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Protection of *Ulayat* Rights of Customary Law Communities in the Development of Food, Energy, and Water Self-Sufficiency Areas in South Papua

Muslim Lobubun^{1*}

^{1*} Institut Cinta Tanah Air, Indonesian

Correspondence

Muslim Lobubun, Institut Cinta Tanah Air Indonesia. JL. Petrus Kafiari Kel. Brambaken, Kec. Samofa, Kab. Biak Numfor, email: m.lobubun@gmail.com

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Original Article

Abstract

The development of Food, Energy, and Water Self-Sufficiency Areas in South Papua may conflict with the *ulayat* rights of customary law communities that continue to exist and have been exercised across generations. This study aims to analyze the protection of *ulayat* rights and to formulate an appropriate legal protection model. It employs a normative legal research method using statutory, conceptual, and historical approaches. The findings indicate that *ulayat* rights are recognized under the Constitution, agrarian law, and Papua's Special Autonomy framework, but their implementation continues to face challenges concerning territorial recognition, community consent, land use, and project oversight. Legal protection must therefore operate from the planning stage through restoration by incorporating the mapping of customary territories, community consent, legal certainty regarding land use, benefit-sharing, monitoring, dispute resolution, and environmental restoration. This model is necessary to ensure that development can proceed without severing the relationship between customary law communities and the land and natural resources that constitute their living territories.

Keywords: ulayat rights; customary law communities; South Papua; legal protection.

Abstrak

Pembangunan Kawasan Swasembada Pangan, Energi, dan Air di Papua Selatan berpotensi berhadapan dengan hak ulayat masyarakat hukum adat yang masih hidup dan dijalankan secara turun-temurun. Penelitian ini bertujuan menganalisis perlindungan hak ulayat serta merumuskan model perlindungan hukum yang sesuai. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan historis. Hasil penelitian menunjukkan bahwa hak ulayat telah diakui dalam konstitusi, hukum agraria, dan Otonomi Khusus Papua, tetapi pelaksanaannya masih menghadapi persoalan dalam pengakuan wilayah, persetujuan masyarakat, penggunaan tanah, dan pengawasan proyek. Oleh karena itu, perlindungan hukum perlu dilakukan sejak tahap perencanaan hingga pemulihan melalui pemetaan wilayah adat, persetujuan masyarakat, kepastian penggunaan tanah, pembagian manfaat, pengawasan, penyelesaian sengketa, dan pemulihan lingkungan. Model ini diperlukan agar pembangunan tetap berjalan tanpa menghilangkan hubungan masyarakat adat dengan tanah dan sumber daya alam sebagai ruang hidupnya.

Kata kunci: hak ulayat; masyarakat hukum adat; Papua Selatan; perlindungan hukum.

1. INTRODUCTION

Self-reliance in the food, energy, and water sectors is a strategic priority under Indonesia's 2025–2029 National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional RPJMN*). The primary objective of this policy is to strengthen national self-reliance in meeting citizens' basic needs. This objective is pursued by maximizing domestic production, diversifying energy sources, and safeguarding the sustainability of water resources. Pursuant to Presidential Regulation No. 12 of 2025, the RPJMN serves as the legal framework for the formulation of work programs at the ministerial, agency, and regional government levels, including programs that operate across sectors and regions.¹ The government has also begun implementing an integrated approach to the management of these three sectors. This approach reflects the recognition that policies adopted in one sector may directly affect the availability of resources in the others.

South Papua is one of the principal target regions under the national development agenda. Merauke Regency encompasses an extensive landscape and possesses geographical conditions considered suitable for the development of agriculture, livestock farming, plantations, and green energy. Development initiatives in the region have now expanded beyond increasing rice production to include sugarcane cultivation for sugar supply and the bioethanol industry. The South Papua Provincial Government has designated several priority areas, including the food production center in Wanam and areas allocated for sugarcane-based bioethanol development. These policies position South Papua as a major commodity-producing region intended to meet both regional demand and national production targets.²

The development of integrated food, energy, and water production areas necessarily requires land on a substantial scale. Capital-intensive agricultural development requires not only land for cultivation, but also supporting infrastructure, including roads, storage facilities, irrigation networks, worker housing, and processing plants. Bioethanol production similarly requires plantation areas, processing facilities, water supplies, and distribution infrastructure. Because these activities operate within the same territorial space, the resulting issues cannot be understood solely as matters of agricultural technology or investment. They also raise fundamental legal questions that require careful attention, including land tenure status, the legal validity of permits issued by local authorities, legal relations with customary law communities holding *ulayat* rights, equitable benefit-sharing, and compensation where project activities restrict community access to forests and water resources.³

Merauke is not new to large-scale agricultural development projects. This trajectory began in 2006 with the Merauke Integrated Rice Estate, which focused primarily on rice production, and continued with the Merauke Integrated Food and Energy Estate (hereinafter referred to as MIFEE) in 2010, followed by successive food-estate initiatives in later periods. These shifts in program names and policy orientation indicate that land use in Merauke has consistently formed part of Indonesia's

¹ Mendra Wijaya, *Perencanaan Pembangunan Daerah* (Eureka Media Aksara, 2025), 30.

² Silas Tanggu Redu and Lindon R. Pane, "Identification of Superior Commodities in the Food Crop Subsector in Merauke Regency," *AGRICOLA* 15, no. 1 (2025): 21–31, <https://doi.org/10.35724/ag.v15i1.6531>.

