

Legal Conflicts between Customary Land and Certificates of Ownership in Indonesia's National Land Registration System

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Abstract (10 PT)

This study examines the legal conflict between customary land and Certificates of Ownership within Indonesia's national land registration system. The issue arises from the coexistence of state law and customary law, in which customary communities base their land claims on hereditary occupation, communal recognition, customary norms, and historical attachment, while certificate holders rely on formal evidence issued by the state through land registration procedures. This research employs a normative juridical method supported by a socio-legal approach. It uses statutory, conceptual, and case approaches to analyze the legal position of customary land, the evidentiary strength of Certificates of Ownership, and the weaknesses of the current land registration system in accommodating communal land rights. The findings show that although customary land and ulayat rights are normatively recognized under Indonesian agrarian law, their protection remains conditional and often weak in practice. Customary land that has not been formally mapped, registered, or recognized by local governments tends to be administratively invisible, creating opportunities for the issuance of Certificates of Ownership over land historically controlled by customary communities. This condition produces legal uncertainty and agrarian injustice, particularly when formal certificates conflict with long-standing customary claims. The study argues that land registration should not be understood merely as an administrative mechanism for legal certainty, but also as an instrument for protecting customary rights and preventing land disputes. A balanced model of legal protection is required by strengthening customary land mapping, improving socio-historical verification, involving customary communities in land registration processes, and ensuring fair dispute resolution for both customary communities and good-faith certificate holders.

Keywords : *customary land; Certificate of Ownership; land registration; legal certainty; legal pluralism; agrarian justice.*



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INTRODUCTION

Land holds a fundamental position in the life of Indonesian society. It is not merely understood as an economic object that may be owned, transferred, inherited, or used as collateral, but also carries social, cultural, historical, spiritual, and political values (Hilmy, 2020). For customary law communities, land has a much broader meaning because it forms part of their collective identity, source of livelihood, living space, and ancestral heritage preserved across generations (Sauls et al., 2022). The relationship between customary communities and land is not solely based on individual ownership as commonly understood in modern land law, but is rooted in communal relations shaped by history, tradition, and customary norms that continue to exist within society (Fuad et al., 2023).

For customary law communities, customary land or ulayat land is inseparable from the continuity of communal life. It serves as a space for economic, social, cultural, and spiritual activities. Control over such land is generally not based on written documents as required in modern land administration systems, but derives from hereditary occupation, community recognition, natural boundaries, and customary institutions that regulate the use and protection of land. This characteristic demonstrates that customary land has a legal nature different from land that has been fully incorporated into the formal land law system (Jannah et al., 2022; Labibah et al., 2024).

Constitutionally, the existence of customary law communities and their traditional rights has been recognized within the Indonesian legal system. Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that the state recognizes and respects customary law communities and their traditional rights, as long as they remain in existence and are in accordance with societal development, the principles of the Unitary State of the Republic of Indonesia, and statutory regulations. This recognition indicates that customary law communities are legal subjects whose existence must be respected and protected by the state (Aprido & Fatimah, 2023; Negara & Ringgi, 2026).

Recognition of customary land is also found in Law Number 5 of 1960 concerning Basic Agrarian Principles, commonly known as the Basic Agrarian Law. This law places customary law as one of the foundations of national agrarian law, provided that it does not conflict with national interests and the interests of the state (Wangi et al., 2023). The Basic Agrarian Law also recognizes the existence of ulayat rights of customary law communities, insofar as such rights still exist in reality and their implementation does not conflict with national interests and statutory regulations. This shows that customary land is not located outside the national legal system, but is recognized as part of Indonesia's agrarian legal structure (Lubis et al., 2025).

Although customary land has obtained normative recognition, its position in practice continues to face various problems. The recognition of ulayat rights is conditional, requiring proof of the existence of the customary community, its customary territory, customary institutions, and a genuine relationship between the community and the land it controls (Tandori & Supriyanto, 2025a). In practice, such proof is not always easy to provide because many customary lands do not have written documents, official maps, or administrative recognition from local governments (P. A. A. Putri, 2025).

On the other hand, the national land registration system is designed to provide legal certainty over land rights. Through land registration, the state records physical and juridical data concerning land parcels. Physical data relate to the location, boundaries, and area of land, while juridical data relate to the legal status of the land, the rights holder, and any legal encumbrances attached to it. One of the final outcomes of land registration is the issuance of a land rights certificate as strong evidence of ownership or control (Ramadhani, 2021; Subekti et al., 2022).

