

Agrarian Reform: The Legal Protection of Ulayat Land for Indigenous Peoples

A. A. Istri Eka Krisna Yanti¹, Anak Agung Istri Ari Atu Dewi¹, I Gede Pasek Pramana¹,
Anak Agung Angga Primantari¹

1. Faculty of Law, Udayana University, Denpasar, Bali, Indonesia

Coresponding author;

A. A. Istri Eka Krisna Yanti, Faculty of Law, Udayana University, Denpasar, Bali, Indonesia

Email: gungistri_krisnayanti@unud.ac.id

Abstract. This study examines the recognition and management authority of the ulayat land of indigenous peoples after agrarian reform. The 1945 Constitution of the Republic of Indonesia and the Basic Agrarian Law recognize the rights of indigenous peoples and their ulayat rights. However, due to dilemmas regarding the protection and management of ulayat land, it is necessary to assess the extent of legal certainty in the governance of ulayat land for indigenous people. This research employs a normative legal methodology, incorporating both statutory and conceptual approaches. The findings reveal that land in Indonesia is ultimately controlled by the State, as provided for in Article 33 of the 1945 Constitution. State control is not absolute ownership and may be delegated to indigenous people. Agrarian reform, as formalized through Presidential Regulation No. 62 of 2023 and Ministerial Regulation ATR/BPN No. 14 of 2024, officially recognizes indigenous peoples. This occurs by issuing Land Parcel Identification Numbers (Nomor Identifikasi Bidang Tanah) and registering ulayat land in the Ulayat Land Registry (DaftarTanah Ulayat). Based on this registration, indigenous people may manage their customary land. They can further affirm their rights by applying for Land Management Rights (Hak Pengelolaan) or Freehold Title (Hak Milik) in the name of the indigenous people to ensure legal certainty. This study concludes that agrarian law reform provides indigenous people with recognition and protection to manage ulayat land.

Keywords: agrarian reform; customary rights; indigenous people; indigenous law community; Ulayat land

INTRODUCTION

Land is a natural endowment that plays a vital role in sustaining human life. Human activities economic, social, and cultural are inherently dependent on land. Historically, from prehistory to the present, land has served as the foundation of life, functioning as a source of food production, settlement, and a marker of social identity. Legally, land is not merely an economic asset but also a fundamental human right, governed by the state under Article 33 paragraph (3) of The 1945 Constitution of the Republic of Indonesia, which stipulates that “*the earth, water, and natural resources therein are controlled by the state and utilized for the greatest prosperity of the people.*” For Indonesia’s indigenous peoples, land possesses an even deeper significance. It represents not only a source of livelihood and habitat, but also forms part of cultural identity, social structures, and spiritual values passed down through generations. The relationship between indigenous peoples and their customary lands is inherently religio-magical. This denotes a spiritual worldview in which land is perceived as sacred, giving rise to specific customary norms governing its use, with violations believed to

bring misfortune. In Indonesian law, customary land is referred to as *ulayat* land, defined as land over which a particular indigenous community holds communal rights (Ridho, 2025).

Although Indonesian law does not explicitly define *ulayat* rights, it provides strong recognition of indigenous land through constitutional and statutory provisions. Van Vollenhoven refers to *ulayat* rights as "*beschikkingsrecht*", meaning rights of territorial control, granting indigenous people the authority to regulate, manage, and engage in legal relationships concerning land use with third parties, provided such activities serve communal interests and do not conflict with national law. (Samosir, 2013). Key characteristics of *ulayat* rights include the communal nature of the subject, clearly defined territorial boundaries, a governing authority, hereditary transmission, and their inseparable connection to the indigenous legal order. Despite this recognition, the governance of *ulayat* land remains problematic. (Samosir, 2013).