³ Laurens Bakker, "Social Sciences & Humanities Open Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences & Humanities Open* 8, no. 1 (2023): 100624, <https://doi.org/10.1016/j.ssaho.2023.100624>.

national food strategy across different administrations.⁴ A study by Maria Maghdalena Diana Widiastuti et al. notes that these programs generated a range of concerns relating to productivity, commodity suitability, land and water availability, and their social, cultural, economic, and environmental impacts. Merauke is considered to retain considerable potential as a food-producing region; however, its development should minimize forest clearing, protect areas that serve as sources of water and food for local communities, and give greater priority to improving the productivity of land already under use.⁵

The experience of MIFEE demonstrates that land administratively designated as available for development is not necessarily free from claims by local communities. Areas frequently characterized as reserve land, unproductive land, or land available for conversion may, in practice, constitute the living territories of customary law communities. These territories include hunting forests, sago groves, wetlands, rivers, medicinal plant areas, ancestral sites, and historically recognized clan (*marga*) boundaries. The assumption that such land has “not yet been utilized” arises from an understanding of productivity that has largely been measured in terms of the scale of commercial exploitation. Such an approach fails to recognize the fundamental role of land in sustaining the lives of customary law communities that have inhabited these territories for generations.⁶

One of the principal lessons from past large-scale agricultural programs is that ambitious production targets do not, by themselves, ensure land readiness, labor availability, technological capacity, or the social preparedness of affected communities. This was evident in the MIFEE project, which sought to integrate rice cultivation, sugarcane production, oil palm development, and livestock farming within a single development scheme. In practice, however, implementation fell considerably short of expectations. Crop productivity did not reach projected levels, while questions concerning land tenure and the rights of customary law communities received insufficient attention. This experience should inform the design of new development policies so that similar shortcomings are not repeated by measuring success primarily in terms of land area and production targets.⁷

For customary law communities in South Papua, *ulayat* land cannot be regarded merely as an economic commodity that may be freely bought and sold. Such land embodies a profound relationship among community life, reverence for ancestors, clan (*marga*) identity, and environmental continuity. This relationship gives rise to collective rights and authority to determine who may use the land, for what purposes, and within which territorial boundaries, all of which must be respected by external parties. Accordingly, an agreement concerning the use of *ulayat* land cannot be equated with an ordinary transaction involving privately owned land. The payment of monetary compensation to a

⁴ Anggalih Bayu Muh. Kamin and Reza Altamaha, “Modernisasi Tanpa Pembangunan Dalam Proyek Food Estate Di Bulungan Dan Merauke,” *BHUMI: Jurnal Agraria Dan Pertanahan* 5, no. 2 (2019): 163–79, <https://doi.org/10.31292/jb.v5i2.368>.

⁵ Maria Maghdalena Diana Widiastuti et al., “Tinjauan Implementasi Program Food Estate Dan Prospeknya Di Merauke Papua,” *Forum Penelitian Agro Ekonomi* 40, no. 2 (2022): 119–33, <https://doi.org/10.31292/jb.v5i2.368>.

⁶ Rika Maryam, “Perolehan Tanah Atas Tanah *Ulayat* Masyarakat Hukum Adat Papua Dalam Program MIFEE (Merauke Integrated Food and Energy State) Ditinjau Dari Perspektif Hukum Agraria,” *Journal of Law, English, and Economics* 5, no. 1 (2023): 14–28, <https://doi.org/10.35960/j-lee.v5i1.1117>.

⁷ Prilia Resa Anggriana and Natasya Mentari Putri Lusi, “Dampak Implementasi Merauke Integrated Food and Energy Estate,” *Societas: Jurnal Ilmu Administrasi Dan Sosial* 11, no. 02 (2022): 138–53, <https://doi.org/10.35724/sjias.v11i02.4883>.

limited number of individuals does not automatically bind the entire customary community, particularly where those purporting to give consent do not, in fact, possess the authority or mandate required under the applicable customary rules.⁸

Although the existence of customary law communities and their rights over *ulayat* land are guaranteed under Article 18B(2) and Article 28I(3) of the 1945 Constitution of the Republic of Indonesia, Article 3 of the Basic Agrarian Law, and further reinforced by the Papua Special Autonomy Law, which mandates a fair dialogue mechanism in land acquisition, implementation remains problematic in practice. Legal recognition continues to be constrained by complex administrative requirements, including formal recognition by regional governments and territorial mapping, processes that often proceed more slowly than the issuance of investment permits or the designation of strategic projects. As a result, communities that exercise de facto control over the land remain in a vulnerable position. This situation reinforces Tekege's view that the central problem concerning *ulayat* land in Papua does not lie in the absence of legal regulation, but rather in the disconnect between formal legal norms and the government's actual commitment to protecting customary rights when confronted with corporate interests.⁹

This situation has also contributed to misconceptions regarding the concept of the State's Right of Control (*hak menguasai negara*). Article 33(3) of the 1945 Constitution authorizes the state to exercise control over land, water, and natural resources for the greatest possible prosperity of the people. This authority, however, does not mean that the state acts as the owner of all land. Rather, the state bears a duty to regulate the use of natural resources fairly, including by respecting rights that existed before project permits were issued. If state authority is instead invoked to facilitate land acquisition while disregarding *ulayat* rights, the role of the state shifts away from fulfilling public rights and toward merely facilitating project implementation.¹⁰

Land acquisition is among the stages most susceptible to legal and social disputes. In practice, compensation payments have often been treated as permanently severing the relationship between customary law communities and their land. Yet authorization to use *ulayat* land may be granted for a specified period without extinguishing the community's status as the holder of collective rights. As Rika Maryam explains, there is a clear distinction between permanently transferring land and merely granting a time-limited right or authorization to use it. Compensation should therefore not be calculated solely on the basis of the land's market value, but should also take into account the potential loss of community livelihoods and damage to sites of social, cultural, and spiritual significance. Once

⁸ Elena Korol and Sofiya Korol, "Governing the Commons through Rule Hybridity: Interactions Between Formal Institutions and Informal Norms in CPR Management," *JBMS : Al-Kindi Center For Research And Development*, 2025, 88–102, <https://doi.org/10.32996/jbms>.

