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DOI: 10.46924/jihk.v6i2.509



Legal Certainty in the Registration of Land Subject to the *Hak Ulayat* of Customary Law Communities Following ATR/BPN Ministerial Regulation No. 14 of 2024

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

How to cite

Legal Certainty in the Registration of Land Subject to the *Hak Ulayat* of Customary Law Communities Following ATR/BPN Ministerial Regulation No. 14 of 2024. (2025). *Jurnal Ilmu Hukum Kyadiren*, 6(2), 128-142.
<https://doi.org/10.46924/jihk.v6i2.509>

Original Article

Abstract

This study analyzes the legal certainty of registering land subject to the *bak ulayat* of customary law communities following the enactment of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024. It employs normative legal research using statutory and conceptual approaches. The primary legal materials consist of legislation and judicial decisions, while the secondary legal materials comprise relevant literature and research findings. The study finds that ATR/BPN Ministerial Regulation No. 14 of 2024 establishes a multi-tiered framework for the administration and registration of *Tanah Ulayat* through inventory and identification, surveying and mapping, recording in the *Daftar Tanah Ulayat* (Customary Land Register), and optional registration as *Hak Pengelolaan* (Right of Management) for a *Kesatuan Masyarakat Hukum Adat* or as *Hak Milik* (Right of Ownership) over collectively held land for a *Kelompok Anggota Masyarakat Hukum Adat*. This framework strengthens legal certainty regarding the legal subject, land object, procedures, and legal consequences of registration. However, such certainty remains affected by the formal recognition of customary law communities, potential overlapping claims to land, and communities' access to land administration. The study concludes that legal certainty concerning *Tanah Ulayat* must integrate administrative and substantive legal certainty so that registration does not diminish the communal character of customary tenure, the authority of customary institutions, or the continuing applicability of customary law.

Keywords: *ak ulayat; customary law communities; land registration; legal certainty; ATR/BPN Ministerial Regulation No. 14 of 2024.*

Abstrak

Penelitian ini menganalisis kepastian hukum pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat pasca berlakunya Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 14 Tahun 2024. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan konseptual. Bahan hukum primer berupa peraturan perundang-undangan dan putusan pengadilan, sedangkan bahan hukum sekunder berupa literatur dan hasil penelitian yang relevan. Hasil penelitian menunjukkan bahwa Permen ATR/BPN Nomor 14 Tahun 2024 membentuk konstruksi administrasi dan pendaftaran tanah ulayat secara bertingkat melalui inventarisasi dan identifikasi, pengukuran dan pemetaan, pencatatan dalam Daftar Tanah Ulayat, serta pilihan pendaftaran sebagai Hak Pengelolaan bagi Kesatuan Masyarakat Hukum Adat atau Hak Milik sebagai tanah bersama bagi Kelompok Anggota Masyarakat Hukum Adat. Konstruksi tersebut memberikan penguatan terhadap kepastian subjek, objek, prosedur, dan akibat hukum pendaftaran. Namun, kepastian hukum tersebut masih dipengaruhi oleh penetapan keberadaan masyarakat hukum adat, potensi tumpang tindih objek tanah, serta akses masyarakat terhadap administrasi pertanahan. Penelitian ini menyimpulkan bahwa kepastian hukum tanah ulayat harus memadukan kepastian administratif dengan kepastian substantif agar pendaftaran tidak mereduksi karakter komunal, kewenangan kelembagaan adat, dan keberlakuan hukum adat.