A Certificate of Ownership, holds an important position in Indonesia's land law system because it serves as formal evidence of land ownership. In practice, a certificate is often regarded as the strongest proof that a person holds rights over a particular parcel of land (A. Putri et al., 2025). The existence of a certificate provides legal certainty for the rights holder, facilitates the transfer of rights, and serves as the basis for various legal acts, including sale and purchase, grants, inheritance, and the imposition of mortgage rights. However, the evidentiary strength of a certificate does not eliminate the possibility of disputes, particularly where the certified land is claimed as customary land (Hafidz & Kamal, 2025).

Conflicts between customary land and Certificates of Ownership arise when a parcel of land that is sociologically and historically recognized as customary land is later certified under the name of an individual, a particular group, or an external party outside the customary community (Yarsina, 2023). Customary communities base their claims on hereditary occupation, historical relations, community recognition, and customary norms that continue to live within society. Conversely, holders of Certificates of Ownership base their claims on formal evidence issued by the state through the land

registration system. These different bases of claim often create tension between communal rights rooted in customary law and individual rights based on land administration (Hendriana & Hardjo, 2025).

The issue becomes more complex because the national land registration system tends to accommodate individual rights more easily than communal rights of customary communities. Customary land that has not been officially mapped or recorded in the land administration system is often considered weak in terms of evidence. As a result, customary land may enter the land registration process under the application of another party without adequate verification of its customary history and occupation. In such circumstances, certificates issued by the state may create new legal problems because they are formally regarded as valid, yet socially rejected by customary communities (Simanjuntak, 2025).

This conflict reflects the tension between state law and customary law. State law operates through written documents, land parcel maps, juridical data, and administrative procedures. Customary law, however, operates through social recognition, genealogical relations, natural boundaries, collective memory, and customary institutions. When these two legal systems are not fairly reconciled, land registration may shift from an instrument of legal certainty into a source of agrarian conflict. This condition shows that land registration should not merely emphasize administrative aspects, but must also take into account the social and historical realities of land occupation (Islam & Sulastrri, 2026).

Conflicts between customary land and Certificates of Ownership are also caused by weak verification of land history in the registration process. In several practices, land registration tends to focus on the completeness of the applicant's documents, land measurement, and administrative statements from local officials. In areas inhabited or controlled by customary communities, however, a deeper examination is required regarding the history of occupation, the existence of customary law communities, and the possibility of ulayat rights. Without adequate verification, the issuance of certificates may disregard the existence of customary land that is still genuinely controlled and used by customary communities (Nitiyudo, 2023).

Regulatory developments indicate that the state has made efforts to provide space for ulayat land within the national land administration system. One such effort is reflected in the regulation concerning the administration and registration of ulayat land belonging to customary law communities. This policy demonstrates that customary land is increasingly being directed into the land administration system in order to obtain stronger recognition. Nevertheless, such regulation has not fully resolved problems in practice, especially with respect to customary land that has already been certified as privately owned land or customary land that has not yet received formal recognition from local governments (Tandori & Supriyanto, 2025b).

Another important issue is the gap between normative recognition and factual protection of customary communities. Legally, customary communities are recognized by the Constitution and statutory regulations. In practice, however, they often face difficulties in proving their rights before a land administration system that requires written evidence. The position of customary communities becomes increasingly vulnerable when they are confronted with parties holding certificates, having access to land administration, or receiving support from actors with stronger economic and political power (Rubi et al., 2024).

At the same time, holders of Certificates of Ownership cannot simply be ignored. Certificates are issued by the state through land registration procedures and constitute the basis of legal certainty for rights holders. If certificates that have been issued can always be defeated by customary claims without a clear evidentiary mechanism, the function of land registration as an instrument of legal certainty will be weakened. Therefore, conflicts between customary land and Certificates of Ownership must be understood as a question of balance between legal certainty, protection of customary communities' rights, and agrarian justice (Lestario & Erlina, 2022).

Such conflicts do not only create legal problems, but also affect the social life of communities. Disputes between customary communities and certificate holders may lead to social tension, loss of access to livelihood resources, criminalization of customary community members, and declining public trust in the state. Land conflicts may also obstruct development, disturb social stability, and prolong legal uncertainty for all parties involved. For this reason, resolving conflicts between customary land and Certificates of Ownership requires an approach that is not merely legal-formal, but also attentive to social, historical, and substantive justice considerations (Ridho, 2025).