The Judicial Commission of Indonesia notes that hundreds of thousands of hectares of land lack clear legal status, including *ulayat* territories. Furthermore, Indonesia has approximately 80,000 villages, of which around 50,000 are believed to contain *ulayat* land that lacks formal legal documentation. (Judicial Commission, 2023). The existence of explicit recognition of *ulayat* land is constitutionally affirmed under Article 18B paragraph (2) of The 1945 Constitution of the Republic of Indonesia, which states that "*the State recognizes and respects the units of indigenous law communities and their traditional rights insofar as they remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.*" Furthermore, Article 28I, paragraph (3), of the 1945 Constitution of the Republic of Indonesia affirms the recognition of cultural identities and the rights of indigenous peoples, which must be respected in harmony with the progress of civilization and societal development. Recognition and protection of *ulayat* land are reaffirmed in Law No. 5 of 1960 on Basic Agrarian Principles (Basic Agrarian Law), which functions as the *lex generalis* governing land administration in Indonesia. Article 3 of the Basic Agrarian Law stipulates that *ulayat* rights of indigenous law communities are acknowledged insofar as they genuinely exist and their implementation does not conflict with national interests. However, efforts to enforce land rights for indigenous peoples under *ulayat* continue to face various regulatory and technical obstacles.

The government has sought to address these issues through agrarian reform. Agrarian Reform is defined as "*the restructuring of land tenure, ownership, use, and utilization in a more equitable manner through Asset Structuring accompanied by Access Structuring for the welfare of the Indonesian people*" as regulated in Presidential Regulation No. 86 of 2018 concerning Agrarian Reform (Presidential Regulation 86/2018). Its primary objective is to reduce disparities in land control and ownership to achieve justice and address agrarian disputes and conflicts. Fundamentally, agrarian reform formulates programs aimed at eradicating poverty, improving welfare through national food self-sufficiency, increasing land productivity, and providing recognition of land ownership, whether private, state, or communal, in ways that support societal needs (Sulistyaningsih, 2021). Six years after the implementation of Presidential Regulation 86/2018, the regulation was deemed insufficient to address society's need for renewed agrarian laws and was subsequently revoked by Presidential Regulation No. 62 of 2023 concerning the Acceleration of Agrarian Reform (Presidential Regulation 62/2023).

Following the issuance of the accelerated agrarian reform policy, indigenous peoples were formally designated as legal subjects. The administration of *ulayat* land and communal land became a core priority of agrarian reform. However, agrarian reform does not automatically provide indigenous peoples with accessible mechanisms to defend their *ulayat* land. Various obstacles persist, including the absence of comprehensive customary territorial maps and the lack of formal determination of indigenous community status. The absence of formal recognition of *ulayat* land increases the potential for agrarian conflicts, evictions, and the marginalization of indigenous peoples, particularly when customary territories overlap

with state forest areas or strategic development projects. Recognition of *ulayat* land rights for indigenous peoples fulfills the Constitution's guarantee of social justice, provided that the existence of such communities can be proven.

Debates concerning *ulayat* land tenure among indigenous law communities have also been explored in previous studies. I Gusti Nyoman Guntur, in his research titled *"Recognition of Indigenous Peoples' Rights to Ulayat Land: An Analysis of the Relationship between National Law and Customary Law,"* examined the diversity of formal recognition of *ulayat* land control across several regions, including Central Kalimantan, Banten, West Sumatra, and Bali. (Guntur, 2023). His findings indicate that these regions have enacted local regulations recognizing *ulayat* land ownership in various administrative forms. This diversity demonstrates the absence of uniform legal certainty regarding the recognition of *ulayat* land rights for indigenous communities. Another study, conducted by Damianus Krismantoro and titled *"Recognition of Indigenous Peoples' Rights to Ulayat Land: An Analysis of the Relationship between National Law and Customary Law,"* reveals that the issuance of land certificates for indigenous peoples by the National Land Agency (BPN) does not yet regulate mechanisms for protecting indigenous communal land (Krismantoro, 2022). This research differs from earlier studies by focusing specifically on the protection and management rights of indigenous peoples over *ulayat* land within the context of agrarian reform. Based on this background, the present study examines the legal certainty surrounding indigenous peoples' rights to *ulayat* land following agrarian reform, under the title ***"Agrarian Reform: Protection and Management of Ulayat Land of Indigenous Peoples."*** The research questions addressed in this study are as follows: (1) How is *ulayat* land of indigenous peoples recognized following agrarian law reform? (2) How is the management authority of indigenous peoples over *ulayat* land determined after agrarian law reform? This study is expected to contribute to strengthening legal certainty and enhancing indigenous peoples' position in the ownership of *ulayat* land following agrarian reform. It also aims to provide a comprehensive understanding of the scope of management authority held by indigenous peoples over their customary lands.

