

**THE EFFECTIVENESS OF THE APPLICATION OF CUSTOMARY LAW IN RESOLVING COMMUNAL LAND RIGHTS CONFLICTS****Rina Maryana<sup>1\*</sup>, Abd Basir<sup>2</sup>**<sup>1,2</sup>Universitas Indonesia Timur, Makassar, Indonesia  
rinamaryanashmh@gmail.com<sup>1\*</sup>, abdbasir788@gmail.com<sup>2</sup>**Abstract**

Communal land rights (*hak ulayat*) refer to the hereditary ownership and management of land and natural resources by Indigenous communities. These rights are formally recognized and regulated in several national laws, including Law No. 5 of 1960 on Basic Agrarian Principles, Law No. 39 of 1999 on Human Rights, and Law No. 41 of 1999 on Forestry. Indigenous communities possess the authority to regulate, manage, and utilize land and natural resources within their territories in accordance with customary norms. This recognition aligns with Article 18B(2) of the 1945 Constitution, which affirms that the state acknowledges and respects Indigenous communities and their traditional rights as long as they remain viable and consistent with societal development and national principles. In practice, conflicts over communal land rights frequently arise among Indigenous groups due to overlapping claims, boundary disputes, and competing interests in natural resource use. This study employs an empirical research approach supported by field observations and interviews with Indigenous community members. The aim of the research is to analyze the underlying factors contributing to these conflicts and to identify effective mechanisms for resolving them, thereby reducing the potential for communal land rights disputes within Indigenous communities.

Keywords : communal land rights; Indigenous communities; dispute

## INTRODUCTION

Communal land rights (*hak ulayat*) as regulated in Article 3 of the Basic Agrarian Law (UUPA), with reference to Articles 1 and 2, stipulate that such rights and comparable traditional rights of Indigenous legal communities shall be exercised in accordance with the collective interest and must not conflict with statutory regulations as long as these provisions remain valid. These legal foundations affirm the state's recognition of communal land rights as the basis for Indigenous communities to govern and manage natural resources to ensure their livelihood sustainability. Article 18B(2) of the 1945 Constitution further reinforces that Indigenous communities, along with their customary lands (*tanah ulayat*), possess legally acknowledged status and protection under the state.

Communal land rights represent collective authority exercised by Indigenous legal communities over specific territories, including land, water, and forests that constitute their living environment. Customary law is a set of unwritten norms derived from traditions and practices that regulate social and economic aspects of community life. Moreover, Article 5 paragraphs (1) and (2) assign regional governments the responsibility to conduct research and formally determine the existence of communal land rights, which necessitates the involvement of customary law experts, community leaders, and relevant government agencies.

This study is directed toward Indigenous community groups to encourage the resolution of communal land rights conflicts in accordance with statutory regulations, and toward local customary authorities to ensure the protection of Indigenous rights. Indonesia adheres to a pluralistic legal system consisting of state law, Islamic law, and customary law, all of which operate concurrently. Several regions continue to uphold strong customary legal traditions, including Minangkabau, Baduy, Lombok, Bali, Minahasa, Toraja, Kajang, East Nusa Tenggara, and Papua.

Customary law (*hukum adat*) refers to unwritten norms and traditional practices that, although not codified, are recognized within the Indonesian legal system. The term *adat* denotes non-statutory rules that live within society and function as binding legal norms despite their absence from formal positive law. These customary rules are preserved through repeated community practices and are socially enforceable, often accompanied by sanctions for violations. The imposition of such sanctions is typically carried out by customary elders—individuals authorized to render decisions based on customary norms. These elders may include village heads, land guardians (*wali tanah*), customary leaders, customary judges, or other traditional authorities depending on the social structure of the respective community.

The existence of Indigenous legal communities that meet specific criteria as legal subjects, along with clearly bounded customary territories as the objects of communal land rights, demonstrates that these communities possess legitimate authority to undertake various actions related to the management, utilization, and protection of their customary lands.

