

THE LEGAL PLURALISM DILEMMA IN ULAYAT LAND CERTIFICATION: The Crisis of Communal Ownership in Minangkabau

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Abstract: This article aims to conceptually analyze the dilemma of legal pluralism in the implementation of land certification policies and their impact on the existence of *ulayat* (communal) land in Minangkabau, which has historically been communal, matrilineally inherited, and governed through a customary legal system. Amid the state's agrarian legal modernization, a significant research gap remains concerning how certification policies—centered on individualized land ownership—affect the communal ownership structure, social function of customary law, and the spiritual values of indigenous communities. This research employs a library-based method with an interdisciplinary approach, combining perspectives from customary law, national agrarian law, and Islamic law, specifically through the lenses of legal pluralism and *maqâshid al-syarî'ah*. The findings indicate that certifying *ulayat* land under individual ownership not only weakens the authority of *ninik mamak* (customary leaders) as custodians of communal land but also degrades customary identity and accelerates the fragmentation of ownership into private holdings. Furthermore, no established legal model has been found capable of safeguarding communal land rights within Indonesia's current legal system. This study offers a responsive and contextual legal harmonization framework by integrating customary law recognition into land administration mechanisms and reinforcing the principle of *al-milkiyyah al-musytarakah* within the *maqâshid al-syarî'ah* paradigm to preserve *ulayat* land amidst growing agrarian liberalization.

Keywords: legal pluralism; land certification; communal ownership; Minangkabau.

Abstrak: Artikel ini bertujuan untuk menganalisis secara konseptual dilema pluralisme hukum yang muncul dalam implementasi kebijakan sertifikasi tanah terhadap eksistensi tanah ulayat Minangkabau yang secara historis bersifat komunal, diwariskan secara matrilineal, dan diatur melalui sistem hukum adat. Di tengah upaya modernisasi hukum agraria nasional, masih terdapat kesenjangan kajian terkait bagaimana kebijakan sertifikasi yang berorientasi pada individualisasi hak berdampak terhadap struktur kepemilikan kolektif, fungsi sosial adat, dan nilai-nilai spiritualitas masyarakat adat. Penelitian ini merupakan studi kepustakaan (*library research*) dengan pendekatan interdisipliner, menggabungkan perspektif hukum adat, hukum agraria nasional, dan hukum Islam, khususnya melalui lensa teori pluralisme hukum dan *maqâshid al-syarî'ah*. Hasil kajian menunjukkan bahwa sertifikasi tanah ulayat atas nama individu tidak hanya melemahkan kewenangan *ninik mamak* sebagai pengelola tanah komunal, tetapi juga berpotensi mendegradasi identitas adat dan mempercepat fragmentasi kepemilikan yang bersifat privat. Selain itu, ditemukan bahwa tidak terdapat model hukum baku yang mampu menjamin keberlanjutan hak komunal dalam sistem hukum nasional. Artikel ini menawarkan sebuah formulasi harmonisasi hukum yang responsif dan kontekstual melalui integrasi pengakuan hukum adat dalam administrasi pertanahan, serta penguatan nilai *al-milkiyyah al-musytarakah* dalam kerangka *maqâshid al-syarî'ah*, untuk menjaga keberlangsungan tanah ulayat di tengah liberalisasi agraria.

Kata kunci: pluralisme hukum; sertifikasi tanah; kepemilikan komunal; Minangkabau

Introduction

Ownership of customary land in Indonesia, particularly in Minangkabau, is facing an existential crisis that threatens its historical, social, and spiritual values as the collective heritage of indigenous peoples. Customary land in Inheritance that is inherited matrilineally and may not be bought and sold, pawned, or transferred, because its main function is not merely as an economic asset, but as a symbol of clan identity, continuity of customs, and spirituality community.¹ His ownership nature inherited in a way individual, Which communal and managed by grandmother and mother (maternal uncle) for the benefit (child) sisters,² in accordance with customary principles based on the philosophy of “*adat basandi syarak, syarak basandi Kitabullah*”.³ This ownership structure is hereditary and strengthens social solidarity, collective control, and the harmonious continuity of customary and religious values.⁴

However, the peculiarities of this system are starting to emerge. has been eroded since the enactment of national policies encouraging accelerated land certification as part of the modernization of land law. The shift in the paradigm of land law contradictory with principle inalienability customary and. Besides reduce authority grandmother and mother and weakening the customary social structure, this also creates normative tension between the logic of state law which emphasizes individual ownership and customary law which is based on communality.⁵

¹ Selfi Mahat Putri, “Kepemilikan Tanah (Adat) Di Minangkabau,” *Titian: Jurnal Ilmu Humaniora* 5, no. 2 (2021), <https://online-journal.unja.ac.id/index.php/titian>.

² Ibrahim Dt. Sanggoeno Diradjo, *Tambo Alam Minangkabau: Tatanan Adat Warisan Nenek Moyang Orang Minangkabau* (Bukittinggi: Kristal Multimedia, 2009).