Kata kunci: *bak ulayat; masyarakat hukum adat; pendaftaran tanah; kepastian hukum; Permen ATR/BPN Nomor 14 Tahun 2024.*

1. INTRODUCTION

Land occupies a fundamental position within customary law communities (*masyarakat hukum adat*). It serves not only as a source of livelihood and an economic foundation, but also as a social, cultural, spiritual, and genealogical space through which communal identity and continuity are constituted. The relationship between customary law communities and land, therefore, cannot be fully understood through the concept of individual ownership commonly associated with modern land law.¹ Under customary law, *tanah ulayat* (communal customary land) forms part of the community's collective living space, whose control, use, utilization, and stewardship are governed by customary legal norms and by the authority of customary institutions operating within the community concerned. These characteristics position *hak ulayat* (communal customary rights) both as a collective right and as a manifestation of the living law within the community.²

At the constitutional level, the recognition of customary law communities and their traditional rights is grounded in Article 18B(2) of the 1945 Constitution of the Republic of Indonesia, which affirms the State's recognition of and respect for customary law communities and their traditional rights insofar as they remain in existence, are consistent with societal development, and conform to the principles of the Unitary State of the Republic of Indonesia.³ This constitutional guarantee is reinforced by Article 28I(3) of the 1945 Constitution, which provides for respect for cultural identities and the rights of traditional communities.⁴ In the agrarian context, Article 3 of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (*Undang-Undang Pokok Agraria, UUPA*) recognizes the exercise of *hak ulayat* and similar rights of customary law communities insofar as such rights continue to exist in practice, provided that their exercise is consistent with national and State interests and does not conflict with higher-ranking laws and regulations.⁵

Hak ulayat (communal customary rights) are not rights that arise solely by virtue of a grant from the State. Their existence is fundamentally rooted in the historical relationship between customary law communities and their territories, as well as in the continuing operation of customary law within those communities. Normative recognition of *hak ulayat*, however, has long encountered difficulties when incorporated into the national land administration system, which requires clarity as to the right holder, the land concerned, its boundaries, legal status, and evidence of rights.⁶ This has created a gap between the sociological existence of *hak ulayat* under customary law and the manner in which such rights must be established within the State legal system. Land that has for generations been regarded and controlled as *tanah ulayat* (communal customary land) does not necessarily enjoy sufficiently strong administrative recognition when confronted with the granting of land rights, concessions, development projects, or competing claims by other parties.⁷

¹ Ega Pribadi et al., "Pemahaman Mazhab Sejarah Dalam Konteks Kepastian Hukum Hak Ulayat Di Indonesia: Studi Kasus Terhadap Dinamika Sosial Legal Masyarakat Adat," *UNES Law Review* 6, no. 4 (2024), <https://doi.org/10.31933/unesrev.v6i4>.

² Dwi Anang Syukrisna et al., "Perlindungan Hak Masyarakat Adat Atas Tanah Ulayat Pasca Peraturan Menteri Agraria Dan Tata Ruang Nomor 14 Tahun 2024," *SENTRI: Jurnal Riset Ilmiah* 4, no. 12 (2025): 4157–65, <https://doi.org/10.55681/sentri.v4i12.5088>.

³ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 18B ayat (2).

⁴ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 28I ayat (3).

⁵ Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (1960) Pasal 3.

⁶ Yunita Adinda Wulandari and Sri Wahyu Handayani, "Kepastian Hukum Hak Ulayat: Dilema Pengakuan Masyarakat Adat Dalam Sistem Pertanahan Nasional," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 6655–65, <https://doi.org/10.61104/alz.v3i5.2285>.

⁷ Zimamum Niam Aulawi and Fokky Fuad Wasitaatmadja, "Kepastian Hukum Atas Tanah Ulayat Dalam Sistem Pendaftaran Tanah Nasional: Tinjauan Terhadap Putusan MK No. 35/PUU-X/2012," *Rivayat: Educational Journal of History and Humanities* 8, no. 4 (2025): 7612–22, <https://doi.org/10.24815/jr.v8i4.50561>.