The resolution of communal land disputes (*sengketa tanah ulayat*) can be pursued through litigation and non-litigation pathways. Litigation involves judicial proceedings in district courts or specialized land courts, resulting in legally binding decisions (Basic Agrarian Law, 1960). This mechanism is generally chosen when non-litigation efforts fail to reach an agreement. Non-litigation approaches include mediation, negotiation, and customary deliberation involving customary leaders, Indigenous communities, and local government authorities. Mediation is facilitated by a neutral third party who assists disputing parties in reaching a mutually acceptable agreement, consistent with Moore's (2014) view of the mediator as a facilitator of communication and tension reduction. Negotiation is carried out directly by the parties based on the *win-win solution* framework proposed by Fisher and Ury (1981). Customary deliberation relies on local norms, traditions, and cultural values and aligns with the constitutional recognition of Indigenous communities as stipulated in Article 18B(2) of the 1945 Constitution.

Two critical factors must be considered in the resolution of communal land disputes. The first is the legal aspect, which includes the application of both positive law and customary law relevant to the region (Soekanto, 2002). The second is the cultural aspect, which requires an understanding of local values, norms, and social structures to ensure that dispute resolution aligns with Indigenous cultural contexts (Koentjaraningrat, 2009).

Conflicts over communal land rights (*tanah ulayat*) typically arise from competing territorial claims between two different Indigenous communities. Each group located along a boundary area tends to assert ownership over the disputed customary land, creating conflict when the opposing community submits an identical claim (Soekanto, 2002). When the object of dispute is customary land, the preferred mechanism for resolution is customary law; however, if customary deliberation fails to produce an agreement, the disputing parties may pursue resolution through positive law and the formal judicial system (Basic Agrarian Law, 1960).

Customary law has traditionally been transmitted orally and passed down across generations as part of Indigenous oral traditions. Its significance lies in its dynamic character, enabling continuity between past practices and present needs (Koentjaraningrat, 2009). Due to the unwritten and uncodified nature of customary norms, ultimate authority in resolving communal land disputes rests with local customary leaders such as *kepala adat* or other traditional decision-makers.

In Indonesia, agrarian law governing land, water, and natural space is fundamentally rooted in customary law principles, as stipulated in the Basic Agrarian Law (1960). Customary land law provides the basis for collective ownership and control of land within Indigenous territories, supported by community recognition of territorial boundaries, land-use patterns, and systems of individual rights allocation within communal structures (Van Vollenhoven, 1981).

Land plays a crucial role for Indigenous communities, functioning not only as a place of residence but also as a primary source for fulfilling daily needs. Indigenous communities possess rights to their land, both through internal customary governance and in interaction with external influences arising from contact with outside groups (Soekanto, 2002). Customary law serves as a resilient legal foundation that preserves local identity and cultural values, enabling Indigenous communities to withstand the pressures of modernization while maintaining their social cohesion (Koentjaraningrat, 2009).

The state recognizes the authority of Indigenous communities to manage communal land (*tanah ulayat*) collectively based on shared lineage. The products of this land management are typically distributed among community members in accordance with their respective rights. Communal land, which is inherently linked to collective ownership, is generally prohibited from being sold because it serves as an intergenerational inheritance that must be preserved (Van Vollenhoven, 1981).

Disputes over communal land continue to occur in several regions of Indonesia, where many Indigenous communities still prefer non-litigation mechanisms due to their faster process and lower cost compared to formal litigation (Moore, 2014). In response to this issue, the present study examines the effectiveness of customary law in resolving communal land disputes through an empirical approach.

This research aims to enhance community understanding and assess the effectiveness of customary law in resolving communal land disputes within Indigenous legal communities in Indonesia. This article is intended for all readers who seek to understand how land dispute resolution is conducted through customary mechanisms that remain practiced today.

## **RESEARCH METHODS**

This study employs a normative-empirical juridical approach, integrating normative legal analysis with the collection of empirical data from Indigenous communities in Indonesia.

