

## Individualization of Communal Rights: Implications of Changes in Customary Marriage Structures for Customary Land Ownership

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### Abstract

This study examines the impact of changes in customary marriage structures on the individualisation of customary land rights, from communal to individual ownership, and its implications for the governance and protection of customary land in Indonesia's indigenous communities. Using normative legal methods, the study finds that modernisation and land certification policies encourage the fragmentation of collective rights into private rights, thereby posing risks to weakened social solidarity, ownership conflicts, and increased vulnerability to land exploitation. Although providing administrative legal certainty, individualisation has not been able to optimally accommodate customary values and the social functions of customary land. Therefore, synergy between customary law and national law is needed to create fair and sustainable agrarian regulations, ensuring the protection of customary rights while adapting to the socio-cultural dynamics of indigenous communities.

**Keywords** : Communal Rights; Customary Marriage; Customary Land

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### Introduction

Along with the development of the marriage system and social transformation, fundamental changes occurred in customary land ownership relations, shifting from a previously communal nature to individualization.<sup>1</sup> This phenomenon created a dilemma between the principle of kinship in indigenous communities and the logic of privatizing land rights introduced by the state through positive law.

Customary land is the basis of the economic, social, and spiritual existence of indigenous communities.<sup>2</sup> Customary land rights are not merely usage rights, but rather a form of collective management passed down across generations and grounded in the customary values prevalent within the

community.<sup>3</sup> In practice, customary land is managed collectively, but through specific mechanisms, individuals or families can also acquire limited management rights based on kinship and community participation.<sup>4</sup> However, the emergence of individualization demonstrates a shift from collective values to private ownership, typically manifested through land registration and national agrarian law policies.<sup>5,6</sup>

Traditional marriage structures in Indonesian society are highly diverse, encompassing matrilineal, patrilineal, and

<sup>1</sup>Nasir, G. A., Khudzaifah Dimiyati, S. H., & Absori, S. H. (2021). *Penguasaan Hak Ulayat: Studi Perubahan Nilai Penguasaan Tanah Hak Ulayat di Nagari Kayu Tanam-Sumatera Barat* (Doctoral dissertation, Universitas Muhammadiyah Surakarta).

<sup>2</sup>Syahril, Muh. A. F. (2024). *Hukum Adat: Teori, dan Dinamika Perkembangannya*. Eureka Media Aksara

<sup>3</sup>Pransisto, Johamran, and Muh. A. F. Syahril. (2025). *Kompendium Hukum: Perlindungan Sertipikat Tanah dari Gugatan Administratif*. Eureka Media Aksara.

<sup>4</sup>Suwitra, I. M. (2020). Eksistensi tanah adat dan masalahnya terhadap penguatan desa adat di bali. *Wicaksana: Jurnal Lingkungan dan Pembangunan*, 4(1), 31-44.

<sup>5</sup>Nababan, N. (2022). Eksistensi Hak Ulayat Atas Tanah di Desa Saribu Asih, Kecamatan Hatonduhan, Kabupaten Simalungun. *Journal Law of Deli Sumatera*, 1(2).

<sup>6</sup>Suwitra, I. M. (2010). Dampak Konversi Dalam UUPA Terhadap Status Tanah Adat di Bali. *Jurnal Hukum Ius Quia Iustum*, 17(1), 103-118.

bilateral systems. Changes in marriage patterns, whether due to economic factors, education, or interethnic interactions, have impacted inheritance systems and customary land ownership. In some communities, the practice of intermarriage outside the clan or between tribes has even catalyzed the fragmentation of communal rights into individual rights. This is increasingly evident in societies that have begun to adopt national legal systems that favor individual property rights.

The process of individualization often creates protracted disputes within indigenous communities due to the conflict between collective customary law and state law, which prioritizes individual rights. The greatest concern is the displaced authority of customary leaders as guardians of collective rights and the weakening of communal solidarity due to the penetration of positive law, which places individuals above the community, as reflected in the practice of individual land registration.<sup>78</sup> A broader impact of this process is the increased potential for agrarian conflict at the local level due to unclear land ownership status.