³ T Alamsyah, “Ketimpangan Agraria Dan Konflik Tanah Adat Di Indonesia,” 2023.

⁴ Indrawati Cipta, Hendra, Hatamari, “Halal Tourism in West Sumatra Province : An Implementation of Sharia Compliance and Minangkabau Custom,” *Madania: Jurnal Kajian Keislaman* 27, no. 2 (2023): 143–54.

⁵ M Safitri, “Politik Agraria Dan Masa Depan Tanah Ulayat: Antara Perlindungan Dan Penghapusan,” *Jurnal Hukum Lingkungan Dan Masyarakat* 11, no. 2 (2023): 201–22; Y Rahmadani and R

Several previous studies confirm that this certification process creates internal conflict within the community,⁶ and ultimately contribute to the extinction of the collective identity attached to customary land. This inequality shows that legal modernization agrarian, instead of providing protection following the enactment of Law Number 11 of 2020 concerning Job Creation and its derivative regulations, such as Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency No. 18 of 2021, has had serious implications for the existence of customary land. Programs such as Complete Systematic Land Registration (PTSL) and customary land certification, carried out in the name of individuals, have formally changed the legal status of land from communal to private ownership. This process allows customary land to be bought and sold, mortgaged, or encouraging social transformation that uproots indigenous peoples' cultural roots from their own land.

This phenomenon creates a space for normative and social conflict over the privatization of collective rights through individual legalization. As in the cases of Rempang, Wadas, and West Pasaman, indigenous communities were accused of being “illegal cultivators” because they lacked land titles, even though they were the legal customary owners.⁷

Wijaya, “Transisi Kepemilikan Komunal Ke Privat Dalam Sertifikasi Tanah Adat: Ancaman Terhadap Sistem Adat Minangkabau,” *Jurnal Al-Manhaj* 12, no. 1 (2023): 55–73.

⁶ A Oktaviani and H Supriyadi, “Ketegangan Antara Hukum Negara Dan Hukum Adat Dalam Sertifikasi Tanah Komunal,” *Jurnal Agraria Dan Pembangunan* 9, no. 3 (2021): 213–30, <https://doi.org/10.22146/jap.2021.9.3.213>; R Mutia, “Hegemoni Negara Terhadap Kepemilikan Komunal: Studi Kasus Tanah Ulayat Di Sumatera Barat,” *Jurnal Masyarakat Adat Dan Hukum* 5, no. 2 (2020): 142–58.

⁷ Kompas.com, “KPA: Proyek Strategis Nasional Jokowi ‘Lapar Tanah’, Picu 73 Konflik Agraria Sejak 2020,” <https://www.kompas.com/tren/read/2023/01/16/110000365/kpa-proyek-strategis-nasional-jokowi-lapar-tanah-picu-73-konflik-agraria>; Tempo.co, “Deretan Konflik Agraria Terbaru: Dari Rempang, Pohuwato, Hingga Seruyan,” <https://www.Tempo.Co/>, 2023, <https://nasional.tempo.co/read/1777198/deretan-konflik-agraria-terbaru>; Mongabay Indonesia, “Tambang Wadas Jalan Terus, Pakar Hukum: Bukti Kegagalan Negara Lindungi Warga,” 2023,

In Minangkabau, these tensions become even more complex, because land ownership is closely linked to the matrilineal system, clan deliberation, and customary legitimacy that still functionally exist in Luhak Nan Tigo (Agam, Tanah Datar, and Limapuluh Kota). When customary land is individually certified, there is concern that the erosion of customary law will become inevitable, ultimately threatening the extinction of communal land and emphasizing the tension between the state legal system and local customary values, as in the case in West Pasaman.⁸

In the context of legal pluralism, this issue shows that there is not yet substantive integration between customary law, Islamic law and national law. Country tend use approach legal-formal administratively, without considering the cultural and spiritual aspects of indigenous communities.⁹ Whereas in the view of Islamic law, the principle *hifz al-mal* (protection of assets) and *hifz al-ird* (protection of the dignity of descendants) supports strengthening collective rights as part of *maqâshid al-syarî'ah*.¹⁰ Herein lies the most fundamental gap in customary land certification policies: where the positive legal system emphasizes individualism, while customary and sharia systems uphold collectivity and communal sustainability.¹¹

Many studies have been conducted on customary land in Minangkabau, including Mutia's

<https://www.mongabay.co.id/2023/02/28/tambang-wadas-dan-kegagalan-negara/>.

⁸ Jurnal Minang, "Perjuangan Petani Menghadapi Konflik Agraria Di Pasaman Barat," *Jurnal Minang* 5, no. 1 (2024): 55–66, <https://jurnalminang.or.id/index.php/jm/article/view/407>.