METHOD

The present study employs a normative legal research method. Normative legal research is a methodology that bases its analysis on applicable and relevant laws and regulations. (Benuf & Azhar, 2020). In this study, the research team focuses on analyzing legal norms and principles related to the recognition and management of *ulayat* land by indigenous peoples following agrarian law reform. This research utilizes statutory, conceptual, and historical approaches to agrarian reform. The legal material is analyzed using a descriptive-analytical technique, which aims to provide descriptions, explanations, and validations of the legal phenomena under study. (Ramdhan, 2021)

DISCUSSION

Recognition Ulayat Land of Indigenous Peoples After Agrarian Reform

Agrarian reform in Indonesia after the New Order marked a new chapter in efforts for a more inclusive, socially just agrarian system. Recognition of *ulayat* land is central to the rights of indigenous law communities and agrarian reform. Recognition is based on the belief that land carries social, cultural, and spiritual importance for indigenous peoples. This belief is reflected in Article 18B, paragraph (2), of the 1945 Constitution and the Basic Agrarian Law. These provide that the State recognizes *ulayat* rights of indigenous law communities if these rights still exist and do not contradict national law. Yet, constitutional and legal recognition has not brought legal certainty for indigenous peoples. Before reform, agrarian policy used a top-down approach. The state assumed supreme authority over land under the doctrine of the

“state’s right to control.” This led to many conflicts for indigenous peoples because of overlapping claims between customary territories and state forests, plantations, or development projects. These conflicts led civil society movements and indigenous organizations to call for a more participatory and equitable agrarian legal framework.

In Presidential Regulation No. 86 of 2018, the State affirmed that state land is land not burdened by rights, as stipulated under Article 16 of the Basic Agrarian Law, including *ulayat* rights. This recognition establishes that *ulayat* land does not constitute state land. However, within the framework of asset restructuring under agrarian reform, the regulation does not explicitly designate indigenous law communities as legal subjects entitled to benefit from agrarian reform programs. Article 12 of Presidential Regulation No. 86 of 2018 stipulates that the subjects of agrarian reform consist of: “(i) Individuals; (ii) Community groups holding Joint Ownership Rights; or (iii) Legal entities.” Joint Ownership Rights under the regulation refer to “ownership rights granted to a community group residing within a particular area over several land parcels collectively owned, for which a single certificate is issued listing the names and respective portions of each co-owner, delivered to one co-owner upon written designation by the others.” While the concept of joint ownership reflects recognition of collective groups, it nevertheless fails to capture the essential nature of indigenous communities, particularly their religio-magical values attributed to land.

Eight years after the enactment of Presidential Regulation No. 86 of 2018, the government issued Presidential Regulation No. 62 of 2023 to accelerate agrarian reform, thereby revoking that regulation. Presidential Regulation No. 62 of 2023 not only accelerates the execution of agrarian reform programs but also strengthens the legal standing of indigenous law communities by explicitly recognizing them as legal subjects. The status of indigenous peoples as legal subjects within agrarian reform is defined through several elements set out in the regulation, namely:

Indonesian citizens possessing distinctive cultural characteristics;

Living collectively and harmoniously in accordance with their customary law;

Having ties to ancestral lineage and/or shared territorial residence;

Maintaining strong connections to land and the natural environment;

Possessing a system of values that shapes economic, political, social, cultural, and legal institutions, and utilizing a particular territory across generations.