Economically, the transformation of communal rights into private rights is usually driven by the expanding economic needs of households within indigenous communities. Customary land, previously managed collectively, is now often used as collateral for debt or even traded individually, supported by formal legal documents from the state.<sup>9</sup> This process, ostensibly driven by economic necessity, risks violating the principles of deliberation and communal justice that underpin customary governance.

From a legal and policy perspective,

although the Basic Agrarian Law (UUPA) and several implementing regulations, such as Ministerial Regulation No. 9/2015, recognize customary land, its provisions remain weak in protecting the communal rights of indigenous communities.<sup>10</sup> Implementation on the ground is often difficult due to clashes between state and industry interests, where land certification and legalization prioritize administrative formalities over local values inherent in indigenous communities.

Facing this complexity, efforts are needed to strengthen customary legal systems and institutions to prevent the erosion of communal rights due to individualization driven by new marriage structures and the expansion of state authority. Actual research into the relationship between marriage structures, individualization of land rights, and their implications for indigenous communities is crucial for designing equitable agrarian policies that ensure local socio-cultural sustainability.<sup>11</sup>

The urgency of this research lies in the urgent need to provide a more comprehensive understanding and evidence-based solutions to the dilemma between the communal rights of indigenous peoples and the individualization of customary land rights resulting from changes in customary marriage structures. Challenges such as potential social fragmentation, loss of cultural identity, and vulnerability to customary land rights demand policies capable of mediating between local values and the national legal system. By strengthening the empirical database and highlighting the concrete experiences of indigenous peoples, this research is expected to encourage the development of more responsive and contextual agrarian regulations that not only protect communal rights but are also adaptive to current social dynamics. The results of this research will be an important contribution for academics, policymakers, and indigenous communities in formulating

<sup>7</sup>Nababan, N. (2022). Eksistensi Hak Ulayat Atas Tanah di Desa Saribu Asih, Kecamatan Hatonduhan, Kabupaten Simalungun. *Journal Law of Deli Sumatera*, 1(2).

<sup>8</sup>Rahmadona, K. (2021). Analisis Hukum dan Spasial Terhadap Perubahan Tanah Hak Ulayat Kaum Kecamatan Payakumbuh Barat Kota Payakumbuh Provinsi Sumatera Barat (Doctoral dissertation, Sekolah Tinggi Pertanahan Nasional).

<sup>9</sup>Suwitra, I. M. (2010). Dampak Konversi Dalam UUPA Terhadap Status Tanah Adat di Bali. *Jurnal Hukum Ius Quia Iustum*, 17(1), 103-118.

<sup>10</sup>*Ibid*

<sup>11</sup>*Ibid*

strategic steps to ensure the sustainability of customary rights amidst the ongoing vortex of social change.

### Research methods

Normative legal research is conducted by examining legal materials, including legislation, doctrine, and court decisions relevant to the research topic.<sup>12</sup> In this approach, researchers systematically analyze and examine legal principles through literature review, without collecting data through interviews or questionnaires. Researchers use literature search techniques, including primary legal sources such as laws and court decisions, as well as secondary legal sources such as books, scientific journals, and other scholarly works that support legal arguments on the issues discussed.

The normative approach allows for comprehensive and valid research without involving empirical data collection techniques. Researchers can explore argumentation patterns, norm development, and even in-depth legal critique through a review of available literature and legal documents. Thus, normative legal research does not rely on field data but focuses on the interpretation and analysis of legal texts and supporting literature logically and systematically.<sup>13</sup>

### Analysis and Discussion

#### Changes in Customary Marriage Structures and Their Impact on the Individualization of Customary Land Rights

Changes in customary marriage structures within Indonesia's indigenous communities, coupled with modernization and globalization, have impacted customary land ownership systems, which are passed down through generations.<sup>14</sup> Initially, customary

marriage structures, such as matrilineal, patrilineal, and bilateral, regulated the distribution of customary land rights through lineage, uniting the land under the authority of a family or clan and managing it collectively according to the principle of deliberation. However, the transformation of values, the penetration of education, and increasing social mobility have gradually shifted the role of customary institutions in controlling access to and inheritance of customary land rights.

