v6i1.4232>.

⁴⁶ Bernica Putri Fasius, “Penyelesaian Konflik Hak Ulayat Melalui Sanksi Adat (Studi Kasus Masyarakat Adat Dayak Simpang Dua),” *Jurnal Hukum, Politik Dan Kekuasaan* 4, no. 2 (2024): 175–94, <https://doi.org/10.24167/jhpk.v4i2.10278>.

4. Comparison with Previous Studies

Murniwati and Delyarahmi (2023), in their study *Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal dan Akibatnya di Sumatera Barat*, emphasize that although the certification of *ulayat* land provides legal certainty and access to credit facilities, it also generates significant socio-cultural consequences⁴⁷. They note that large portions of communal land have been transferred through sale or inheritance practices that deviate from the matrilineal system of Minangkabau customary law, thereby eroding the communal meaning of *tanah pusaka*.

Andrian and colleagues (2025), in their article *Transformasi Hak Tanah Ulayat Kaum Menjadi Hak Milik melalui Program PTSL di Kota Solok*, explain that the systematic land registration program (PTSL) has facilitated the conversion of communal *ulayat* into individual ownership⁴⁸. Their normative study concludes that this process is made possible through regulatory provisions that allow formal and administrative transformations of customary rights into individual titles. While the present article aligns with these findings regarding the erosion of communal values, it extends the discussion by analyzing the normative contradictions between national and regional regulations and by identifying the juridical consequences of such disharmony.

Putri (2024), in her article *The Existence of Customary Land of the Kaum as Communal* published in *Cendekia Hukum*, argues that *ulayat* should be recorded as a communal object of land registration rather than attributed to individual subjects. She critiques technical regulations that often focus exclusively on physical attributes such as location and boundaries, while neglecting the communal dimension of ownership recognized in Minangkabau adat⁴⁹.

Similarly, the article *Analysis of The Prospects for The Implementation of The Customary Land Registration System* observes that Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2019 largely treats the registration of *ulayat* land as administrative documentation rather than substantive recognition of communal rights. As a result, the regulation provides only declarative acknowledgment without ensuring robust legal protection for indigenous communities. This gap highlights the limitations of current regulatory frameworks in safeguarding the communal character of *ulayat* land⁵⁰.

Taken together, these studies provide valuable insights into the socio-economic and procedural challenges of *ulayat* land certification. However, they do not comprehensively address the normative disharmony between national and regional laws or the juridical consequences of prioritizing individual rights over communal rights. The present study seeks to fill this gap by offering a normative legal analysis that integrates

⁴⁷ Murniwati and Delyarahmi, "Sertifikasi Tanah Pusaka Kaum Selaku Hak Milik Komunal Dan Akibatnya Di Sumatera Barat."

⁴⁸ Andrian et al., "Transformasi Hak Tanah Ulayat Kaum Menjadi Hak Milik Melalui Program Pendaftaran Tanah Sistematis Lengkap Di Kota Solok."

⁴⁹ Fasius, "Penyelesaian Konflik Hak Ulayat Melalui Sanksi Adat (Studi Kasus Masyarakat Adat Dayak Simpang Dua)."

⁵⁰ Safrin Salam et al., "Analysis of The Prospects for The Implementation of The Customary Land Registration System: Benefits and Legal Issues," *Alauddin Law Development Journal* 6, no. 2 (2024): 405–17, <https://doi.org/10.24252/aldev.v6i2.46518>.

constitutional recognition, statutory provisions, and customary principles, while also proposing conceptual recommendations for harmonizing agrarian law with Minangkabau customary law⁵¹. This position aligns with recent scholarship that stresses the urgency of adopting elements of customary land tenure into agrarian reform to avoid marginalizing indigenous rights⁵². Furthermore, other studies emphasize that although the Basic Agrarian Law of 1960 recognizes *ulayat*, national land law continues to privilege individual ownership structures, resulting in persistent conflicts between adat communities and the state⁵³.

5. Implications for Agrarian Law and Customary Rights

The findings of this article highlight that the future development of Indonesian agrarian law must incorporate customary law as an integral dimension of the national system rather than treating it as a supplementary element. A sustainable agrarian framework requires recognition of *ulayat* not merely at a declarative level, but also through enforceable technical mechanisms that preserve its communal essence. Recent scholarship on agrarian reform argues that neglecting the communal dimension of land tenure has contributed to systemic conflicts between adat communities and state institutions, underscoring the need for substantive legal integration⁵⁴.

In addition, it is evident that the construction of agrarian law should move beyond the dominance of individualistic frameworks. A comparative study on land law in Indonesia emphasizes that although the 1960 Basic Agrarian Law recognizes *hak ulayat*, subsequent regulations remain skewed toward individual ownership structures. This creates a fragmented system that weakens indigenous tenure security and perpetuates normative disharmony⁵⁵.