⁹ Petrus Tekege, "Hakikat Pengakuan Dan Perlindungan Hak *Ulayat* Atas Masyarakat Hukum Adat Di Papua," *INNOVATIVE: Journal Of Social Science Research* 4, no. 4 (2024): 6660–78, <https://doi.org/10.31004/innovative.v4i4.13915>.

¹⁰ Ni Luh Ariningsih Sari, "Konsep Hak Menguasai Negara Terhadap Tanah Dalam Hukum Tanah (UUPA) Dan Konstitusi," *GANEK SWARA* 15, no. 1 (2021): 991, <https://doi.org/10.35327/gara.v15i1.202>.

the authorized period of use expires, any subsequent arrangement for the use of the land must be subject to renewed consent from the relevant customary law community.¹¹

The issue of *ulayat* rights in food, energy, and water self-sufficiency projects extends beyond the land acquisition process itself. Forest conversion may reduce local communities' access to traditional food sources, construction timber, medicinal plants, and game animals. The establishment of plantations and processing facilities may also alter river flows, degrade water catchment areas, and restrict community access to wetlands and water sources. In this context, water cannot be treated merely as an industrial input. Rivers, wetlands, and springs form an integral part of customary territories and carry economic, environmental, social, and spiritual significance.¹² The impacts of development must therefore be assessed comprehensively and in an integrated manner, rather than treating agriculture, bioethanol plantations, and water use as separate and independent sectors.

Previous studies have examined these issues from a range of perspectives. Widiastuti and her research team, for example, assessed the implementation and prospects of food-estate programs in Merauke. Their study emphasized the importance of drawing lessons from the MIRE and MIFEE projects, particularly with respect to land suitability, production targets, the protection of local food and water resources, and the effects of large-scale agriculture on local economies. The findings indicate that Merauke has the potential to contribute to national food security, provided that future development reconciles the carrying capacity of the land, environmental sustainability, and the socioeconomic conditions of local communities.¹³

Maryam examined the acquisition of *ulayat* land under the MIFEE program from the perspective of agrarian law. The study focused primarily on the extent to which the land acquisition process was consistent with the principles of national agrarian law and on its implications for the quality of life of customary law communities. It emphasized the critical importance of applying the principle of Free, Prior and Informed Consent (FPIC), under which consent must be obtained in advance, without coercion, and on the basis of adequate and transparent information. Through this mechanism, communities are able to decide whether to accept a proposed project, condition their consent on specified changes, or reject the project after obtaining a full understanding of its potential benefits and risks.¹⁴

Tekege examined the effectiveness of legal guarantees for *ulayat* rights in Papua. The study found that, although the Constitution, the Basic Agrarian Law (*Undang-Undang Pokok Agraria—UUPA*), and the Papua Special Autonomy Law recognize customary land rights, their practical protection remains particularly weak when such rights come into conflict with land acquisition interests pursued by the state or corporations. Kinanti et al., meanwhile, evaluated the socio-environmental inequalities associated with oil palm expansion and National Strategic Projects (*Proyek*

¹¹ Rika Maryam, "Perolehan Tanah Atas Tanah *Ulayat* Masyarakat Hukum Adat Papua Dalam Program MIFEE (Merauke Integrated Food and Energy State) Ditinjau Dari Perspektif Hukum Agraria."

¹² Andreas Budi Rahutomo et al., "Tinjauan Kebijakan Penyediaan Kawasan Hutan Untuk Pembangunan Food Estate," *Jurnal Bisnis Kehutanan Dan Lingkungan* 1, no. 1 (2023), <https://doi.org/10.61511/jbkl.v1i1.2023.256>.

¹³ Maria Maghdalena Diana Widiastuti et al., "Tinjauan Implementasi Program Food Estate Dan Prospeknya Di Merauke Papua."

¹⁴ Rika Maryam, "Perolehan Tanah Atas Tanah *Ulayat* Masyarakat Hukum Adat Papua Dalam Program MIFEE (Merauke Integrated Food and Energy State) Ditinjau Dari Perspektif Hukum Agraria."

Strategis Nasional—PSN) in Merauke. Their principal finding was that the pursuit of economic growth continues to marginalize environmental sustainability and the rights of local communities.¹⁵

The energy-sector perspective provides an important complementary dimension to this analysis. Noviputri, Maharani, and Abida examined the protection of customary law communities in bioethanol development projects. Their study found that recognition of *ulayat* rights under plantation and environmental regulations has not been accompanied by adequate opportunities for meaningful community participation. As a proposed solution, the authors advocate the use of an Impact Benefit Agreement, a written agreement governing community participation, benefit-sharing arrangements, joint monitoring, protective clauses, and dispute-resolution procedures. The study underscores that the protection of customary law communities should not end with the payment of initial compensation, but should instead ensure an equitable partnership throughout the operational life of the project.¹⁶

Previous studies on development in Papua have generally been fragmented along sectoral lines, examining food production, plantations, or energy in isolation rather than analyzing the interaction among all three within a single customary territory. Yet the convergence of these sectors can generate simultaneous and cascading effects on land carrying capacity, water availability, and the living space of local communities. Legal protection mechanisms have also often operated too late, focusing primarily on administrative legality or compensation after land acquisition has taken place. Ideally, legal safeguards should operate from the earliest stages of project planning and site selection through community consent processes, operational monitoring, and environmental restoration.