The normative juridical approach focuses on examining written legal norms governing the resolution of customary land disputes, while the empirical approach involves gathering factual data through interviews and observations.

## **RESULT AND DISCUSSION**

### **The Position of Indigenous Peoples**

The term *adat law* refers to a set of customary norms practiced within Indigenous communities, representing shared understandings of proper conduct based on justice, tradition, and collective social values. Adat law comprises unwritten community rules that are respected and enforced socially, without requiring codification by the state. These norms originate from long-standing ancestral traditions and are not based on regulations established by colonial authorities or the modern state. The fundamental characteristics of adat law include:

- a. Traditional: Adat law is rooted in ancestral traditions, as every rule or norm within Indigenous communities originates from long-standing customs transmitted across generations.
- b. Magico-religious: The life of Indigenous communities is inseparable from supernatural beliefs, which are reflected in customary rituals, offerings to honor ancestral spirits, and the perception that various events are linked to the metaphysical realm.
- c. Communal: Indigenous communities are collectivist in nature, characterized by strong social cohesion, mutual assistance, and a shared sense of responsibility among community members.
- d. Open and simple: Indigenous communities remain open to new developments as long as these do not disrupt their cultural values and traditions. Their simple way of life reflects a preference for moderation and the avoidance of excess.
- e. Uncodified: The rules governing customary life are generally unwritten and transmitted orally. Despite the absence of written codification, these norms are highly respected and strictly observed by the community.
- f. Visual: Customary legal relations are often manifested through visible or tangible signs. For example, when purchasing goods, a buyer may provide a down payment (*panjar*) as a physical indication of agreement before final payment is made.
- g. Deliberation and consensus: Decision-making is based on deliberation to reach consensus (*musyawarah untuk mufakat*), with the aim of achieving outcomes that are mutually beneficial and collectively accepted.

According to Djojodigono, customary law possesses static, dynamic, and plastic characteristics. Its static nature indicates that customary law consistently exists within society; its dynamic nature reflects its responsiveness and ability to evolve in line with societal developments; and its plastic nature demonstrates that customary law can be adjusted to meet the needs and aspirations of the community, thereby exhibiting considerable flexibility.

Customary rules serve as a foundational framework governing the behavior of individuals within the community. Customary law encompasses traditions, habits, and moral norms that prevail in society. It also includes regulatory mechanisms and sanctions imposed on individuals who violate customary norms, with decisions determined through the authority of customary leaders (Soekanto, 2015).

### **Resolution of Communal Land (*Tanah Ulayat*) Disputes and Ulayat Rights**

#### **a. Communal Land (*Tanah Ulayat*)**

Article 1 paragraph (2) of the Minister of Agrarian Affairs Regulation No. 5 of 1999 concerning Guidelines for the Settlement of Ulayat Rights of Indigenous Law Communities stipulates that *tanah ulayat* refers to a parcel of land owned collectively by a particular Indigenous law community based on shared territorial boundaries and communal

history. This provision is further elaborated in Article 2 paragraph (1), which states that ulayat rights may continue to be exercised by the Indigenous community insofar as their implementation remains consistent with the customary law prevailing within the community.

Several conditions must be fulfilled for ulayat rights to be legally recognized: (1) the existence of a group of people who actively apply customary legal norms in their daily lives; (2) a specific territory functioning as a place of residence and source of livelihood; and (3) a customary legal order acknowledged and practiced by the community. The regulation of communal land ownership is governed by Articles 5 and 6 of the Basic Agrarian Law (UUPA) No. 5 of 1960, which authorizes regional governments to verify the existence of ulayat rights in collaboration with customary law experts, Indigenous communities, civil society organizations, and stakeholders utilizing natural resources within the ulayat area. Furthermore, Article 5 paragraph (2) requires that the existence of Indigenous communal land be documented in cadastral maps and registered in the official land registry.