The issue has become increasingly significant because legal certainty constitutes one of the principal objectives of land registration. Article 19 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria, UUPA*) establishes land registration as an instrument for ensuring legal certainty.⁸ The nature of *hak ulayat*, however, differs from that of individual land rights, which have historically constituted the predominant objects of the national land registration system. *Hak ulayat* attach to a customary law community, derive from its communal relationship with a particular territory, and are exercised in accordance with customary law, whose institutional forms and structures vary among communities. Applying the logic of land registration to *hak ulayat*, therefore, cannot be limited to incorporating customary land into the land administration system. The process must also ensure that registration does not diminish the communal character of the rights or the customary authority that underpins their existence.⁹

Constitutional Court Decision No. 35/PUU-X/2012 provided important momentum for strengthening this paradigm. In that decision, the Constitutional Court held that customary forests (*hutan adat*) are not State forests but forests located within the territories of customary law communities. Although the decision arose from the statutory framework governing forestry, the Court's constitutional reasoning more broadly affirmed the relationship between customary law communities and their territories. The State may not position itself as the owner of customary territories; rather, it performs the constitutional functions of recognizing, respecting, protecting, and regulating the exercise of those rights within the framework of a state governed by law. Substantively, the decision underscores the need to distinguish the State's authority of control from the rights of customary law communities that existed before the development of the State's administrative system.¹⁰

For many years, the principal difficulty lay in the absence of a sufficiently effective mechanism connecting the recognition of *hak ulayat* with the land administration and registration system. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2019 concerning Procedures for the Administration of *Tanah Ulayat* of Customary Law Communities had previously established a mechanism for the administrative recording of customary land. Subsequent legal developments and community needs, however, prompted the adoption of a new regulatory framework. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024 concerning the Administration of Land Affairs and Registration of Land Subject to the *Hak Ulayat* of Customary Law Communities repealed and replaced ATR/BPN Ministerial Regulation No. 18 of 2019, introducing a more detailed framework for land administration and registration.

ATR/BPN Ministerial Regulation No. 14 of 2024 represents a significant change because it extends beyond the administrative recording of *tanah ulayat*. The Regulation establishes two conceptually distinct stages: the land administration of *hak ulayat* and the registration of *tanah ulayat*. The administrative process consists of inventory and identification, surveying and mapping, and the recording of land parcels in the *Daftar Tanah Ulayat* (Customary Land Register). Inventory and identification are principally undertaken by the directorate general responsible for the determination of land rights and land registration, with assistance, where applicable, from regional governments, higher education institutions, and/or customary institutions designated by regional governments. Customary law communities are also given the opportunity to request the inventory and identification of their *tanah ulayat*. This framework marks a shift in institutional roles, under which the Ministry of

⁸ Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 19 UUPA.

⁹ Tandori Tandori and V. Hari Supriyanto, "Kontradiksi Hak Komunal Dan Hak Ulayat Dalam Hukum Pertanahan Indonesia: Tinjauan Yurisprudensi Dan Regulasi Indonesia," *Tunas Agraria* 8, no. 3 (2025): 380–400, <https://doi.org/10.31292/jta.v8i3.483>.

¹⁰ Aulawi and Wasitaatmadja, "Kepastian Hukum Atas Tanah Ulayat Dalam Sistem Pendaftaran Tanah Nasional."

Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) assumes a more active role than regional governments in identifying and recording *tanah ulayat*.¹¹

Administrative stages such as the inventory, mapping, and recording of *tanah ulayat* are no longer dependent on a regional government decision formally recognizing the relevant customary law community. ATR/BPN Ministerial Regulation No. 14 of 2024 fundamentally restructures the relationship between these two processes, allowing the physical identification and recording of customary land to proceed in advance. A copy of the *Daftar Tanah Ulayat* (Customary Land Register) may even serve as supporting material for regional governments in determining the existence of a customary law community. At the subsequent stage, however, both the *Daftar Tanah Ulayat* and the formal recognition of the customary law community constitute the basis for the registration of *tanah ulayat*. Although a regional government decree remains a mandatory requirement for the granting of land rights to customary law communities, this framework represents a significant development because it allows the administrative process to commence without being delayed by the completion of formal recognition procedures.