Against this background, this study examines the effectiveness of legal protection for *ulayat* rights in the establishment of Food, Energy, and Water Self-Sufficiency Areas in South Papua and, at the same time, develops a proportionate legal framework for their governance. The proposed framework emphasizes territorial boundary mapping, community consensus, legal certainty regarding land-use arrangements, equitable benefit-sharing, and mechanisms for ecological restoration. Through this approach, strategic development initiatives are expected to proceed in a manner that remains compatible with, rather than severing, the fundamental relationship between customary law communities and their ancestral lands.

2. RESEARCH METHODOLOGY

This normative legal study examines the protection of *ulayat* rights of customary law communities in the development of Food, Energy, and Water Self-Sufficiency Areas in South Papua. The study employs a combination of statutory, conceptual, and historical approaches. The statutory approach examines laws and regulations governing land, Papua's special autonomy, environmental protection, and food and energy policy. The conceptual approach addresses the underlying concepts of *ulayat* rights, state authority, public participation, the principle of Free, Prior and Informed Consent (FPIC), and benefit-sharing. The historical approach revisits the implementation of MIRE, MIFEE, and food-

¹⁵ Petrus Tekege, "Hakikat Pengakuan Dan Perlindungan Hak *Ulayat* Atas Masyarakat Hukum Adat Di Papua."

¹⁶ Angelo De Sousa Santarlacci et al., "Benefit Sharing Governance Framework : Pathways for Financial Benefit Sharing in Traditional Communities," 2024, 1–24.

estate programs in Merauke to identify productivity constraints and the socio-environmental risks associated with previous large-scale development projects.

All primary legal materials, comprising legislation and legal decisions, and secondary legal materials, including books and scholarly articles, were collected through library research. These materials were analyzed qualitatively to identify normative inconsistencies and legal gaps. The analysis ultimately develops a comprehensive model for the protection of *ulayat* rights encompassing legal recognition of customary territories, community consent, land-use arrangements, benefit-sharing, environmental monitoring, dispute resolution, and ecological rehabilitation.

3. RESULT AND DISCUSION

3.1. Legal Status of the *Ulayat* Rights of Customary Law Communities in Area Development

3.1.1. *Ulayat* Rights as Communal Rights over the Living Territories of Customary Law Communities

Ulayat rights reflect the traditional authority of customary law communities to manage and use territories that have been transmitted across generations. The scope of this authority extends beyond the commodification of land and encompasses the community's living territory as a whole, including forests, water sources, and local ecosystems. *Ulayat* rights are therefore more appropriately understood as an enduring legal relationship between customary communities and the entirety of the environment in which they live, rather than merely as physical ownership of a particular parcel of land.¹⁷

This communal character constitutes the principal distinction between *ulayat* rights and private property rights. The rights holder is the customary community as a collective entity structured through ethnic, clan, or marga affiliations. Although individual rights may develop within such territories, their exercise and the mechanisms governing their use remain subject to collective social control. Consequently, legal acts concerning *ulayat* land cannot be regarded as valid when based solely on individual agreements without regard to the legitimacy and institutional structure of the applicable customary system.¹⁸

For customary law communities in Papua, land and forests are not merely assets with economic value; they constitute living territories that provide food, water, hunting grounds, and spaces for the performance of customary practices and the veneration of ancestors. Financial compensation, therefore, cannot fully offset the severance of a community's relationship with its ancestral land. Research on National Strategic Projects (*Proyek Strategis Nasional—PSN*) in South Papua demonstrates that the social, cultural, and spiritual functions of customary land cannot adequately be replaced through conventional compensation schemes.¹⁹

¹⁷ Lolita et al., "The Existence of Customary Law Community 's Rights (Hak Ulayat) Over Land in Kalimantan," Proceedings of the 1St International Conference on Toward Kalimantan as the New Capital of the Republic of Indonesia, 2023, 403–13.

¹⁸ Endah Pertiwi and Ujang Badru Jaman, *Masa Depan Hak Ulayat: Harmonisasi Hukum Adat Dan Kebijakan Agraria Nasional*, 34.

¹⁹ Rosita Dewi and Bondan Widyatmoko, "Proyek Strategis Nasional Untuk Ketahanan Pangan Di Merauke, Papua Selatan: Transformasi Paksa Sistem Pangan Masyarakat Adat," in *Paradigma Dan Praktik Ekonomi Hijau Dan Ekonomi*

From a legal perspective, the existence of *ulayat* rights is guaranteed under Article 18B(2) of the 1945 Constitution of the Republic of Indonesia, Article 3 of the Basic Agrarian Law (UUPA), and the Papua Special Autonomy Law. In practice, however, such protection remains heavily dependent on formal recognition by regional governments. This imbalance ultimately disadvantages customary law communities that exercise de facto control over their territories but have not yet obtained formal administrative recognition.

The existence of *ulayat* rights may be identified through the social realities of the community concerned. Relevant indicators include the presence of a settled community bound by kinship or territorial ties, identifiable territorial boundaries, functioning customary leaders, and shared rules governing the use of natural resources. A regional government decree serves to provide legal certainty regarding rights that already exist; it does not create *ulayat* rights from the outset. The legal relationship between customary communities and their ancestral lands predates any formal decision issued by the state.

This approach is also reflected in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024. The regulation defines *ulayat* land as land that is actually controlled by a customary law community and is not encumbered by individual rights or rights held by other institutions. It also contains provisions governing the registration, documentation, and recording of *ulayat* land. These provisions indicate that the state administrative system functions to provide formal legal evidence and protection, while the underlying basis of the right remains grounded in the factual circumstances existing within the community.