⁹ P Suparlan, "Ketimpangan Pengakuan Hukum Adat Dalam UU Cipta Kerja," *Jurnal Konstitusi Indonesia* 18, no. 2 (2021): 301–19; M Farid and F Aulia, "Menakar Pluralisme Hukum Dalam Pengakuan Tanah Adat," *Jurnal Ilmu Hukum Nusantara* 3, no. 2 (2022): 165–84.

¹⁰ A Riswanda and M Yuliani, "Erosi Otoritas Adat Akibat Sertifikasi Tanah: Studi Sosio-Legal Di Nagari Tuo," *Jurnal Antropologi Hukum Dan Adat* 7, no. 2 (2025): 134–50; Jasser Auda, *Maqâshid Al-Shari'ah as Philosophy of Islamic Law: A Systems Approach*, International Institute of Islamic Thought (London and Washington: International Institute of Islamic Thought (IIIT), 2008), <https://archive.org/details/Maqasid-Al-Shariah-as-a-Philosophy-of-Islamic-Law-Combined>.

¹¹ H Syarif, "Legal Pluralism Dalam Pengelolaan Ruang Komunal," *Jurnal Hukum Dan Masyarakat* 7, no. 1 (2019): 67–85; Mutia, "Hegemoni Negara Terhadap Kepemilikan Komunal: Studi Kasus Tanah Ulayat Di Sumatera Barat."

research¹² highlights the lack of adaptation of agrarian law to the communal social structure of indigenous communities. Oktaviani & Supriyadi¹³ found that individual certification increased intra-communal conflict. Alhafiz proposed communal certification as a middle ground between formal legality and customary legitimacy.¹⁴ Ramli emphasized the need for progressive laws so as not to marginalize local values.¹⁵ Meanwhile, Riswanda & Yuliani integrated *maqâshid al-syarî'ah* as the basis for agrarian policy justice.¹⁶ Farid and Aulia research¹⁷ and Lestari,¹⁸ while recognizing the importance of legal pluralism, they have yet to delve into the matrilineal and spiritual aspects of local Minangkabau culture. To date, there has been no comprehensive and in-depth study examining the threats to the existence of Minangkabau customary law due to customary land certification policies.

Previous research on Minangkabau customary land generally focused on legal-formal aspects, social conflicts, or discrepancies between state policies and customary practices.¹⁹ However, it has not comprehensively examined how the land certification

¹² Mutia, "Hegemoni Negara Terhadap Kepemilikan Komunal: Studi Kasus Tanah Ulayat Di Sumatera Barat."

¹³ Oktaviani and Supriyadi, "Ketegangan Antara Hukum Negara Dan Hukum Adat Dalam Sertifikasi Tanah Komunal."

¹⁴ M Alhafiz, "Sertifikat Komunal Sebagai Solusi Tengah: Menjembatani Legalitas Formal Dan Legitimasi Adat," *Jurnal Hukum Agraria Indonesia* 4, no. 1 (2022): 91–110.

¹⁵ S Ramli, "Pluralisme Hukum Pertanahan Dan Ketidakhadiran Negara Dalam Pengakuan Tanah Ulayat," *Jurnal Hukum Ulayat* 4, no. 2 (2023): 88–105.

¹⁶ Riswanda and Yuliani, "Erosi Otoritas Adat Akibat Sertifikasi Tanah: Studi Sosio-Legal Di Nagari Tuo."

¹⁷ Farid and Aulia, "Menakar Pluralisme Hukum Dalam Pengakuan Tanah Adat."

¹⁸ I Lestari, "Revitalisasi Peran Ninik Mamak Dalam Pengelolaan Tanah Ulayat Di Era Modernisasi," *Jurnal Hukum Dan Adat Nusantara* 6, no. 1 (2024): 77–94.

¹⁹ Nurul Auliya, Rika Lestari, and Ulfia Hasanah, "Penyelesaian Sengketa Tanah Ulayat Oleh Ninik Mamak Di Nagari Koto Tangah Kecamatan Tilatang Kamang Kabupaten Agam," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 2, no. 3 (May 19, 2023): 200–210, <https://doi.org/10.55681/seikat.v2i3.515>; Mutia, "Hegemoni Negara Terhadap Kepemilikan Komunal: Studi Kasus Tanah Ulayat Di Sumatera Barat"; Farid and Aulia, "Menakar Pluralisme Hukum Dalam Pengakuan Tanah Adat"; Lestari, "Revitalisasi Peran Ninik Mamak Dalam Pengelolaan Tanah Ulayat Di Era Modernisasi."

process gives rise to an existential crisis regarding communal ownership within the framework of legal pluralism that exists in Minangkabau. This research gap arises because there has not been a study that simultaneously brings together the dimensions of matrilineal-based customary law and the principles of *maqâshid al-syarî'ah* in the protection of collective rights, as well as the individualistic logic of national agrarian law. Because customary land certification can trigger changes in ownership structures, shifts in customary authority, and the fragmentation of Minangkabau social values. The certification program not only affects the legal status of land but also contributes to the erosion of communal identity and the weakening of social functions, particularly the role of grandmothers and mothers as collective guardians of land values and governance.