Asset structuring within agrarian reform consists of land redistribution and asset legalization. Land redistribution is the government’s effort to allocate and/or grant land rights derived from Agrarian Reform Objects, commonly referred to as TORA. (Widowati, A.R., 2025). Asset legalization, meanwhile, constitutes the process of first-time land registration and data maintenance as part of agrarian reform implementation. Under Article 33 of Presidential Regulation No. 62 of 2023, asset legalization includes the issuance of land ownership certificates for the public, certification of transmigration land, and the administration of *ulayat* land for indigenous communities. For indigenous communities, asset legalization is carried out through surveying, mapping, and registration of *ulayat* land in the land registry, accompanied by a Land Parcel Identification Number (Nomor Identifikasi Bidang/NIB). However, Presidential Regulation No. 62 of 2023 does not sufficiently clarify the form of legal recognition granted to indigenous communities, unlike the asset legalization process for individuals and transmigrants, which results in the issuance of ownership certificates. As a result, the regulation is considered inadequate in providing legal certainty for indigenous peoples.

Legal certainty in the land sector, especially in land registration, is established when the process ends with a land certificate. This certificate provides the holder with legal protection and certainty regarding their land rights (Murni, C.S., and Sulaiman, S., 2022). This aligns with Article 19 of the Basic Agrarian Law, which requires a nationwide land registration system,

called the *rechtkadaster*, to guarantee legal certainty. In Indonesia, certificates are the main and strongest proof of land ownership (Rajab, Turisno & Lumbanraja, 2020). However, asset legalization under agrarian reform results only in the issuance of a Land Parcel Identification Number (Nomor Induk Bidang/NIB) in the land registry. The Land Parcel Identification Number provides spatial identification of a parcel, but does not have the same legal certainty or evidentiary value as a certificate. It is assigned to each land parcel with formally established boundaries, whether through systematic or sporadic registration, and is recorded in the Minutes of Juridical Data Investigation and Boundary Determination (Sagoni, Saputra & Nur, 2023). Simply put, the Land Parcel Identification Number is a unique identifier recorded on cadastral maps. However, this recording does not automatically provide recognition equal to a Land Certificate for indigenous law communities regarding that land.

Ministerial Regulation of ATR/BPN No. 14 of 2024 addresses the Administration of Land Affairs and Registration of *Ulayat* Land for Indigenous Law Communities (Ministerial Regulation ATR/BPN No. 14/2024). This regulation details how to document and register *ulayat* land for indigenous communities. With this regulation, indigenous peoples can convert *ulayat* land recorded in the registry into Land Management Rights (Hak Pengelolaan / HPL) or Freehold Title (Hak Milik) in the community's name. Land rights can be transferred through two processes: legal acts and legal events. Transfer by legal acts involves intentional actions such as sale, purchase, exchange, grant, capital contribution to a company, or division of jointly owned land (Amir, 2019). Article 15 of the regulation lets indigenous law communities apply for Land Management Rights (HPL) to the Minister of ATR/BPN. The application process for Land Management Rights includes: 1. Submitting the application; 2. Collecting and examining land data; 3. Getting the administrative decision, and 4. Receiving proof of rights. Basic Agrarian Law remains the principal legal framework of Indonesia's national land law, as it governs nearly all land rights listed under Article 16, except for the Land Management Rights (Dharsana, Budiarta & Setiasa, 2023).

Indigenous people may choose to apply for Land Management Rights over *ulayat* land. Article 16 of Ministerial Regulation ATR/BPN No. 14/2024 states that *ulayat* land remains under indigenous communal rights if no application is made. Yet, gaining Land Management Rights allows indigenous communities, as right holders, to enter into agreements with third parties in accordance with statutory regulations. Managing *ulayat* land through Land Management Rights grants a portion of the State's land control rights to indigenous law communities, government bodies, or other lawful entities. This helps optimize land use for society's broader welfare.

Legalization of assets through Land Management Rights provides recognition and protection for *ulayat* land; however, because Land Management Rights derive from the State's administrative delegation of authority, their existence is highly dependent on government policy. This administrative nature creates potential legal uncertainty for indigenous communities. Consequently, the State provides an alternative mechanism: indigenous peoples may apply to convert *ulayat* land listed in the *Ulayat* Land Registry into a Freehold Title. Applications for the conversion of *ulayat* land into Freehold Title under the name of an indigenous law community are regulated in Article 17 of Ministerial Regulation ATR/BPN No. 14/2024. The conversion process may be undertaken through the following stages:

1. Submission of the application;
2. Collection and examination of juridical data;
3. Public announcement; and
4. Issuance of proof of rights.