Based on the foregoing discussion, the study entitled “Legal Conflicts between Customary Land and Certificates of Ownership in Indonesia’s National Land Registration System” is important to conduct. This research aims to analyze the legal position of customary land when confronted with Certificates of Ownership, examine the weaknesses of the land registration system in accommodating ulayat rights, and formulate a model of legal protection capable of balancing legal certainty and justice for customary communities. It is expected that this research will contribute to the development of national agrarian law that is not only oriented toward administrative certainty, but also toward social justice and the protection of customary law communities’ rights.

RESEARCH METHODS

This research employs a normative juridical method supported by a socio-legal approach (Darmalaksana, 2020). The normative juridical method is used to examine legal rules, legal principles, and legal concepts related to customary land, ulayat rights, Certificates of Ownership, and the national land registration system. The socio-legal approach is used as a complementary approach to observe how these legal norms operate in practice, particularly when conflicts arise between the claims of customary communities and certificate holders.

The approaches used in this research consist of the statutory approach, conceptual approach, and case approach. The statutory approach is applied to examine legal provisions concerning the recognition of customary law communities, ulayat rights, ownership rights over land, and land registration. The conceptual approach is used to understand the concepts of legal certainty, legal protection, legal pluralism, and agrarian justice. Meanwhile, the case approach is used to analyze examples of conflicts between customary land and Certificates of Ownership, either through court decisions or actual land dispute practices.

The sources of data in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law, regulations on land registration, regulations concerning ulayat land, and relevant court decisions. Secondary legal materials include books, academic journals, legal articles, research findings, and expert opinions. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources that help explain the legal concepts used in this research.

RESULTS AND DISCUSSION

1. The Legal Position of Customary Land in the National Land Registration System from the Perspective of Legal Pluralism

The legal position of customary land within Indonesia’s agrarian law system must be understood through the fundamental relationship between customary law communities and land. For customary communities, land is not merely an object of ownership with economic value, but also a living space that contains social, cultural, spiritual, historical, and communal significance. Control over customary land generally does not arise from an individual legal relationship as recognized in the modern land registration system, but is rooted in hereditary occupation, communal recognition, natural boundaries, customary institutions, and the collective relationship

between customary communities and their territories. This pattern of land control demonstrates that customary land possesses a legal character that differs from land that has been fully incorporated into the state land administration system.

The analysis of customary land can be examined through the theory of legal pluralism. This theory views that more than one legal system may coexist within a society. Law does not originate solely from the state, but may also arise from customary law, social norms, local practices, and dispute resolution mechanisms recognized by certain communities. In the context of this research, legal pluralism helps explain that state law and customary law are both present in regulating land control and land ownership. State law operates through statutory regulations, certificates, land parcel maps, and land administration procedures. Meanwhile, customary law operates through communal recognition, historical occupation, customary territorial boundaries, and the authority of customary institutions.

Normatively, customary land is not outside the national legal system. Law Number 5 of 1960 concerning Basic Agrarian Principles serves as the main foundation of Indonesia's national agrarian law and recognizes the existence of ulayat rights of customary law communities, as long as such rights still exist in reality and their implementation does not conflict with national interests and higher laws and regulations. The Basic Agrarian Law also places customary law as one of the foundations of national agrarian law, provided that it is in line with national interests. This means that the state does not eliminate the existence of customary law, but positions it as part of the construction of national agrarian law.

Although recognized, the position of customary land in practice continues to face significant challenges because such recognition is conditional. Customary communities must prove that their community still exists, that they possess customary territory, that customary institutions are still functioning, and that there is a real relationship between the community and the land it controls. The problem is that proof within customary communities is not always expressed in written documents. Many customary communities recognize territorial boundaries through natural markers such as rivers, forests, hills, certain trees, ancestral graves, or agreements between communities. When this customary model of proof confronts the national land registration system, which requires written evidence and administrative maps, the position of customary communities often becomes vulnerable.

The national land registration system is basically designed to create legal certainty through the recording of physical and juridical data concerning land. Physical data relate to the location, boundaries, and area of land, while juridical data relate to the legal status of the land, the rights holder, and the legal relationship attached to the land. Under this system, land that has not been recorded, mapped, or administratively recognized is often regarded as lacking strong legal certainty. As a result, customary land that is socially controlled by customary communities may be excluded from the land administration process if it is not immediately identified and recorded by the state.