A national law-based approach has the potential to shift the status of Minangkabau customary land from communal ownership based on customary law to privatization, as well as how legal pluralism (customary, Islamic, and state) can be integrated to protect the collective rights of indigenous peoples. This focus is important given that few studies have in-depth analyzed the intersections and conflicts between these principles, *al-milkiyyah al-'âmmah* in Islamic law, Minangkabau traditional philosophy "*adat basandi syarak, syarak basandi Kitabullah*", and the logic of individualistic state agrarian law. To answer this main problem, this article poses three key questions: first, how does the land certification policy impact the communal status of customary land in Minangkabau? Second, how does the Islamic legal perspective view the process of privatization of customary land within the framework of *maqâshid al-syarî'ah*?, and third, how can a legal harmonization model be designed to safeguard the existence of customary land in the context of legal pluralism in Indonesia? These three questions will form the basis for a critical analysis of the communal land ownership crisis in Minangkabau as a result of legal modernization that tends to standardize property rights on an individual basis.

Method

This study highlights one main problem, namely how land certification policies qualitative study-based approach library with while opening up opportunities for a normative-contextual legal approach was used. Data were collected through in-depth searches and reviews of relevant literature sources, both primary and secondary. Primary sources consisted of legal documents such as Law Number 5 of 1960 concerning Agrarian Principles (UUPA), Law Number 11 of 2020 concerning Job Creation, and their derivative regulations, such as Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency (ATR/BPN) No. 18 of 2021 concerning Procedures for Determining Communal Rights of Indigenous Communities. Meanwhile, secondary sources included books, national and international journal articles, previous research results, and documents from customary and religious institutions.

The data was analyzed using the content analysis method (content analysis) descriptively and critically, to identify gaps between state policies and local values and the spirituality of indigenous communities. Furthermore, a legal harmonization method is used to identify intersections and conflicts between customary law norms, Islamic law, and state law. The results of this analysis are expected to offer an integrative model and normative solutions to the issue of customary land protection amidst the currents of certification and legal modernization.

The analytical tools used to interpret the data and draw conclusions from this research utilize two main pillars. First, the theory of legal pluralism is used to analyze the interactions and conflicts between three legal systems: Minangkabau customary law, national agrarian law, and Islamic legal principles. This theory helps map how the dominance of state law can shift the legitimacy of customary law stronger recognition. Second, the theory *maqâshid al-syarî'ah* used to assess the extent to which certification policies align or conflict with the principles *hifzh al-mal, mashlahah 'ammah*, and concept *al-milkiyyah al-musytarakah* as a normative basis for maintaining communal ownership.

Thus, these two theories not only serve as conceptual background, but are used directly to interpret data, identify structural problems, and construct arguments in the final discussion.

Change of Ownership Status from Communal to Private through the Certification Program

The land certification policy, which aims to provide legal certainty through land rights registration, has had a significant impact on the existence of customary land in Minangkabau. Traditionally, customary land is communal, inherited through matrilineal inheritance, and cannot be traded due to its historical value, cultural identity, and spirituality of the indigenous community. However, with the implementation of the certification policy, particularly through the Complete Systematic Land Registration (PTSL) program, there has been a shift in the paradigm of customary land ownership from collective to individualistic.

One of the main characteristics of The communal land ownership system in the Minangkabau traditional community is the existence of a mechanism *ganggam baantuak*, namely the hereditary right to use customary land which is given to members of the clan through the maternal or matrilineal line of descent.²⁰ In a matrilineal system, land is a symbol and means of continuity of the lineage mother.²¹ In this system, members of the community (tribe/clan) have the right to use and enjoy the land during their lifetime, but do not own it. The land can be returned if necessary, in accordance with the principles of justice and community welfare. Thus, this system represents a form of land ownership that is sell it. Right Land Forcustomary law not absolute, but rather based on social function and collective sustainability, which

as a form of shared inheritance (high inheritance) not only functions as an economic resource, but also as a symbol of the continuity of communal and spiritual identity.²²

Ninik mamak as customary leaders have full authority in managing customary land, including determining is fundamentally different from the logic of individualized rights in the national agrarian legal system. disputes, and all of this is only valid if agreed upon through community deliberation, emphasizing the collective character of Minangkabau customary rights.²³ Rights of use such as “*ganggam baantuak*” generally, inheritance is determined by the name of the eldest female in the lineage and ratified through customary deliberation, indicating that these rights are rooted in a matrilineal structure. In addition to land, this form of collective inheritance also includes the traditional house, gold, and silver, which are passed down across generations without changing ownership status.