Once recorded in the *Daftar Tanah Ulayat*, ATR/BPN Ministerial Regulation No. 14 of 2024 provides several possible legal statuses for the land concerned. For a *Kesatuan Masyarakat Hukum Adat* (customary law community as a recognized communal entity), *tanah ulayat* may be submitted for recognition as a *Hak Pengelolaan* (Right of Management, HPL). By contrast, a parcel of *tanah ulayat* held by a *Kelompok Anggota Masyarakat Hukum Adat* (group of members of a customary law community) may be established as *Hak Milik* (Right of Ownership) in the name of the group as collectively held land. A *Kesatuan Masyarakat Hukum Adat* that does not seek confirmation of its *tanah ulayat* as a *Hak Pengelolaan* may nevertheless retain the parcel's status as *tanah ulayat* and may enter into cooperation with third parties pursuant to agreements made in accordance with applicable laws and regulations. The Regulation therefore gives rise to three possible legal outcomes: *tanah ulayat* may remain at the administrative recording stage, be registered as a *Hak Pengelolaan* (HPL), or be recognized as collectively held *Hak Milik* for the relevant customary community group.

This differentiation of legal status is primarily intended to ensure legal certainty. Legal certainty in the registration of *tanah ulayat*, however, cannot be measured solely by the availability of a land certificate. It also requires clarity regarding the legal subject, the object and territorial boundaries, the legal relationship between the community and the land, the procedures for recognition and registration, and the legal consequences arising from the form of right selected. Registration should strengthen the legal position of customary law communities in their dealings with third parties without extinguishing the distinctive character of *hak ulayat*. This consideration is particularly significant because Article 30 of ATR/BPN Ministerial Regulation No. 14 of 2024 expressly provides that the registration of *tanah ulayat* does not diminish the continued applicability of customary law to the registered parcel. To ensure legal certainty, the Regulation must therefore satisfy two concurrent requirements: it must provide legal certainty within the national land law framework while preserving the operation of customary law as the normative basis of the community's relationship with its territory.

The regulatory framework nevertheless raises four principal normative concerns. The first concerns its legal implications: whether the conversion of *tanah ulayat* into *Hak Pengelolaan* (Right of Management, HPL) or collectively held *Hak Milik* (Right of Ownership) merely serves as a mechanism for registering evidence of rights, or instead alters the underlying nature of *hak ulayat* itself. Second,

¹¹ Rohyani Rigen Is Sumilat, "Implementation of the Regulation of the Minister of ATR/BPN No. 14 of 2024 in the Registration of Customary Land Rights of Customary Law Communities: Implementasi Peraturan Menteri ATR/BPN No. 14 Tahun 2024 Dalam Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat," *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 8, no. 2 (2024): 1832–41, <https://doi.org/10.36526/santhet.v8i2.4485>.

the distinction between a *Kesatuan Masyarakat Hukum Adat* and a *Kelompok Anggota Masyarakat Hukum Adat* carries legal consequences for both the types of rights that may be granted and the legal representation of the community concerned. Third, the imposition of formal requirements including the legal status of the right holder, clarity of the land object, the absence of disputes, and the delineation of forest-area boundaries may inadvertently exclude vulnerable customary territories from urgently needed access to registration. Finally, the scope of State administrative authority in granting *Hak Pengelolaan* must be precisely defined so as not to obscure the fact that *hak ulayat* predates its formal recognition by the State.

These concerns are not merely theoretical. Drawing on data from the *Badan Registrasi Wilayah Adat* (Customary Territory Registration Agency, BRWA), Zahra and Priyono report that approximately 2,284 customary territories covering 36.6 million hectares have been registered by BRWA, whereas only approximately 7.54 million hectares, or 20.6 percent of the total registered customary territory, have received formal recognition from regional governments.¹² Although these figures do not correspond precisely to the recording of *Tanah Ulayat* by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), they demonstrate the substantial gap between customary territories that have been independently documented and those formally recognized by government authorities. This reality demonstrates that legal protection is not simply a matter of whether a registration mechanism exists, but also of how effectively the verification of customary communities, the legal recognition of their existence, territorial boundary determination, and the land administration system itself are integrated.