For policymakers, the results of this study underscore the urgency of establishing technical regulations either in the form of ministerial decrees or regional bylaws that explicitly govern the registration of communal *ulayat* land. Such regulations should require verification by customary authorities and collective consent before any certification process is undertaken. This model is consistent with calls in legal scholarship to adopt community-based verification systems as a safeguard against the erosion of communal rights⁵⁶.

⁵¹ Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform: Jurnal Pembaharuan Hukum* 19, no. 1 (2023): 128–47, <https://doi.org/10.14710/lr.v19i1.48393>.

⁵² Destriananda Safa Aina et al., "Adoption of Customary Land Tenure as a Model in Agrarian Reform: A Study of the Tenurial System in Tenganan Pegriingsingan Village," *BHUMI: Jurnal Agraria Dan Pertanahan* 10, no. 2 (2024).

⁵³ Ni Ketut Suartining and Benny Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960," *Journal of Social Research* 2, no. 6 (2023): 1775–85, <https://doi.org/10.55324/josr.v2i6.903>.

⁵⁴ Safa Aina et al., "Adoption of Customary Land Tenure as a Model in Agrarian Reform: A Study of the Tenurial System in Tenganan Pegriingsingan Village."

⁵⁵ Suartining and Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960."

⁵⁶ Lutfi El Falahy, Giyarsi Giyarsi, and Budi Birahmat, "Customary Land Rights in Positive Law (Agrarian Law) and Islamic Law in Indonesia," *Jurnal Kawakib* 5, no. 02 (2024): 106–13, <https://doi.org/10.24036/kwkib.v5i02.227>.

Furthermore, the issuance of collective certificates (*sertifikat komunal*) could provide a legal instrument that secures *ulayat* against fragmentation into individual titles. A normative analysis of customary land disputes in Indonesia reveals that one of the most pressing problems is the absence of legal documentation that reflects communal ownership, leaving customary rights vulnerable to state and private appropriation⁵⁷.

Harmonization between national law and customary law requires regulatory frameworks that are flexible and adaptive, accommodating the diversity of adat practices across different *nagari*. This adaptive approach reflects the constitutional mandate of Article 18B(2) of the 1945 Constitution, which recognizes customary communities and their traditional rights. Research on land reform models in Southeast Asia suggests that legal pluralism can strengthen agrarian governance if state law genuinely integrates indigenous institutions rather than subsuming them⁵⁸.

Institutional innovation is also necessary. The establishment of independent verification bodies composed of adat representatives could strengthen accountability and legitimacy in *ulayat* recognition. In parallel, legal education and participatory law-making should be expanded so that indigenous communities meaningfully influence land regulations. Studies on participatory legislative processes affirm that inclusive law-making increases legal certainty and social justice in land governance⁵⁹.

CONCLUSION

This study concludes that contradictions between national land certification policies and regional regulations on *tanah ulayat* reflect deeper structural inconsistencies in Indonesian agrarian law. While the Basic Agrarian Law of 1960 and the 1945 Constitution formally recognize *hak ulayat*, technical and procedural frameworks such as the PTSL program primarily accommodate individual ownership, thereby weakening the communal essence of Minangkabau customary tenure. Regional efforts, such as West Sumatra Regional Regulation No. 18 of 2019, attempt to preserve communal rights but remain normatively fragile due to lack of operational clarity and harmonization with national law.

To strengthen legal certainty and social justice, policy reform should focus on harmonizing state regulations with adat principles. This includes establishing clear legal mechanisms for collective registration, issuing communal land certificates, and empowering customary institutions to participate in verification and adjudication processes. Without these measures, the legitimacy of *tanah ulayat* as communal property will remain vulnerable, perpetuating conflict and eroding indigenous identity. Ensuring substantive recognition of communal land rights is thus essential to fulfilling Indonesia's constitutional mandate and securing intergenerational justice for customary communities.

⁵⁷ Sunarno and HannaAmbaras Khan, "Customary Land Disputes in Indonesia," *International Journal of Academic Research in Business and Social Sciences* 13, no. 10 (2023), <https://doi.org/10.6007/ijarbss/v13-i10/19103>.

⁵⁸ Maarten Keune Beryl ter Haar, "One Step Forward or More Window-Dressing? A Legal Analysis of the Recent CSR Initiatives in the Garment Industry in Bangladesh," *Journal of Comparative Labour Law and Industrial Relations*, no. 1 (2014): 1–15.

⁵⁹ Dodi Jaya Wardana, Sukardi, and Radian Salman, "Public Participation in the Law-Making Process in Indonesia," *Jurnal Media Hukum* 30, no. 1 (2023): 66–77, <https://doi.org/10.18196/jmh.v30i1.14813>.

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