In this context, the land used by the man and brought to the wife’s house is referred to “*abuan*”, and the results of its use are divided fairly between the man and the wife, indicating a form of economic relationship that remains based on customary values. Interestingly, usage This mechanism practically prevents customary land from being unilaterally privatized, and adherence to the matrilineal structure and the agreement of the *ninik mamak* (chiefly elders) prevents conversion to private use, limit, until arrange settlement ownership.²⁴

Interestingly, efforts to recognize customary rights have even been accommodated in national law through conversion provisions through the Basic Agrarian Law (UUPA), particularly in the Conversion Provisions of pasal VI which states that customary rights (such as *ganggam baantuak*, *bruikleen*, *anggaduh*, and others) can be converted into usage

²⁰ W Wahyudi and N Najmi, “Peralihan Hak Milik Atas Tanah Karena Pewarisan Terhadap Tanah Ganggam Baantuak,” *Lembang Mangkurat Law Journal* 4, no. 2 (2019): 190–202, <https://doi.org/10.32801/abc.v4i2.90>.

²¹ Indah Adelia, Sri Wahyuni, and Tetty Marlina Tarigan, “Keunikan Hukum Waris Adat Minangkabau,” *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 1 (February 18, 2023): 73–79, <https://doi.org/10.47467/elmujtama.v4i1.3187>.

²² Dedi Irwan, “Tanah Ulayat: Hukum Dan Sosial Budaya,” *Jurnal Hukum Islam Dan Adat*, 2020.

²³ Auliya, Lestari, and Hasanah, “Penyelesaian Sengketa Tanah Ulayat Oleh Ninik Mamak Di Nagari Koto Tangah Kecamatan Tilatang Kamang Kabupaten Agam.”

²⁴ M. Jamil Labai Sampono, personal interview, May 10, 2025.

rights as referred to in Article 41 paragraph (1) of the Basic Agrarian Law (UUPA). However, empirical study data shows that until now there has been no real implementation of this conversion the, show The system's failure to substantially reflect legal plurality demonstrates the gap between regulatory texts and the social realities that exist within the Minangkabau indigenous community.

The transformation of the land ownership system in Indonesia through authority divert, For or distribute interesting, the Complete Systematic Land Registration (PTSL) program and policies customary land certification has had serious implications for the legal status of customary land. Formally, land certification carried out in individual names has resulted in the loss of the communal nature of customary land. Land that previously could not be bought or sold due to customary protection has now been transformed into an asset subject to market logic and national law.²⁵ so that in the long term it will cause the extinction of customary land as a high heritage asset that is passed down from generation to generation.

Table 1 below illustrates the differences in principle between land ownership under customary law and state law:

NO	ASPECT	CUSTOMARY LAW MINANGKABAU	LAW STATE
1	Status Ownership	Communal (Kaum/ Suku)	Individual/ Personal/ Private
2	Base Law	Customary Law "Adat Basandi Syarak, Syarak Basandi Kitabullah"	UUPA, UU Cipta Kerja, Permen ATR/ BPN
3	Diversion Right	No can for sale or pawned	Can for sale, pawned, or diverted
4	Function treasure	Inheritance, grandma ancestors and indigenous identity	Aset economy

²⁵ Safitri, "Politik Agraria Dan Masa Depan Tanah Ulayat: Antara Perlindungan Dan Penghapusan"; Rahmadani and Wijaya, "Transisi Kepemilikan Komunal Ke Privat Dalam Sertifikasi Tanah Adat: Ancaman Terhadap Sistem Adat Minangkabau."

This table represent structural tension between two legal systems that have different logics in interpreting customary land, from land as a communal entity bound by kinship, social function, and prohibitions transfer of function (Minangkabau customary law) to become an object of individual rights subject to market mechanisms, allowing transfer through sale, purchase, pawning, or personal inheritance (state law). Table the no only illustrates normative differences and legal structures, but emphasizes the potential dislocation of the legitimacy of customary collective authority and the increasing risk of formal privatization of customary land in Minangkabau.

From the table above, it can be see that one of the most significant impacts of the certification process is that it encourages the occurrence of epistemic shift from communal ownership to privatization, the sustainability of indigenous peoples' social identities is threatened. When customary land is certified, not only does its economic value change, but its cultural and spiritual dimensions are also reduced. Land, which was previously the basis of communal life and a symbol of community identity, is transformed into an individual or private commodity. This leads to the erosion of solidarity, intergenerational ties, and the spiritual function of land as part of local belief systems. Studies by Mutia, Oktaviani, and Supriyadi show that in many cases, the loss of collective control over customary land results in community disintegration, particularly the loss of the social authority of the *ninik mamak* (leaders) in carrying out customary roles.²⁶

By not certifying customary land, ensuring that future generations can benefit from the communal land, every member of the clan or tribe is responsible for protecting and maintaining the integrity of the land. As the philosophy of customary law,

"sawah ladang banda buatan, sawah batumpak di nan data, ladang babidang

²⁶ Mutia, "Hegemoni Negara Terhadap Kepemilikan Komunal: Studi Kasus Tanah Ulayat Di Sumatera Barat"; Oktaviani and Supriyadi, "Ketegangan Antara Hukum Negara Dan Hukum Adat Dalam Sertifikasi Tanah Komunal."