Debate over the form of registration has also emerged within civil society. In 2024, the *Aliansi Masyarakat Adat Nusantara* (Indigenous Peoples Alliance of the Archipelago, AMAN), together with several civil society organizations, raised objections to the certification of *Hak Pengelolaan* over *tanah ulayat*. These objections were based, among other considerations, on concerns that formalizing customary land as *Hak Pengelolaan* could alter the legal relationship between the State and customary law communities and place the recognition of *tanah ulayat* within a framework in which rights are understood as being granted by the State (AMAN and Civil Society Coalition, 2024).¹³ By contrast, the empirical study conducted by Prawira and Saputri (2025) in *Sungai Penuh* City indicates that *Hak Pengelolaan* certificates may provide certainty regarding legal status, control, and administration, provided that their implementation continues to respect customary authority and is based on community consent.¹⁴ Taken together, these perspectives indicate that the central issue under ATR/BPN Ministerial Regulation No. 14 of 2024 is no longer simply whether a registration procedure is available, but how that procedure is legally structured so that it genuinely serves as an instrument of legal certainty without displacing the character of *hak ulayat* as a right originating in customary law.

Several earlier studies have addressed closely related issues. Sumilat (2024) examined the implementation of ATR/BPN Ministerial Regulation No. 14 of 2024, emphasizing policy effectiveness, digitalization, administrative barriers, and conflict resolution.¹⁵ Pribadi et al. (2024)

¹² Mutia Zahra and Ery Agus Priyono, “Kepastian Hukum Atas Status Tanah Adat Setelah Berlakunya Undang-Undang Pokok Agraria,” *Legal Standing: Jurnal Ilmu Hukum* 9, no. 1 (2025): 131–46, <https://doi.org/10.24269/ls.v9i1.10973>.

¹³ Tandori Tandori and V. Hari Supriyanto, “Kontradiksi Hak Komunal Dan Hak Ulayat Dalam Hukum Pertanahan Indonesia: Tinjauan Yurisprudensi Dan Regulasi Indonesia,” *Tunas Agraria* 8, no. 3 (2025): 380–400, <https://doi.org/10.31292/jta.v8i3.483>.

¹⁴ Ilham Abdi Prawira and Vioni Saputri, “Kepastian Hukum Sertifikat Hak Pengelolaan Atas Tanah Ulayat Adat Di Kota Sungai Penuh Jambi: Kajian Yuridis-Empiris Atas Implementasi Peraturan Menteri ATR/BPN Nomor 14 Tahun 2024,” *Jambura Journal Civic Education* 6, no. 1 (2025), <https://doi.org/10.37905/jacedu.v6i1.38320>.

¹⁵ Rohyani Rigen Is Sumilat, “Implementation of the Regulation of the Minister of ATR/BPN No. 14 of 2024 in the Registration of Customary Land Rights of Customary Law Communities.”

analyzed legal certainty regarding *hak ulayat* through the perspective of the Historical School of Law and socio-legal dynamics.¹⁶ Aulawi and Wasitaatmadja (2025) examined the legal certainty of *tanah ulayat* within the national land registration system, with particular attention to the implications of Constitutional Court Decision No. 35/PUU-X/2012.¹⁷ Wulandari and Handayani (2025) addressed the dilemma of recognizing customary law communities within the national land system,¹⁸ while Syukrisna, Candrakirana, and Lukitasari (2025) focused on the protection of customary communities' rights following the enactment of ATR/BPN Ministerial Regulation No. 14 of 2024.¹⁹ Prawira and Saputri (2025), in turn, empirically examined the legal certainty provided by *Hak Pengelolaan* certificates over *tanah ulayat* in the local context of *Sungai Penuh* City.²⁰