Based on these stages, Article 27 of Ministerial Regulation ATR/BPN No. 14 of 2024 stipulates that Freehold Title over *ulayat* land belonging to indigenous people shall be issued

in the form of a land certificate, which includes the name of the traditional leader representing the indigenous community along with his or her customary position. The inclusion of the traditional leader's name must be based on a written agreement of the members of the indigenous law community. The issuance of a Freehold Title certificate for *ulayat* land signifies the strongest and fullest form of land ownership in a juridical sense, providing the highest degree of legal certainty for indigenous peoples. A Freehold Title certificate grants indigenous people the legal capacity to undertake legal acts involving their land and offers full, authentic protection of their land rights.

Recognition of *ulayat* land rights of indigenous peoples after agrarian law reform implicitly provides substantial legal protection. However, both Freehold Title and Land Management Rights are not absolute, as they remain subject to the principle of the social function of land as regulated in Article 6 of the Basic Agrarian Law. Under this principle, the State retains ultimate authority to regulate, limit, or even revoke land rights for public purposes pursuant to Law No. 2 of 2012 concerning Land Acquisition for Public Interest, which affirms that all land rights carry a social function. This means that although holders of Freehold Title possess full legal authority over their land, its use must still consider broader societal interests and environmental sustainability. The State maintains its authority to regulate, restrict, and revoke land rights in the public interest.

Management Authority of Indigenous peoples Over Ulayat Land After Agrarian Law Reform

A land right is a right that grants its holder the authority to use or derive benefits from the land to which the right is attached (Wardoyo, 2024). Indonesia's agrarian legal system, the terms *land control* (*penguasaan tanah*) and *land management authority* (*kewenangan mengelola tanah*) are often used interchangeably, yet they encompass different scopes and legal consequences. Both concepts derive from the State's Right to Control as regulated under Article 2 of the Basic Agrarian Law. The State's Right to Control places the State as the highest authority over land, water, and airspace, with the primary purpose of achieving equitable welfare for the people. This right does not mean that the State owns all land in Indonesia; rather, the State acts as the governing organization of the people's collective authority. Under Article 2, paragraph (2) of the UUPA, the State may delegate aspects of land control to regional governments, state institutions, and indigenous law communities. The land rights whose control may be delegated to indigenous peoples include Land Management Rights and Freehold Title. Control over *ulayat* land is collective, meaning it is owned jointly by all members of the indigenous community rather than by individuals. In practice, this collective control comprises three main elements:

Regulatory authority: The authority of indigenous people to determine the designation and land-use arrangements of *ulayat* land;

Utilization authority: The right of community members to use *ulayat* land to meet their livelihood needs;

Defensive authority: The right of indigenous people to refuse the use of *ulayat* land by external parties without their permission.

The recognition granted by the State through Land Management Rights and Freehold Title fundamentally differs in nature. The early development of Land Management Rights can be traced back to the Dutch colonial period, which introduced the term *in beheer* or *beheersrecht*, meaning "the right to administer or control" (Budiastanti, 2023). Regulation of Land Management Rights is only implicitly referenced in the Basic Agrarian Law, meaning that its specific legal structure is not explicitly regulated, although the General Elucidation of the Land Management Rights, Section II paragraph 2, provides: "*The State may grant such land to an individual or legal entity with a specific right according to its purpose and designation, such as: Freehold Title, Building Use Rights, or Use Rights, and may grant it to a governing body*

(Departments, Agencies, or Autonomous Regions) to be used for the implementation of their respective duties."

Based on this clarification, the State may grant communities the right to manage or use state land. Land Management Rights are regulated under Government Regulation No. 18 of 2021 on Land Management Rights, Land Rights, Apartment Units, and Land Registration (Government Regulation 18/2021), which defines Land Management Rights as a State's right to control land, the exercise of which is partially delegated to the holder of Land Management Rights. Article 7 of Government Regulation 18/2021 further provides that indigenous law communities, as Land Management Rights holders, are granted the authority to:

Prepare plans for land allocation, use, and utilization in accordance with spatial planning.