dinan lereng, banda baliku turuik ba bukik, cancang latiah niniek moyang, tambilang basi rang tuo-tuo, usah tajua jo tagadaikan, kalau sumbiang batitiak, patah batimpo, hilang bacari, tarapuang bakaik, tabanam basilami, kok anyuik dipintasi, kurang batukuak, ketek dipagadang, kok tirihs disisik, lapuak diganti, rusak dibaiki”

The customary philosophy above emphasizes that the value of customary land lies in sustainability, not in transactions. This demonstrates the urgent need to develop hybrid legal instruments that do not automatically convert communal rights into private rights, but rather maintain customary land as an integral legal, social, and spiritual entity that is part of Minangkabau society.

Perspective Islamic Law to Communal Ownership

Islamic law recognizes and protects communal ownership of property and other resources. The concept *al-milkiyyah al-musyarakah* (communal ownership) and objectives *hifzh al-mal* (property protection) in *maqâshid al-syarî'ah* provide a strong normative basis for maintaining the communal status of customary land. Conceptual- *milkiyyah al-musyarakah* is a form of ownership that is recognized normatively by Islamic law, besides *al-milkiyyah al-khashshah* (ownership individual) and *al-milkiyyah al-'ammah* (public ownership).²⁷ *Al-milkiyyah al-musyarakah* refers to property owned jointly by two or more parties without any physical separation, but rather based on an agreement or certain sharia relationship such as inheritance, partnership, or family endowment.²⁸ This concept is very relevant in discussing the structure of customary land in Minangkabau, because the land is owned communally by the people and managed for the

common good in a matrilineal kinship system. Wahbah Al-Zuhayli in *Al-Fiqh al-Islami wa Adillatuhu* explains that collective ownership contains elements of deliberation, shared responsibility, and cannot be transferred without the consent of all parties involved.

Therefore, in the context of customary land, every action on land must involve the approval of the *ninik mamak* as communal or collective representatives of the people.

Relevance *al-milkiyyah al-musyarakah* within in the framework *maqâshid al-syarî'ah* emphasizes that the Communal Ownership has a high social function because it guarantees distributive justice (“*adl al-tawzi'i*), protection of assets (*hifzh al-mal*), and maintain the sustainability of the community (*hifzh al-nafs wa al-nasl*).²⁹ According to Yusuf al-Qaradawi, the Islamic economic system upholds collective property rights in order to prevent the domination of capitalism accumulate wealth in one elite group.³⁰ In the context of customary land, *al-milkiyyah al-musyarakah* It functions as a social bulwark that protects customary structures from the logic of individualization applied in the national agrarian legal system. Wahbah al-Zuhaily and Yusuf al-Qaradawi agree that communal or public ownership must be protected by the state to prevent it from falling into the hands of a few, which would undermine social justice.³¹

In this regard, the Indonesian Ulema Council (MUI) of West Sumatra Province issued an official statement in 2023 articulating significant religious resistance to the customary land certification policy. The MUI firmly stated its rejection of customary land certification. This rejection was based on concerns

²⁷ S A Hassan, R A Rashid, and Z Z Zakuan, “The Preservation of Property in Maqasid Al-Syariah: With Special Reference to the Appointment and Duties of Wasi in Estate Administration,” *International Journal of Law, Government and Communication* 7, no. 29 (2022): 318–28.

²⁸ Y al-Qaradawi, *Fiqh Al-Zakâh: A Comparative Study of Zakah, Regulations and Philosophy in the Light of the Qur'an and Sunnah* (Dar al-Taqwa, 1999).

²⁹ Az-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*; al-Qaradawi, *Fiqh Al-Zakâh: A Comparative Study of Zakah, Regulations and Philosophy in the Light of the Qur'an and Sunnah*.

²⁷ W Az-Zuhayli, *Al-Fiqh Al-Islami Wa Adillatuhu*, vol. 7 (Damaskus: Dar al-Fikr, 2003).

²⁸ H Hamzah, B Saiti, and G U Saefurrohman, “Islamic Perspective on Assets and Property,” *International Journal of Academic Research in Business and Social Sciences* 12, no. 2 (2023): 1551–66.

that certification would pave the way for the sale and purchase of Miangkabau customary land, which is inherently communal and should not be freely transferred. The MUI emphasized that although administration And While the administration of customary land is necessary, the process must maintain the principles of local wisdom and Islamic law. Furthermore, the resolution of customary land disputes is requested to be returned to the village customary courts based on the philosophy of *syara' mangato*, custom of wearing as embodiment of *basandi syarak custom*, *syarak basandi Kitabullah*. The MUI also urged that regional regulations regarding customary land explicitly include sharia terms and provisions as the normative and spiritual basis inherent in the existence of customary land in Minangkabau.³²

Finally, customary land certification also has the potential to cause violations of the basic principles of Islamic law, especially the concept of *maqâshid al-syarî'ah* that is *hifzh al-mal* (protection of communal property) and *hifzh al-'irdh* (maintaining honor/social dignity). This emphasizes that customary land, as communal property of a tribe or community, cannot be transferred to private ownership through the certification process, as it conflicts with the spiritual and social value system of the Minangkabau people. Thus, this resistance is not merely administrative or technocratic, but is a response to the liberalization of land rights that ignores theological, cultural, and distributive justice dimensions in the context of Indonesian legal pluralism.