Intermarriage patterns between clans, tribes, or even between indigenous people and outsiders create space for negotiation and redefinition of customary land rights. Inheritance mechanisms that were previously strictly based on customary law, such as those granted only to women in matrilineal systems, have now become more flexible, even adapting to nuclear family structures, as in urban cultures. This phenomenon facilitates the individualization of land rights, transforming communal rights into legally registered individual rights.

This change is also closely related to the implementation of the principles of legality and legal certainty adopted by the state. The principle of legality requires the administration of valid proof of rights, thus encouraging many indigenous communities to change the status of customary land through individual certification. Government programs such as PTSL (Complete Land Acquisition) incentivize this process, shifting public awareness from collective ownership to a private orientation for stronger legal protection.<sup>15</sup> While this accelerates access to the modern economy, it also raises concerns about the erosion of communal solidarity and the role of customary law, which prioritizes deliberation and consensus.

The implications of changes in marriage structures for the individualization of land rights are also evident in the widespread practice of buying, selling, and

<sup>12</sup>Juliardi, B., Runtuwun, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). Metode penelitian hukum. CV. Gita Lentera.

<sup>13</sup> Syarif, M., Ramadhani, R., Graha, M. A. W., Yanuaria, T., Muhtar, M. H., Asmah, N., ... & Jannah, M. (2024). Metode Penelitian Hukum

<sup>14</sup>Syahril, Muh. A. F. (2024). Hukum Adat: Teori, dan Dinamika Perkembangannya. Eureka Media Aksara

<sup>15</sup>Ambarwati, A. (2021). Pendaftaran Tanah Sistematis Lengkap, Efektifkah?. *Dinamika Hukum*, 22(1), 1-10.

mortgaging customary land by individuals, something that was previously strictly taboo. Economic needs and the need for legal certainty from the state are the primary reasons why indigenous communities are willing to adapt their customary principles. In the cases of Minangkabau and East Nusa Tenggara, for example, the individualization of customary rights occurs through internal family agreements recognized by the state, both through inheritance distribution and the transfer of rights through inter-clan marriages.

The principle of justice in law is also tested in this process. Amidst structural transformation, certain groups often lose access to customary land, particularly women or those who leave the community after marriage. This creates a substantive justice gap, where communal rights that should protect all community members become fragmented and are no longer enjoyed collectively. This unequal distribution of rights demonstrates a conflict between the concept of individual justice driven by state law and social justice according to customary law.

Social property rights theory asserts that land serves not only as an individual asset but also as the foundation of a community's economy and cultural identity. In the context of customary land, the process of individualization sometimes contradicts the principle of social function, as privatized land is more easily transferred or traded outside the community.<sup>16</sup> This weakens the land's function as a glue for social solidarity while simultaneously exposing communities to external exploitation.

The theory of living law and legal pluralism suggests that customary law is still alive and enforced at the local level, despite ongoing negotiations with national law. In reality, the power of living law comes under significant pressure when it comes into contact with the state's land administration system, which emphasizes individualization.

<sup>17</sup>The process of registering land parcels in individual names often contradicts customary deliberation norms, due to the lack of space for collectives to articulate their rights within the positive legal system.

The individualization of customary land due to changes in marriage patterns increases the potential for internal conflict between family members over ownership boundaries and management rights.<sup>18</sup> As customary law resolution mechanisms become looser, individuals become more vulnerable to unilateral claims, which in turn undermines the social stability of indigenous communities. This situation is often accompanied by an increase in land disputes and agrarian conflicts at the local level, both among family members and between indigenous communities and outsiders.

The shift in land rights from collective to individual ownership is often driven by the need to respond to modern economic challenges, but the process rarely involves substantive strengthening of customary institutions. As a result, customary communities lose their primary economic, social, and legal safeguards. Reformulations of customary land inheritance and distribution mechanisms within changing marriage relationships often occur pragmatically, rather than based on a comprehensive reflection of the values of justice and the social function of customary law.