This condition reflects a tension between state law and customary law. From the perspective of legal pluralism, this tension should not be resolved by fully subordinating customary law to state law. If customary law is considered valid only after being transformed entirely into administrative documents, the original character of customary land as a communal right may disappear. At the same time, the state cannot ignore the need for legal certainty within the national land system. Therefore, the legal position of customary land should be understood as a communal right that must be integrated into the land registration system without eliminating its customary character.

The recent regulation concerning the registration of ulayat land through the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 14 of 2024

indicates the state's effort to incorporate customary land into the national land administration system. This regulation governs the administration, registration, data maintenance, and information system of ulayat land belonging to customary law communities. This is important because customary land, which previously existed mainly within the realm of social recognition, has begun to receive formal space within the national land administration system.

2. Conflicts between Customary Land and Certificates of Ownership from the Perspective of Legal Certainty

Conflicts between customary land and Certificates of Ownership essentially arise from different sources of legitimacy. Customary communities base their claims on customary law, historical occupation, communal relations, and social recognition. Conversely, holders of Certificates of Ownership base their claims on formal documents issued by the state through the land registration process. These two bases of claim often conflict when land considered by customary communities as ulayat territory has been certified under the name of an individual or another party.

This conflict can be analyzed using the theory of legal certainty. Legal certainty requires every legal subject to clearly understand their rights and obligations and to receive protection for rights recognized by law. In land law, legal certainty is realized through land registration and the issuance of certificates. A certificate functions as formal evidence that a parcel of land has been recorded by the state, has a rights holder, has specific boundaries, and has a particular legal status.

Government Regulation Number 24 of 1997 concerning Land Registration provides that land registration is conducted to provide legal certainty and legal protection to holders of land rights. Under this regulation, a certificate is positioned as a letter of proof of rights that serves as strong evidence regarding the physical and juridical data contained therein. This means that the holder of a Certificate of Ownership has a strong legal basis to prove their right over a parcel of land.

Nevertheless, the evidentiary strength of certificates in Indonesia's land law system is not absolute. Indonesia's land registration system does not fully adopt a positive publication system, but is more commonly understood as a negative publication system with a positive tendency. Under this system, a certificate is strong evidence, but it may still be challenged if another party can prove legal defects, administrative defects, errors in physical or juridical data, or the existence of another prior right over the land. This is where conflicts between customary land and Certificates of Ownership become highly complex.

Such conflicts may arise in several forms. First, there may be a conflict of legal subjects, where a customary community claims that the land is ulayat land, while the certificate has been issued under the name of an individual. Second, there may be a conflict over the land object, where the boundaries stated in the certificate overlap with customary territory. Third, there may be a conflict over the basis of control, where customary communities rely on hereditary occupation while certificate holders rely on administrative documents. Fourth, there may be a conflict of legitimacy, where the state formally recognizes the certificate holder, but the customary community rejects such recognition because its communal rights have been disregarded.

From the perspective of legal certainty, this conflict demonstrates that certificates may provide formal legal certainty, but not necessarily substantive legal certainty. Formal legal certainty relates to the existence of documents, records, and administrative recognition. Substantive legal certainty, however, relates to the truth of land occupation history, the validity of the process of granting rights, and justice for parties who have a legal relationship with the

land. If a certificate is issued without thoroughly examining whether the land is customary land, the certificate may create administrative certainty while potentially disregarding agrarian justice.

Another problem lies in the verification process within land registration. In practice, land registration often relies on the completeness of the applicant's documents, statements from village or sub-district officials, land measurement, and the public announcement of physical and juridical data. For land located within customary communities, such mechanisms may not be sufficient. Customary land requires broader verification, including examination of occupation history, recognition by the customary community, customary territorial boundaries, and the existence of customary institutions. If verification is conducted only administratively, customary land without formal documents can easily be treated as land that may be registered by other parties.

3. A Model of Legal Protection in Resolving Conflicts between Customary Land and Certificates of Ownership

The resolution of conflicts between customary land and Certificates of Ownership requires a balanced model of legal protection. This analysis may be based on the theory of legal protection and the theory of agrarian justice. The theory of legal protection emphasizes that law must provide protection to parties whose rights are threatened or harmed. In this research, legal protection should not only be granted to customary communities, but also to holders of Certificates of Ownership who have acquired their rights lawfully and in good faith. Meanwhile, the theory of agrarian justice emphasizes the importance of fair control, use, and distribution of land, especially for communities that have historically maintained strong relationships with land.