In Papua specifically, the legal foundation for protecting *ulayat* rights is particularly strong because of the Papua Special Autonomy Law. Article 43 expressly requires the state to recognize, respect, protect, and empower the rights of customary law communities, including both their collective (*ulayat*) rights and the individual rights of their members. The management of customary land remains vested in customary authorities in accordance with the applicable local customary law.

The central significance of Article 43 lies in the government's affirmative responsibility. The state is not merely required to refrain from unilateral land appropriation; it must also identify rights holders, prevent communities from being displaced from their living territories, facilitate negotiation processes, and mediate land disputes. More importantly, the use of customary land for any purpose must be preceded by deliberation aimed at reaching agreement on the boundaries of the land concerned and the form of compensation. Within the special autonomy framework, deliberation is therefore not a supplementary formality but a substantive requirement that must be fulfilled.

The protection of customary land in Papua is further implemented through Special Regional Regulations (*Peraturan Daerah Khusus—Perdasus*) Nos. 22 and 23 of 2008. *Perdasus* No. 22 of 2008 emphasizes the importance of natural resources to customary law communities as foundations of economic life, cultural values, and spirituality. *Perdasus* No. 23 of 2008, meanwhile, contains more specific provisions concerning the existence, procedures for recognition, management, and dispute-

resolution mechanisms relating to *ulayat* land, whether collectively or individually controlled. To date, both regulations remain important legal references for the protection of *ulayat* rights in South Papua.

The legal position of customary rights was further strengthened following Constitutional Court Decision No. 35/PUU-X/2012. The Constitutional Court removed the word “state” from the statutory definition of customary forests, thereby redefining them as “forests located within the territories of customary law communities.”²⁰ This ruling fundamentally distinguished customary forests from state forests and clarified that the government’s administrative designation of an area as forest does not automatically sever the legal relationship between customary law communities and the territories they manage.

This principle has significant implications for South Papua, where land designated for agricultural projects, energy plantations, water infrastructure, and road construction frequently overlaps with customary forest areas. Administrative forest status therefore cannot, by itself, justify the conclusion that particular land is free from community rights. Before changing the designated function of a forest area, releasing it from forest status, or issuing a business permit, the government must verify the existence of the relevant customary law community, the clarity of territorial boundaries, and ongoing patterns of forest use.

Understanding *ulayat* rights as encompassing an integrated living territory also explains why customary land cannot be valued solely according to its market price. The loss of land may sever community access to food, clean water, hunting areas, traditional medicines, local knowledge, and relationships with ancestors.²¹ Studies of *ulayat* land in South Papua indicate that cash compensation cannot fully substitute for the social, economic, and spiritual functions that customary land performs for customary law communities.

Ultimately, *ulayat* rights constitute constitutionally protected communal rights that are recognized through agrarian legislation, Papua’s special autonomy framework, land regulations, and Constitutional Court jurisprudence. The object of these rights extends beyond individual parcels of land to encompass the broader territorial landscape that sustains the continuity of community life. On this basis, every development policy in South Papua must recognize customary law communities as primary rights holders who must be engaged from the outset, rather than presuming that their territories constitute vacant land available for development.

3.1.2. The Binding Effect of *Ulayat* Rights on the Planning and Use of Development Areas

The designation of South Papua as a priority area for the accelerated development of Food, Energy, and Water Self-Sufficiency Areas was formally established through Presidential Instruction No. 14 of 2025. Under this instrument, ministries, government agencies, and regional governments are directed to undertake planning, budgeting, and program implementation in an integrated and coordinated manner. This policy direction was subsequently reinforced by Presidential Instruction No. 16 of 2025,

²⁰ Subarudi Subarudi, “Kebijakan Pengelolaan Hutan Adat Pasca Putusan Mahkamah Konstitusi No. 35/PUU-X/2012: Suatu Tinjauan Kritis,” *Jurnal Analisis Kebijakan Kebutuhan* 11, no. 3 (2014): 207–24, <https://doi.org/10.20886/jakk.2014.11.3.207-224>.

²¹ Endah Pertiwi and Ujang Badru Jaman, *Masa Depan Hak Ulayat: Harmonisasi Hukum Adat Dan Kebijakan Agraria Nasional*, 216.

which assigns the Coordinating Minister for Food Affairs, together with the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN), a leading coordinating role.²²

In substance, both Presidential Instructions function as internal governmental directives for the implementation and oversight of the program. Their provisions cannot be interpreted as effecting a transfer of land rights, much less as providing a legal basis for extinguishing *ulayat* rights. The designation of South Papua as a priority area merely determines the direction of the government's development agenda. The legal status of each affected parcel of land must continue to be determined in accordance with the Basic Agrarian Law (UUPA), the Papua Special Autonomy Law, forestry legislation, land regulations, and the applicable customary law. From the perspective of the hierarchy of legal norms, a Presidential Instruction cannot displace higher-ranking legal provisions governing the recognition and protection of customary law communities.

This principle is rooted in the concept of the State's Right of Control (*bak menguasai negara*). State control over land and water is not equivalent to private ownership. According to the Constitutional Court, the state exercises public-law functions that encompass policy-making, regulation, administration, management, and supervision, all of which must be directed toward achieving the greatest possible prosperity of the people. Accordingly, governmental authority should not be exercised solely to expedite the transfer of land to project implementers, but must also be used to safeguard customary law communities located within development areas.²³

National development and the protection of *ulayat* rights are not inherently incompatible. The state may carry out development projects, provided that the relevant land-use arrangements do not arbitrarily deprive communities of their rights. Nor may the designation of a project as part of a national development agenda be used to pressure communities into merely accepting a predetermined amount of compensation. The obligation to engage in deliberation as provided under Article 43 of the Papua Special Autonomy Law confirms that customary law communities retain the right to determine the boundaries of the land to be used, the form and terms under which the land is made available, and the compensation arrangements to be agreed upon collectively.