Unlike these earlier studies, this article specifically treats the legal structure governing the registration of *Tanah Ulayat* under ATR/BPN Ministerial Regulation No. 14 of 2024 as the object of a legal-certainty analysis, particularly by distinguishing among land administration, administrative recording, registration as *Hak Pengelolaan*, and the establishment of Hak Milik over collectively held land. The analysis is concerned not merely with the presence or absence of formal recognition, but with whether this legal structure consistently provides certainty regarding the legal subject, land object, procedures, and legal consequences of registration while simultaneously preserving the communal character of *hak ulayat* and the continuing applicability of customary law. On this basis, the study's novelty lies in examining the duality between administrative legal certainty and substantive legal certainty: administrative certainty is secured through recording and registration within the national land system, whereas substantive certainty requires that these processes not transform *hak ulayat* from an ancestral right of customary law communities into a right whose existence depends solely on a constitutive act of the State.

To address these issues, this study focuses on two principal matters: the legal structure governing the registration of *Tanah Ulayat* under ATR/BPN Ministerial Regulation No. 14 of 2024 and the degree of legal certainty it affords customary law communities while preserving the integrity of their customary law and communal tenure. The analysis examines the technical regulatory framework governing registration in order to assess its consistency with the principle of legal certainty. Ultimately, the study seeks to formulate parameters capable of aligning the national land administration system with the protection of the traditional rights of customary law communities.

2. RESEARCH METHODOLOGY

This study employs normative legal research, treating legal norms as the primary object of analysis in examining the legal certainty of the registration of *tanah ulayat* subject to the *hak ulayat* of customary law communities following the enactment of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024. The study applies a statute approach and a conceptual approach. The statute approach is used to examine the relationship and consistency among the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960 concerning

¹⁶ Ega Priyadi et al., "Pemahaman Mazhab Sejarah Dalam Konteks Kepastian Hukum Hak Ulayat Di Indonesia: Studi Kasus Terhadap Dinamika Sosial Legal Masyarakat Adat."

¹⁷ Aulawi and Wasitaatmadja, "Kepastian Hukum Atas Tanah Ulayat Dalam Sistem Pendaftaran Tanah Nasional."

¹⁸ Yunita Adinda Wulandari and Sri Wahyu Handayani, "Kepastian Hukum Hak Ulayat: Dilema Pengakuan Masyarakat Adat Dalam Sistem Pertanahan Nasional."

¹⁹ Syukrisna et al., "Perlindungan Hak Masyarakat Adat Atas Tanah Ulayat Pasca Peraturan Menteri Agraria Dan Tata Ruang Nomor 14 Tahun 2024."

²⁰ Prawira and Saputri, "Kepastian Hukum Sertifikat Hak Pengelolaan Atas Tanah Ulayat Adat Di Kota Sungai Penuh Jambi."

Basic Regulations on Agrarian Principles, Government Regulation No. 24 of 1997 concerning Land Registration, Government Regulation No. 18 of 2021, ATR/BPN Ministerial Regulation No. 14 of 2024, and Constitutional Court Decision No. 35/PUU-X/2012. ATR/BPN Ministerial Regulation No. 14 of 2024 serves as the principal legal material because it specifically governs the stages of administering *tanah ulayat*, including inventory and identification, surveying and mapping, recording in the *Daftar Tanah Ulayat* (Customary Land Register), and registration in the form of *Hak Pengelolaan* (Right of Management) or Hak Milik (Right of Ownership) over collectively held land.

The legal materials examined consist of primary legal materials, including legislation and judicial decisions, and secondary legal materials, including books, journal articles, and research findings concerning *hak ulayat*, customary law communities, land registration, and legal certainty. The materials were collected through library research and analyzed using a qualitative-prescriptive method through grammatical, systematic, and conceptual interpretation. The analysis assesses whether the legal framework governing the administration and registration of *tanah ulayat* under ATR/BPN Ministerial Regulation No. 14 of 2024 provides certainty regarding the legal subject, the land object, the applicable procedures, and the legal consequences of registration while preserving the communal character of *hak ulayat* and the continued applicability of customary law. This issue is particularly significant because ATR/BPN Ministerial Regulation No. 14 of 2024 expressly provides that the registration of *Tanah Ulayat* does not diminish the applicability of customary law to the relevant parcel of *Tanah Ulayat*.