Legal protection for customary land should be implemented in two forms, namely preventive protection and repressive protection. Preventive protection aims to prevent conflicts from occurring in the first place. In the context of land registration, preventive protection may be carried out through the mapping of customary territories, recognition of customary law communities, registration of ulayat land, strengthening of land databases, and mandatory verification of land history before certificates are issued. Such protection is important because many conflicts arise due to the state's lack of adequate data regarding the existence of customary land.

Strengthening the registration of ulayat land is an important step in preventive protection. Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation Number 14 of 2024 provides a legal basis for the administration and registration of ulayat land belonging to customary law communities. This regulation may serve as an instrument for recording the existence of ulayat land in the national land system so that customary land is no longer placed in a weak administrative position. However, its implementation must ensure that the registration of ulayat land does not eliminate the communal character of customary land. Ulayat land should not be forced into an individual rights scheme that may fragment the communal rights of customary communities.

In addition to the registration of ulayat land, preventive protection must also be carried out through improvements in individual land registration procedures. Land offices need to apply a higher standard of prudence when receiving applications for land registration in areas that may indicate the existence of customary land. Examination should not rely solely on the applicant's documents, but must also involve surrounding communities, customary leaders, local governments, and institutions that understand the existence of customary law communities. The announcement of physical and juridical data must also be conducted openly and made accessible to customary communities, rather than merely being treated as an administrative formality without meaningful participation.

A legal protection model must also include an effective objection mechanism. Customary communities should be given the opportunity to submit objections before a certificate is issued if the land proposed for registration forms part of customary land. This objection mechanism should be simple, accessible, and should not burden customary communities with overly formal procedures. If objections from customary communities are ignored, the issuance of certificates may potentially lead to larger disputes in the future.

Based on the analysis above, legal protection for customary land and holders of Certificates of Ownership must be constructed in a balanced manner. Certificates remain important as instruments of legal certainty, but their issuance must be ensured not to disregard the rights of customary communities. Customary land must also be respected as a communal right, but customary claims still need to be proven through a clear mechanism so as not to create legal uncertainty. An ideal national land registration system is one that is capable of bringing together legal certainty, legal pluralism, legal protection, and agrarian justice within a balanced framework.

CONCLUSION

Based on the analysis, customary land holds a recognized legal position within Indonesia's national agrarian law system, particularly through the recognition of customary law communities and ulayat rights. However, such recognition remains conditional and depends on proof of the existence of customary communities, customary territories, customary institutions, and the actual relationship between the community and the land it controls. In practice, customary land is often placed in a vulnerable position because the national land registration system tends to emphasize written evidence, administrative data, and individual ownership, whereas customary land control is generally based on historical occupation, communal recognition, natural boundaries, and customary norms that continue to live within society.

Conflicts between customary land and Certificates of Ownership arise from different legal bases of land claims. Customary communities base their rights on hereditary occupation and social legitimacy under customary law, while holders of Certificates of Ownership rely on formal evidence issued by the state through the land registration process. Although a certificate has the status of strong evidence, its legal force is not absolute if its issuance contains legal defects, administrative defects, or disregards pre-existing rights of other parties, including the rights of customary communities. This indicates that legal certainty in land registration cannot be assessed solely from the existence of a certificate, but must also take into account the accuracy of land occupation history and justice for the parties concerned.

The national land registration system still faces weaknesses in accommodating the communal character of customary land. Customary land that has not been mapped, registered, or formally recognized by the government often remains invisible within land administration. This condition creates opportunities for the issuance of Certificates of Ownership over land that is socially and historically recognized as customary land. Therefore, the land registration process needs to be strengthened through verification of land history, involvement of customary communities, mapping of customary territories, and recording of ulayat land within the national land administration system.

Legal protection in conflicts between customary land and Certificates of Ownership must be carried out in a balanced manner. Customary communities require protection over ulayat land as their living space and collective identity, while holders of Certificates of Ownership who have acted in good faith must also be protected to preserve legal certainty. The resolution of such conflicts should not rely solely on administrative and formalistic approaches, but must also consider social, historical, and agrarian justice dimensions. An ideal model of legal protection is one that integrates legal certainty,

recognition of legal pluralism, protection of customary communities' rights, and justice for all parties involved in land disputes.

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