The legally binding character of *ulayat* rights must be taken into account from the stage of site designation. Land that has not been formally certificated should not automatically be treated as ownerless land. Before a location permit is issued, the government should verify the existence of the relevant customary law community, the certainty of territorial boundaries, the legitimacy of customary governance structures, and the community's daily use of the land, forests, and water resources concerned. The registration and documentation of *ulayat* land pursuant to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 should serve as an initial basis for development planning. Such mapping should encompass the entire landscape ecosystem including sago groves, rivers, wetlands, and culturally significant community

²² Yarien Wonda et al., "Manajemen Pengembangan Wilayah Berbasis Ketahanan Pangan," *Jurnal Riset Mahasiswa Manajemen* 12, no. 2 (2025): 91–99, <https://doi.org/10.21067/jrmm.v12i2.13006>.

²³ Yance Arizona, "Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber Daya Alam Dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 3 (2016): 257, <https://doi.org/10.31078/jk833>.

spaces rather than being confined to individual project parcels. This approach is consistent with Presidential Instruction No. 14 of 2025, which mandates integrated area planning.

Customary law communities must also be positioned as participants in decision-making rather than merely as populations affected by development projects. Their involvement should begin at the earliest planning stage and extend to the determination of territorial boundaries and project size, as well as the selection of the appropriate legal arrangement governing land use. As mandated by Article 43 of the Papua Special Autonomy Law, the provision of customary land must be based on deliberation and consensus concerning both the area to be used and the form of compensation. Such consensus must involve representatives who are legally and customarily authorized to act on behalf of the rights-holding community; the consent of a single local leader cannot, by itself, be treated as representing the entire group of rights holders.

The legal status of *ulayat* rights also confirms that permanent and absolute relinquishment of land is not the only available legal arrangement. For activities of limited duration, land use may be structured through leases, renewable contractual arrangements, or partnership schemes that do not extinguish the community's communal rights. Any agreement should specify the duration of use, community access rights, benefit-sharing arrangements, and obligations to rehabilitate the land upon the termination of the agreement. The same principle applies to water resources. Under Law No. 17 of 2019, the fulfillment of basic community needs and local agricultural requirements remains a primary priority. Accordingly, authorization to use customary land cannot be interpreted as conferring absolute control over rivers, wetlands, or springs located within the relevant territory.

Customary law communities should not be treated merely as recipients of compensation after a project decision has already been made. As legitimate rights holders, they are entitled to determine which areas may be used, which areas must remain protected, the duration of any authorized use, and the conditions that government authorities and project developers must satisfy. This is where the substantive recognition of *ulayat* rights becomes evident: national self-sufficiency objectives may still be pursued without severing the relationship between customary law communities and the land, forests, and water resources on which their lives depend.

3.2. Legal Protection Model for *Ulayat* Rights in the Development of Food, Energy, and Water Self-Sufficiency Areas

3.2.1. Preventive Protection through Territorial Recognition, FPIC, and Legal Certainty regarding Forms of Land Use

The legal protection model for *ulayat* rights in South Papua should operate well before a development area is fixed through site designation, licensing, or the physical implementation of a project. This is particularly important because Presidential Instruction No. 14 of 2025 governs not only project execution but also integrates planning, budget allocation, monitoring, and development control. Because safeguards can be established from the earliest stages, the acceleration of project implementation should not precede the identification of customary law communities and the mapping of territories designated for project use.

The first priority should be the recognition and mapping of customary territories before any determination regarding land use is made. The government must verify the legitimate holders of *ulayat* rights, the structure of land tenure at the ethnic or marga level, the certainty of territorial boundaries, the customary authorities entitled to make decisions, and existing patterns of land use. The resulting maps should not merely delineate land parcels on paper but should identify food-producing forests, sago groves, cultivation areas, wetlands, rivers, springs, hunting grounds, sacred sites, and customary travel routes. Such an approach would enable project spatial planning to distinguish clearly between areas that must be conserved, areas suitable for shared use, and areas that may be subject to cooperative arrangements.

An adequate legal basis for this process already exists in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 concerning the Administration and Registration of *Ulayat* Land Rights. The regulation provides guidance on data collection, registration, data maintenance, and the management of information concerning *ulayat* land, with factual physical control on the ground serving as a principal requirement. This regulatory framework can be used to align customary territory maps with spatial plans, forest-area maps, concession permits, water networks, and government-planned infrastructure.

The mapping of customary territories should be completed before the government changes the legal status or designated function of a forest area. Constitutional Court Decision No. 35/PUU-X/2012 expressly distinguished customary forests from state forests and reaffirmed that the State's Right of Control (*hak menguasai negara*) does not mean that the state owns such land outright. Consequently, land classified administratively as forest area cannot automatically be regarded as free from the rights of customary law communities. This principle is particularly significant in South Papua, where land targeted for food projects, energy plantations, and infrastructure networks frequently overlaps with forests on which local communities depend.

Once the identity of the rights holders and the boundaries of their territories have been established, the use of *ulayat* land must be based on the principle of Free, Prior and Informed Consent (FPIC) consent given without coercion, before activities commence, and on the basis of truthful and adequate information. This is consistent with Article 43 of the Papua Special Autonomy Law, which requires that the provision of customary land for any purpose be undertaken through deliberation aimed at reaching consensus regarding the area to be used and the form of compensation. Lessons from the earlier MIFEE project also indicate that legal protection can be effective only where a fair negotiation mechanism exists, under which communities retain the right to accept a project, condition their consent on specified changes, or reject it after fully understanding its risks and potential benefits.