Thus, *maqâshid al-syarî'ah* provides a framework for rejecting certification processes that have the potential to cause *mafsadah* (social damage) in indigenous communities. This is reinforced by Jasser Auda's view which emphasizes that *maqâshid* must used For avoid *mafsadah* (social damage), including in matters of redistribution and legalization of customary land.³³

³² MUI Sumbar, "Majelis Ulama Indonesia," Surat, vol. 49, 2025.

³³ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon, VA: The International Institute of Islamic Thought, 2008).

Harmonization of Legal Pluralism in the Context of Maintaining the Existence of Customary Land in Minangkabau

From the results of the literature review conducted, it was found that there is no standard model that can effectively and applicably guarantee the protection of customary land in the context of legal pluralism. In fact, to date, there has been no concrete realization of this. The change in legal status takes the form of the official conversion of communal rights into use rights under state law. This imbalance demonstrates the implementation stagnation and the state's failure to fully adopt customary law mechanisms into the national agrarian legal system, which should be inclusive and responsive to legal plurality. Although the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency (ATR/BPN), Nusron Wahid, has stated that customary land certificates provide security for indigenous landowners. With certificates, the subjects and objects of customary land are clearly defined and legally recognized. Furthermore, the mapping, boundaries, and extent of the land are also clear, preventing irresponsible parties from arbitrarily taking it.³⁴

In the middle public Minangkabau, there is two corners different view related with strengthening administrative legality can implementation of customary land registration. First, Those who agree with customary land registration argue that by registering and certifying customary land, we are supporting the government's ongoing programs. Furthermore, certified land will have high economic value in the future. Second, opposing views by arguing that land ownership is clear and does not require written proof such as a certificate. As stated in customary philosophy:

"kabukik baguliang aia, kalurah baanak sungai, rimbo dibari balinjuang, taratak balingkuang aua duri, bukik dibari bakaratau, kok sawah alah bapamatang, kok ladang alah bamintalak" (ke bukit air

³⁴ <https://sumbar.antaranews.com/25 April 2025>

mengalir, ke lembah sungai lahir, hutan diberi tanda, kampung dikelilingi aur berduri, bukit diberi pondok-pondoknya, sawah diberi pematangnya, ladang diberi batasnya).

The West Sumatra Minangkabau Traditional Council (LKAAM) through its chairman, Fauzi Bahar, conveyed support and provide a constructive response to customary land certification policies by emphasizing the importance of the collective model as a middle ground between state law and customary legal systems.³⁵ He emphasized that customary land certified through a communal scheme cannot be transferred unilaterally by individuals, including *datuks*, because the names listed on the certificates reflect collective ownership based on deliberation. The trial implementation of communal certificates in Tanah Datar and Limapuluh Kota is evidence that strengthening administrative legality can be done without damaging the customary social structure. The LKAAM chairman's statement needs to be questioned again: what is the legal basis that underpins certification through a communal scheme? Therefore, there must be more specific derivative regulations regarding the certification of Minangkabau customary land.

From this perspective, consider that customary land certification can indeed provide administrative certainty within the state legal system, but it also poses a serious potential threat to the sustainability of communal rights and sacred values within Minangkabau customs. This study emphasizes that customary land in Minangkabau cannot be understood solely within the framework of positive law as a physical entity subject to the formal legal system. Furthermore, customary land represents communal cultural, spiritual, and social values, passed down through a matrilineal pattern, and maintained through a vibrant and functional customary kinship structure.

Even though customary land certification is carried out through a joint or collective deed

scheme, it still leaves room for long-term privatistic interpretations. The question is not only about the current generation's adherence to customary laws, but also about the resilience of these communal values when confronted with modern interpretations of ownership law by future generations. Furthermore, positive legislation stipulates that land that has been registered and certified with a land title becomes the property of an individual, even if multiple names are listed on the certificate. If this practice is allowed to continue and is considered commonplace, it is highly likely that customary land will gradually shift from one generation to the next to become privately owned land under state law. This process not only eliminates *de facto* communal rights but also erodes the legacy of matrilineal values and Minangkabau traditional spirituality that have been preserved across generations. If land is registered in the name of the *Mamak Kepala Waris* (Chief Waris), there is a possibility that the land will be transferred, sold, or mortgaged to a bank in the future.³⁶

Therefore, the main challenge going forward for the indigenous people of Minangkabau is how to design a legal harmonization framework that not only administers customary land but also ensures the sustainability of customary values and the social legitimacy inherent within it. Therefore, a more progressive and contextual legal formulation is needed to ensure the continuity of communal rights to customary land in Minangkabau. The state needs to draft specific regulations or even separate laws that explicitly recognize and protect customary land as the collective property of a clan or tribe, inherited through matrilineal inheritance. This formulation must be based on the principle of non-subordinate legal pluralism, where customary law has an equal position and is substantively recognized within the national legal system.