Use and utilize all or part of the Land Management Right either for their own purposes or in cooperation with third parties; and

Determine tariffs and/or annual mandatory payments from third parties in accordance with agreements.

Given their nature, indigenous peoples holding Land Management Rights over *ulayat* land may use the land and enter into agreements with third parties, provided that such arrangements are preceded by a formal contract. Maria S.W. Sumardjono explains that the legal relationship underlying the holder of HPL granting land rights to a third party is set forth in a Land Use Agreement (*Surat Perjanjian Penggunaan Tanah / SPPT*). In practice, the SPPT may be referred to by other names, such as an agreement for the transfer, use, or administration of land rights (Ardani & Dewi, 2020). In contrast to Land Management Rights the management authority of indigenous peoples under Freehold Title is significantly broader. As the strongest, fullest, and hereditary land right, Freehold Title grants its holder the legal capacity to undertake legal acts concerning the land. This right is considered the oldest and strongest form of tenure because it is not limited by a specific duration and constitutes the primary source from which other land rights derive (Wardoyo, 2024). Within Indonesia's national agrarian legal system, a Freehold Title certificate holds a distinguished status as the strongest and fullest evidence of land ownership. Under Article 20, paragraph (1) of the Basic Agrarian Law, Freehold Title is defined as a hereditary, strongest, and fullest right that an individual may possess over land. This formulation indicates that Freehold Title offers the highest degree of legal authority to its holder among land rights, such as the Right of Cultivation (*Hak Guna Usaha*), the Right to Build (*Hak Guna Bangunan*), and the Right of Use (*Hak Pakai*). Freehold Title is not subject to a time limit and may be owned only by Indonesian citizens, making it the most legitimate and authoritative form of land right within Indonesia's land tenure structure.

A Freehold Title Certificate constitute authentic legal proof of land ownership issued by the government through the National Land Agency after land registration is conducted in accordance with Article 19 paragraph (2)(c) of the Basic Agrarian Law and Government Regulation No. 24 of 1997 on Land Registration. Under Article 32, paragraph (1), of the regulation, a certificate serves as valid proof of right and functions as strong evidence of the physical and juridical data contained therein, provided such data correspond with the records in the land book and the cadastral map. Accordingly, a Freehold Title Certificate is not merely an administrative document but a legal instrument possessing *prima facie* evidentiary strength—meaning that it is presumed correct unless proven otherwise through a final and binding court decision. A land rights certificate constitutes strong legal evidence unless rebutted with other valid evidence. This principle demonstrates that Indonesia's land registration system adopts a negative publication system with positive elements, meaning the State does not absolutely guarantee the accuracy of the data contained in the certificate, but it does provide robust legal protection to good-faith certificate holders. Consequently, a holder of a Freehold Title certificate stands in the strongest legal position compared to parties who possess only physical control of land or unregistered documents.

CONCLUSION

Following agrarian reform through Presidential Regulation No. 62 of 2023 and Ministerial Regulation ATR/BPN No. 14 of 2024, a stronger framework for recognizing the status of *ulayat* land belonging to indigenous law communities has been established. Indigenous peoples are formally designated as legal subjects of agrarian reform, and their *ulayat* rights are acknowledged through the issuance of Land Parcel Identification Numbers (NIB) and the registration of such lands in the *Ulayat* Land Registry for administrative management. The State also provides indigenous peoples with the opportunity to affirm their *ulayat* rights by applying for Land Management Rights (HPL) or Freehold Title (Hak Milik), which may be certificated under the name of the indigenous community. Based on this recognition, indigenous law communities possess the authority to manage and undertake legal acts concerning their *ulayat* land, in accordance with the scope of the rights they choose to assert. The affirmation of recognition through certificates of HPL or Freehold Title positions indigenous peoples as primary land managers grounded in the *religio-magical* values inherent in *ulayat* land. Therefore, the protection and management of *ulayat* land following agrarian reform not only serve as instruments of agrarian justice but also reflect the State's commitment to the social, ecological, and cultural sustainability of indigenous peoples in Indonesia.

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