FPIC provides a more measurable standard for assessing the quality of such deliberative processes. Under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Indigenous Peoples have the right to determine their own priorities and directions for development affecting their territories. States are also required to consult and cooperate in good faith through representative institutions in order to obtain free, prior and informed consent before approving projects that affect Indigenous lands, waters, or resources. This international principle is highly relevant as a normative reference for strengthening the substantive quality of the deliberation required under Indonesian law.

In practice, compliance with FPIC cannot be assessed merely by reference to attendance sheets or minutes of public consultation meetings. Communities are entitled to detailed information concerning the boundaries and size of the project area, the operational period, the types of crops to be developed, water allocation, the location of factories and roads, risks associated with forest clearing, potential waste generation, the anticipated number of outside workers, impacts on local food sources, the legal status of the land, benefit-sharing arrangements, and plans for environmental restoration. The process must be conducted through the relevant customary institutions, use language that is readily understood by the community, and provide sufficient time for communities to deliberate independently. This standard also requires continuing dialogue from the outset, rather than a procedural formality undertaken only after the project has effectively been predetermined.

Another critical issue is the legal form governing the relationship between the community and the land. The use of *ulayat* land for investment purposes need not result in the permanent relinquishment of community rights. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 expressly provides that *ulayat* land not designated as a Right of Management (*Hak Pengelolaan—HPL*) retains its status as *ulayat* land, while customary law communities may enter into contractual arrangements with investors. This provision creates an important legal basis for land-use arrangements that preserve the community's continuing relationship with its living territory.

Under this approach, the form of legal cooperation may be tailored to the characteristics of the particular project. Land use may be structured through fixed-term leases, benefit-sharing arrangements, or other forms of partnership that do not extinguish the community's communal rights. Research on the earlier MIFEE project likewise indicates that authorization to use *ulayat* land may be limited to a specified period. Once the contractual period expires, any extension or subsequent use must be based on renewed consent from the customary law community for as long as its legal existence continues to be recognized. Such arrangements are considerably more appropriate for food and energy projects with defined operational periods than a one-time, outright-payment model that permanently severs the community's relationship with its land.

Preventive protection must follow a coherent and clearly sequenced process: recognition of the customary law community, territorial mapping, environmental impact assessment, disclosure of relevant information, Free, Prior and Informed Consent (FPIC), and agreement on the legal form of land use. This sequence should not be reversed. An agreement or consent cannot be legally meaningful where the identity and status of the rights holders remain uncertain. Similarly, an environmental impact assessment loses its protective function if it is prepared only after the community has already been pressured into approving the project.

3.2.2. Protection During Project Implementation through Benefit-Sharing, Monitoring, and Restoration

Legal protection for *ulayat* rights does not end once initial consent has been obtained. During project implementation, attention shifts to ensuring compliance with commitments made at the planning stage, including respect for agreed land boundaries, continued community access to livelihood resources, implementation of benefit-sharing arrangements, and control of environmental impacts.

Consent to the use of customary land must therefore be supported by legally binding arrangements that remain enforceable against all parties the government, investors, and customary law communities throughout the life of the project.

One model that may be developed is an agreement governing benefit-sharing and impact management based on the principles of an Impact Benefit Agreement (IBA). Research on bioethanol development indicates that IBA arrangements can promote the active participation of customary law communities by specifying the parties to the agreement, implementation mechanisms, monitoring procedures, contractual rights and obligations, and channels for dispute resolution. Although IBAs are not yet mandatory instruments under Indonesian law, the concept has considerable potential to serve as a framework for agreements governing the use of customary land.

At a minimum, such agreements should clearly specify the boundaries and duration of land use, conservation areas that must remain undisturbed, guarantees for the protection of water sources and sago groves, community access rights, environmental restoration obligations, local employment allocations, benefit-sharing arrangements, information-disclosure requirements, monitoring mechanisms, and dispute-resolution procedures. Through a written agreement of this kind, community consent does not merely authorize the transfer of land for use by an investor; it also creates concrete obligations whose implementation can be monitored and legally demanded throughout project operations.

Benefit-sharing must also be clearly distinguished from compensation for land-related losses. Compensation generally addresses specified losses, often on a short-term or one-time basis, whereas benefit-sharing recognizes customary law communities as rights holders over the relevant territory who are entitled to participate continuously in the economic benefits generated by the project. Lessons from the MIFEE megaproject demonstrate the shortcomings of valuing *ulayat* land solely according to its market price. The relinquishment of customary land may also result in the loss of livelihoods, social identity, cultural heritage, and spiritual spaces. Development commitments should therefore not be regarded as fulfilled merely through the payment of upfront compensation.

Benefits to communities may take the form of recurring payments, revenue-sharing arrangements, shared ownership schemes, local employment allocations, community economic empowerment, access to education and training, and measures to protect local food security. The appropriate arrangement should be determined transparently in accordance with the characteristics of the industry concerned. To prevent benefits from being captured by a limited number of individuals, their administration must be transparent and community-based, including clear identification of beneficiaries, accountability in the use of funds, and participation by representatives of the relevant *marga*.

Such arrangements are important because the success of development cannot be measured solely by macroeconomic gains to the state. The Papua Special Autonomy Law requires regional investment to position customary law communities as principal subjects of development. Papua Special Regional Regulation (*Perdasus*) No. 22 of 2008 was also enacted specifically to address the erosion of community access to natural resources resulting from accelerated development and to establish fair, legally certain relationships among customary law communities, investors, and the government.

Protection during project implementation requires an oversight system that integrates agrarian and environmental considerations. In an integrated development area, monitoring cannot be confined to determining whether a company remains within the boundaries of its concession. Other relevant matters must also be assessed, including water quality, changes in river flows, wetland conditions, forest cover, the availability of local food sources, continued access to hunting grounds and sago groves, and compliance with corporate social responsibility commitments.