#### b. Ulayat Rights

Ulayat rights refer to a technical legal term denoting the inherent and collective rights vested absolutely in Indigenous law communities. These rights encompass the authority to control, manage, and regulate communal land in accordance with customary norms. Etymologically, the term *ulayat* denotes a specific territorial domain over which an Indigenous community exercises traditional authority.

Ulayat rights constitute inherent collective entitlements vested in Indigenous legal communities, which confer the community with authority to control, manage, and regulate communal territories in accordance with customary norms and internal governance structures (Lubis et al., 2025). Empirical and doctrinal studies indicate that this authority is not merely social but has normative recognition within Indonesia's agrarian framework, although practical legal certainty often depends on administrative verification and local implementation mechanisms. Research on customary land governance documents that communal control over land is exercised through customary institutions and decision-making processes, which allocate use rights and regulate access while prohibiting alienation inconsistent with communal tenure (Pulungan, 2023; Ihsan, 2022).

In addition, ulayat rights constitute inherent collective entitlements embedded within Indigenous legal communities, granting them the authority to control and regulate communal territories based on customary norms. Recent studies affirm that although ulayat rights are conceptually recognized within Indonesia's agrarian legal framework, their practical protection remains constrained by administrative challenges, particularly the absence of standardized verification procedures and inconsistencies in regional implementation. Lubis et al. (2025) emphasize that strengthening the recognition of ulayat rights requires coordinated documentation, participatory mapping, and institutional support to prevent overlapping claims and to ensure legal certainty for Indigenous communities.

Moreover, ulayat rights are highly recognized within Indigenous communities; therefore, when disputes or conflicts arise over communal land, the responsibility for resolving such conflicts is entrusted to customary leaders who hold legitimate authority in the community. The mechanisms for settling these disputes depend on the customary rules established by the respective traditional leaders, including the sanctions imposed when members of the community violate these norms.

The legal position of Indigenous peoples' ulayat rights within Indonesia's positive legal system is regulated under the Basic Agrarian Law (UUPA) No. 5 of 1960, which affirms the existence and recognition of communal land rights. Article 3 of the UUPA

stipulates that the recognition of ulayat rights is contingent upon fulfilling two conditions: the requirement of existence and the requirement of implementation—meaning that ulayat rights are acknowledged insofar as the Indigenous community continues to exist and actively practices its customary norms. Despite this normative recognition, Indonesia's agrarian law provides limited certainty regarding the formal documentation and registration of ulayat land ownership, leading to challenges in establishing written legal status for communal land rights.

Communal land rights (*hak ulayat*) are strongly recognized by Indigenous communities; therefore, when disputes over ulayat land arise, resolution is generally entrusted to local customary leaders who are mandated to settle the conflict (Krisnantoro, 2022). The form of conflict resolution depends on the customary rules established within each community, including sanctions imposed on members who violate customary norms (Rohi, Wijaya & Suryani, 2024). The legal standing of Indigenous communities' rights to communal land is governed by the Basic Agrarian Law (UUPA) No. 5 of 1960. Recognition of communal land rights is articulated in Article 3 of the UUPA, which requires two conditions: the requirement of existence and the requirement of implementation — meaning that the Indigenous community and its customary practices in the territory must demonstrably still exist (Sunari Wangi, Dantes & Sudiatmaka, 2023).

Communal land rights remain valid as long as the social reality confirms the continued presence of the Indigenous community and its customary territory. However, despite this normative recognition, the written documentation of communal land ownership often lacks legal certainty under the national agrarian law (Rangkuti, 2023; Jaelani et al., 2023). This indicates that while communal land rights are formally acknowledged in national law, they remain vulnerable to disputes, especially when there is no formal land registration or written documentation. The absence of clear implementing regulations and a robust verification mechanism undermines legal protection for ulayat lands and the Indigenous communities entitled to them (Saputri, Rato & Anggraini, 2024; Wardhani & Hoesein, 2023).