In-depth studies have shown that the lack of synergy between the principles of state legality and communal justice widens the gap in the protection of customary rights. The government tends to develop regulations that favor the recognition of individual rights, citing efficiency and bureaucratic simplicity. However, without recognition of the values, social functions, and living law of indigenous communities,

<sup>16</sup>Sembiring, J. (2018). *Dinamika pengaturan dan permasalahan tanah ulayat*. STPN Press.

<sup>17</sup>Badriyah, S. M. (2022). *Sistem penemuan hukum dalam masyarakat prismatic*. Sinar Grafika..

<sup>18</sup>Ahmad, M. A. H., & Wulandari, D. (2023). Analisis Yuridis Kepemilikan Ex Tanah Adat Pada Masyarakat Pamboang. *Jurnal Litigasi Amsir*, 10(3), 254-262.

legal protection for customary rights cannot be meaningfully realized, either within the realm of positive law or within the dynamics of local community life.

The boundaries between individual and communal ownership have become increasingly fluid. Amidst the individualization of land rights resulting from changes in customary marriage structures, indigenous communities face a difficult choice: maintain collective principles at the risk of being marginalized within the national legal system, or adapt to the logic of individualization, which offers administrative certainty but risks eroding solidarity, identity, and the sustainability of their communities. Analysis of this phenomenon opens up the opportunity to find equitable, contextualized agrarian regulatory solutions that accommodate Indonesia's legal plurality, rooted in the richness and dynamics of indigenous communities.

### **Implications of Individualization of Communal Rights in the Governance and Protection of Customary Land**

The implications of the individualization of communal rights are evident in the governance and protection patterns of customary land in various indigenous communities in Indonesia. This transformation process is inseparable from changes in customary marriage structures and the need for communities to adapt to modern socio-economic dynamics. When marriage structures shift, for example, intermarriage between clans or tribes, land rights that were once communally bound begin to fragment and become positioned as individual rights. This situation triggers the erosion of the customary land's function as a collective instrument of customary law communities, shifting toward individual ownership.<sup>1920</sup>

In governance, individualization introduced new forms of ownership, where community members began registering portions of customary land in individual names. This mechanism was often facilitated by government programs, such as the acceleration of Complete Systematic Land Registration (PTSL), which provided administrative incentives to individuals, not communities. In practice, land governance shifted from a pattern of community deliberation and consensus to semi-private decisions within the nuclear family or even individuals, especially when there were demands for inheritance distribution.<sup>2122</sup>

The protection of customary land is also threatened by this shift. Based on Ter Haar's theory of dualism in land ownership, a flexible relationship emerges between communal and individual rights: the stronger individual rights, the weaker customary rights, and vice versa. In the case of East Sumba, the customary rights of indigenous communities were uprooted when land was converted and managed by private companies, whose legality rested on individual certificates, not communal recognition. The absence of concrete legal protection, particularly at the regional level, exacerbates this situation, as national laws tend to favor individual recognition over collective mechanisms.

Other cases in Minangkabau and West Sumatra demonstrate how the social and religious functions of customary land are beginning to be replaced by economic ones. Land that was previously non-transferable outside the community is now being traded to external parties through individual inheritance schemes, such as the practice of "ganggam bauntuak," which legitimizes private ownership with family blessing.<sup>23</sup> As a result, more and more communal land is escaping the control of

<sup>19</sup>Pratama, F. S. (2023). MELANGUN, Sejarah dan Pemberdayaan Suku Anak Dalam Mentawak. Guepedia.

<sup>20</sup>Suwitra, I. M. (2020). Eksistensi tanah adat dan masalahnya terhadap penguatan desa adat di bali. Wicaksana: Jurnal Lingkungan dan Pembangunan, 4(1), 31-44.