Government Regulation No. 22 of 2021 provides a legal basis for environmental approvals, water-quality protection, pollution and environmental degradation control, periodic monitoring, administrative sanctions, and ecosystem restoration obligations. These mechanisms are intended to ensure that commitments made during the planning process are actually implemented once the project becomes operational. Within customary territories, however, formal environmental oversight should be integrated with community-based monitoring so that environmental harm experienced directly by local residents is not excluded from official governmental reporting.

Because food, energy, and water development takes place within the same landscape, monitoring must assess cumulative impacts rather than examining compliance with permits in each sector separately. Forest clearing for plantations may disrupt hydrological systems, while large-scale industrial water extraction may reduce water levels in rivers and wetlands on which communities depend. Experience from food-estate projects in Merauke underscores the importance of accounting for water availability, sociocultural structures, and the need to minimize deforestation, particularly in forests that sustain local food and water systems.

Customary law communities should therefore be given a formal role in monitoring arrangements. Representatives of marga, women's groups, and community members who depend directly on natural resources may participate alongside regional governments, independent experts, and project developers. Technical information including project boundaries, volumes of water use, environmental-quality indicators, rates of forest clearing, labor recruitment, and details of compensation should also be disclosed transparently. Access to such information is essential if communities are to assess whether the use of their territories remains within the terms of the original agreement.

Where violations occur, dispute-resolution mechanisms must be straightforward and readily accessible. Papua Special Regional Regulation (*Perdasus*) No. 23 of 2021, as cited in the source text, incorporates recognition, management, investor obligations, and conflict resolution as integral elements of the governance of *ulayat* rights. At the statutory level, Article 43 of the Papua Special Autonomy Law also requires the government to play an active role in facilitating the resolution of customary land disputes. On this basis, regional governments should not remain passive and leave communities to confront companies on their own, particularly where the dispute arises from permits issued by the government itself.

The final critical stage is restoration. Legal protection becomes ineffective if communities are provided only with ex post monetary compensation after their land, forests, and water resources have suffered irreversible damage. Restoration must correspond to the specific form of harm: polluted rivers must have their water quality and availability restored; land cleared beyond authorized boundaries must be rehabilitated; damage to local food sources must be addressed through livelihood

restoration; and harm to sacred sites must be resolved through the applicable customary mechanisms. UNDRIP likewise emphasizes that development activities affecting Indigenous territories should be accompanied by fair compensation and concrete measures to mitigate ecological, economic, social, cultural, and spiritual impacts on affected communities.

These mechanisms should be operationalized through technical regulations at the South Papua provincial level. As a newly established autonomous region (*Daerah Otonom Baru*—DOB) with special autonomy status, South Papua may draw on Papua Special Regional Regulations Nos. 22 and 23 of 2008 on natural resource protection and *ulayat* rights. Given the pace of development, however, more specific regional rules are needed to govern recognition procedures, FPIC, land-use arrangements, water protection, benefit-sharing, monitoring, dispute resolution, and restoration.

The proposed legal protection model has two complementary layers. The preventive layer comprises recognition and mapping of customary territories, environmental impact assessment, Free, Prior and Informed Consent (FPIC), and land-use arrangements that do not permanently extinguish *ulayat* rights. The second operates during and after project implementation through benefit-sharing agreements, continued community access to forests and water resources, joint monitoring, conflict-management mechanisms, and binding restoration obligations.

This model corrects the longstanding reliance on one-time, outright compensation (*ganti rugi jual-putus*). Rather than relinquishing their land and losing their legal relationship with the territory, customary law communities remain legitimate rights holders throughout the project. National food, energy, and water self-sufficiency objectives can therefore be pursued without treating the sacrifice of *ulayat* rights as an inevitable or acceptable cost of development.

4. CONCLUSION

The *ulayat* rights of customary law communities retain legally binding status in the development of Food, Energy, and Water Self-Sufficiency Areas in South Papua. The designation of South Papua as a priority location for accelerated development under Presidential Instruction No. 14 of 2025 does not, in itself, convert customary land into state land or extinguish the state's obligation to respect community rights over land, forests, and water resources. National law has, in fact, strengthened this recognition, including through the registration of *ulayat* land under Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 and the distinction between customary forests and state forests established by Constitutional Court Decision No. 35/PUU-X/2012. The principal challenge, however, lies in implementation. Project-site designation undertaken before customary land has been mapped, public information sessions used as substitutes for genuine deliberation, one-time “outright” compensation schemes, and fragmented impact assessments all weaken the position of customary law communities as rights holders. Lessons from the MIFEE project confirm that customary land cannot be valued solely in monetary terms because it encompasses sources of livelihood, social structures, cultural identity, and the spiritual values of the communities concerned.

The protection of *ulayat* rights should therefore be structured through two complementary layers of safeguards. The first is preventive and should operate through the recognition and mapping

of customary land before project locations are finalized, comprehensive socio-ecological impact assessments, the application of Free, Prior and Informed Consent (FPIC), and the adoption of land-use arrangements that do not extinguish the community's communal rights. The second operates during project implementation through benefit-sharing agreements, guarantees of continued community access to forests and water resources, multi-stakeholder monitoring, fair dispute-resolution mechanisms, and binding obligations to restore affected areas. Time-limited land-use arrangements are more consistent with the character of *ulayat* rights because they preserve the community's continuing relationship with its territory, while any future extension of authorization must be subject to renewed consent from the customary law community. Under this framework, the success of self-sufficiency areas should not be measured solely by levels of food and energy production, but also by the extent to which development safeguards the long-term sustainability of customary law communities within the territories they manage.

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