### **c. Causes of Communal Land (Ulayat) Rights Conflicts**

Conflicts within Indigenous communities often arise from both internal and external factors, particularly when social harmony is not maintained among community members. One of the most common sources of dispute concerns unclear land boundaries. Indigenous communities frequently rely on simple boundary markers such as stones or wooden stakes placed on the land, which are often ineffective because these markers may shift due to natural conditions such as rainfall or strong winds. As a result, the boundaries may change over time, making it difficult for the community to ascertain the exact limits of their customary land. This uncertainty often triggers disputes between different Indigenous groups over overlapping ulayat land claims. To address such boundary conflicts, the communities typically engage in deliberation and consensus-building to determine mutually agreed upon territorial boundaries.

Another contributing factor to ulayat land disputes is the variation in oral histories related to customary land inheritance. Since the ownership and lineage of ulayat land are traditionally passed down verbally from generation to generation without formal documentation or land deeds, differences in narrative or collective memory may emerge. These discrepancies can create confusion and lead to conflicts regarding the legitimate status and historical ownership of the communal land.

Conflicts within Indigenous communities frequently arise from both internal and external factors, particularly when social harmony is not preserved among community members. One of the primary causes of these disputes is the absence of clear land

boundaries. Indigenous communities often rely on simple boundary markers such as stones or wooden stakes, which are easily displaced by environmental factors such as heavy rain or strong winds. As these markers shift over time, they create uncertainty regarding territorial limits and trigger disputes between different customary groups over overlapping ulayat land claims. Studies have shown that unclear boundary markers are one of the most persistent structural causes of conflict in Indigenous territories (Lestari et al, 2023).

To address these boundary disputes, customary communities commonly resort to deliberation and consensus-building (*musyawarah untuk mufakat*) in order to establish mutually recognized territorial limits. Another source of conflict arises from variations in the oral transmission of customary land histories. Since ulayat land ownership is traditionally inherited verbally across generations without formal land deeds or written documentation, differences in collective memory can produce competing interpretations of lineage and ownership, ultimately leading to disputes over the legitimate status of customary land.

Conflict resolution may be pursued through litigation or through customary legal mechanisms. In resolving disputes within Indigenous communities, parties often rely on customary law and mediation based on collective deliberation. Once an agreement is reached, the parties formalize the settlement in a written peace agreement signed on stamped paper to ensure its binding legal force under both customary law and positive law. This written document also serves as strong evidentiary support should a similar conflict arise in the future. Agreements achieved through this consensus-based approach, rooted in customary legal principles, help prevent the recurrence of disputes among future generations.

## CONCLUSIONS

The legal status of Indigenous communities over communal land (*ulayat rights*) has been affirmed in the Basic Agrarian Law and the 1945 Constitution, which recognize, protect, and respect Indigenous legal communities as long as they continue to exist and maintain their traditional practices on their customary land. Under Indonesian customary law, *ulayat rights* are typically acquired through collective use, management, and stewardship of the land, and are passed down from one generation to the next.

Conflicts concerning *ulayat rights* often arise due to unclear land boundaries between different Indigenous groups, as boundary markers commonly consist only of stones or wooden stakes that are easily displaced. Additionally, inconsistencies in orally transmitted histories of customary land, which vary among community members, may create uncertainty regarding ownership status. In resolving disputes over customary land, customary leaders play a central role by facilitating deliberation and consensus-building (*musyawarah untuk mufakat*) to determine the rightful status of the *ulayat land* and to address conflicts within the community.

To strengthen the legal standing of Indigenous communities over their communal land (*ulayat rights*), government authorities should maintain continuous coordination with customary leaders who hold legitimate authority within their communities. Such coordination is essential to ensure that Indigenous peoples receive legal certainty regarding their customary land and that their territorial rights obtain firm legal protection, thereby preventing future land-related disputes.

For effective resolution of *ulayat rights* conflicts and to ensure clear legal certainty, it is recommended that customary leaders and village authorities collaborate in integrating customary law and cultural practices into the settlement process. This may include verifying accurate historical records of customary land, formalizing agreements in written documents before a notary, and establishing decisions through the customary council based on mutual consensus.

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