<sup>21</sup>*Op.vit*

<sup>22</sup>*Op.cit*

<sup>23</sup>Putri, M. F. (2020). Pengelolaan hak ulayat sebagai hak konstitusional masyarakat hukum adat dalam pemanfaatan sumber daya air di Nagari Sungai Tanang Kabupaten Agam (Doctoral dissertation, Universitas Islam Riau).



the nagari (village) or tribal government, and ownership status becomes ambiguous between customary law and the state.<sup>24</sup>

Another significant implication is the emergence of internal and external conflicts within indigenous communities. Fragmentation of land rights leads to unclear boundaries, conflicting claims, and even disputes between family members. Conflicts often involve companies, investors, or local governments, which use individual ownership documents to legitimize access to former customary land belonging to indigenous communities.<sup>25</sup>

On a governance level, individualization also weakens the position of customary institutions in managing and protecting customary land. The authority of customary leaders or customary institutions is often ignored when land registration processes are conducted without comprehensive deliberation. This pattern erodes communal solidarity and creates opportunities for transactions outside the consent of customary law communities.<sup>26</sup>

Eugen Ehrlich's theory of living law is relevant to contextualizing this phenomenon: living law in indigenous communities continues to operate and forms the basis for land management, but is often overridden by state law, which places greater emphasis on individual administrative recognition.<sup>27</sup> The sustainability of traditional governance is increasingly threatened when individual allocations are made as a form of adaptation or household economic competition amidst land limitations.

The existence of customary land also faces complex challenges between national and local regulations. Although Article 18B

of the 1945 Constitution and the Basic Agrarian Law recognize the customary rights of indigenous communities, legal protection is minimal in many regions. Many regions lack adequate implementing regulations to safeguard the collective interests of indigenous communities, making customary land easily acquired by individuals, then used as collateral or sold to external investors.

The transformation of customary rights into individual ownership also impacts environmental aspects and the sustainability of indigenous ecosystems. The process of individualization often leads to land exploitation without strong community control, threatening the traditional conservation functions of customary lands, protected forests, or shared water sources due to the separation of management rights.<sup>28</sup>

In some extreme cases, uncontrolled individualization has led to the breakdown of the social fabric of indigenous communities, with younger generations preferring to sell their inherited customary land for consumption or urbanization. This situation creates a disparity between community members who still practice customary law and those who choose a pragmatic, individualistic path for the sake of certainty and ease of land rights bureaucracy.

It is undeniable that economic needs and external pressures are the primary drivers of the individualization of land rights in indigenous communities. As land values rise, particularly in economically promising areas like West Sumatra, East Nusa Tenggara, and Papua, communal rights are increasingly being squeezed by market logic and competition among individuals for access to new land.

## Conclusion

Changes in customary marriage structures in Indonesia have driven a shift in customary land rights from communal to

<sup>24</sup>Pratama, F. S. (2023). MELANGUN, Sejarah dan Pemberdayaan Suku Anak Dalam Mentawak. Guepedia.

<sup>25</sup>Rohi, G. A., Wijaya, I. K. K. A., & Suryani, L. P. (2023). Perlindungan Hukum Terhadap Hak Milik Atas Tanah Ulayat Desa Adat (Studi Kasus di Kecamatan Umalulu Kabupaten Sumba Timur). Jurnal Preferensi Hukum, 4(1), 18-22

<sup>26</sup>*Op.cit*

<sup>27</sup>Hasbi, M. H., & Busri Harun, M. H. (2017). Monograf Hukum Syariah Dalam Penyelesaian Sengketa Bank Syariah. La Tansa Mashiro Publisher.

<sup>28</sup>Pratama, F. S. (2023). MELANGUN, Sejarah dan Pemberdayaan Suku Anak Dalam Mentawak. Guepedia.

individual ownership, influenced by modernization and the implementation of the principle of legality in national law, which requires administrative certainty through personal certification. While providing legal protection and economic access, individualization weakens communal solidarity and the role of customary institutions, and increases conflict and inequality, particularly for vulnerable groups such as women. This shift deepens the gap between customary law and state law in protecting indigenous peoples' rights.

The impact of individualization is also felt in the governance and protection of customary land, where fragmented land is more vulnerable to transfer to outside parties, threatening the social function and sustainability of indigenous communities. Economic needs and external pressures accelerate this process without strengthening customary institutions, resulting in the breakdown of social and cultural structures. Therefore, synergy between customary law and national law is necessary to ensure the fair and sustainable protection of customary land, in line with the dynamics of pluralistic law in Indonesia.

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**Conflict of Interest Statement:**

The author declares that the research was conducted without any commercial or financial relationships that could potentially create a conflict of interest.

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