In the context of Islamic law, the proposal to find an appropriate legal formulation for customary

³⁵ <https://sumbar.antaranews.com/> 14 April 2025.

³⁶ Y Antara, "Perubahan Status Hukum Tanah Ulayat Dan Konflik Agraria Di Sumatera Barat," *Jurnal Hukum Agraria* 8, no. 1 (2023): 45–61.

land in Minangkabau is strongly legitimized through the concept of *maqâshid al-syarî'ah*, particularly in *hifzh al-mal* (protection of property), *hifzh al-nafs* (social protection of the community), and *hifzh al-nasl* (protection of the continuity of generations). These principles demonstrate that Islamic law not only permits the existence of collective ownership but also mandates it in the context of safeguarding the public interest and preventing damage (*mafsadah*) resulting from uncontrolled liberalization of property rights. Thus, the best solution lies in the synergy between customary law, Islamic law, and state law that supports substantive justice and the sustainability of local culture.

A key finding in this article is that the proposed harmonization model goes beyond normative recognition through administrative land certification, but rather involves a hybrid legal instrument that combines customary functions, state procedures, and sharia principles. Based on the principle of legal convergence within the legal pluralism approach, *ninik mamak* can be given a formal mandate through a Regional Regulation (*Perda*) to manage and sign communal land deeds, with oversight from the National Land Agency (BPN) and final legitimacy from the local District Court. This model adopts the spirit of Constitutional Court Decision No. 35/PPU-X/2012 concerning customary forests (which provides space for customary rules within the national legal system) so that customary land remains under communal control and is not exposed to privatization. Herein lies the importance of reconstructing legal pluralism based on relational justice as a new idea that positions land not merely as an agrarian object, but as a symbolic, spiritual, social, and political space for indigenous communities.

From an Islamic legal perspective, harmonization between customary law and state law must be formulated not only through textual arguments, but also through operational guidelines. Referring to Jaser Auda's concept of *maqâshid al-syarî'ah*, harmonization is necessary, including: (a) providing *al-milkiyah al-musytarakah* clauses for customary land deeds; (b) providing legal standing for the *ninik mamak* (religious leader) decisions through *ta'lîq*

syarî'; and (c) establishing a consultative forum between the BPN-KAN before issuing certificates. This model ensures that every use of customary rights is not only legally valid but also fulfills sharia objectives. This approach broadens the discourse of legal pluralism, which has been dominated by procedural aspects, toward a substantive and relational justice orientation based on the communal and spiritual norms of the Minangkabau indigenous community.

This harmonization strategy shows that customary land certification, if designed collectively and participatively, can actually become an affirmative mechanism that bridges legal pluralism, as emphasized by the theory of Hooker and F. von Benda-Beckmann & K. von Benda-Beckmann, in the context of integrating customary law into a more inclusive national legal framework.³⁷ Therefore, the state has a crucial role in determining what authority can provide a compromise between the various parties involved. In addition to state law, Indonesia, as a multicultural nation, has customary and religious laws as part of its society. Recognizing the existence of customary law, indigenous communities, and customary land is crucial to finding a resolution to this land law conflict.

Conclusion

The study's findings indicate that land certification policies based on individual ownership have shifted communal ownership structures, weakened the authority of the *ninik mamak* (traditional leaders), and disrupted the continuity of customary values inherited through matrilineal inheritance. Within a predominantly legal-formal national legal framework, customary land has the potential to be reduced to a mere economic asset, detached from its social and spiritual functions.

³⁷ M B Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975); F von Benda-Beckmann and K von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *Journal of Legal Pluralism* 38, no. 53–54 (2006): 1–44, <https://doi.org/10.1080/07329113.2006.10756661>.

This study emphasizes the importance of an integrative approach between customary law, national agrarian law, and Islamic law. The *maqâshid al-syarî'ah* approach provides normative legitimacy for the protection of communal rights through the principles of property protection (*hifzh al-mal*), community protection (*hifzh al-nafs*), generation protection (*hifzh al-nasl*), and honor/dignity protection (*hifz al-'ird*). Therefore, legal harmonization is not merely symbolic, but must be realized in operational legal instruments that safeguard the existence of customary land legally, socially, and intergenerationally.

Going forward, further studies need to focus on formulating regulations that can bridge state interests and local values. The development of mechanisms such as collective certification, formal recognition of customary decisions, and consultative forums between customary institutions and the state are key strategies for realizing a just, inclusive, and contextual legal system.

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