3. RESULT AND DISCUSION

3.1. Legal Framework Governing the Registration of Land Subject to the *Hak Ulayat* of Customary Law Communities Following ATR/BPN Ministerial Regulation No. 14 of 2024

The enactment of ATR/BPN Ministerial Regulation No. 14 of 2024 marks a turning point in the governance of *tanah ulayat*, as its provisions no longer focus solely on administrative recording but establish a broader framework extending from land administration to formal registration. Its normative foundation, however, remains rooted in *hak ulayat* as a right derived from the customary law of the community concerned. This is expressly reflected in Article 1 point 4, which provides:

“Land Subject to the *Hak Ulayat* of Customary Law Communities, or referred to by another name and hereinafter referred to as Tanah Ulayat, is land located within the territory controlled by a customary law community that, in fact, continues to exist and is not encumbered by any land right.”²¹

This provision indicates that the legal existence of *tanah ulayat* does not depend exclusively on the issuance of a certificate or a State decree of recognition, but also on the historical reality and actual control exercised by the customary law community. The role of the State, through the land administration system, is therefore not to “create” a new right but to strengthen the legal position of an existing traditional right within the national legal order. This construction is reinforced by Article 2(1), which provides:

²¹ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 1 angka 4.

“*Hak Ulayat* shall be exercised insofar as it continues to exist in fact under the applicable customary law by the customary law community.”²²

The validity of *bak ulayat* rests on three principal elements: the continuing existence of an active customary law community, the territory constituting its living space, and a body of customary law that remains operative and is observed in the governance of that land. ATR/BPN Ministerial Regulation No. 14 of 2024 therefore places social reality and living customary law at the foundation of the existence of *bak ulayat*. The State administrative system, in turn, serves to clarify the legal subject, identify the land concerned, and establish the legal relationship between the community and the land.²³ A central innovation of the Regulation concerns its administrative mechanism, as provided in Article 4(3):

“The stages of land administration for *Tanah Ulayat* shall include:

- a. inventory and identification;
- b. surveying and mapping; and
- c. recording in the *Daftar Tanah Ulayat*.”²⁴

Through this mechanism, *tanah ulayat*, which had previously been identified primarily through customary boundaries and factual control, is translated into physical and juridical land data. The inventory process is intended, among other purposes, to obtain information concerning the customary law community as the legal subject, the *tanah ulayat* itself, and the legal relationship between the community and its land. Surveying and mapping, meanwhile, provide certainty regarding the location, area, and boundaries of the parcel. The process culminates in recording the land in the *Daftar Tanah Ulayat* (Customary Land Register). Article 13(1) provides:

“A parcel of *Tanah Ulayat* that has been surveyed and mapped as referred to in Article 12 paragraph (1), and to which a land parcel identification number has been assigned on the registration map, shall be recorded in the *Daftar Tanah Ulayat* at the Land Office having jurisdiction over the location of the land.”²⁵

This recording stage performs a distinct legal function because the *Daftar Tanah Ulayat* is not a land-right certificate. Rather, it functions as an administrative identifier through which the existence of *tanah ulayat* is incorporated into the national land administration system. In other words, the Regulation expressly distinguishes between the administrative documentation of customary territory

²² Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 2 ayat (1).

²³ Tamara Hendriana and David Hardjo, “Perlindungan Hukum Tanah Ulayat Masyarakat Adat Atas Klaim Sertifikat Oleh Pihak Ketiga,” *Unizar Law Review* 8, no. 1 (2025): 21–37, <https://doi.org/10.36679/ulr.v8i1.88>.

²⁴ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 4 ayat (3).

²⁵ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 13 ayat (1).

and the establishment or registration of a formal land right.²⁶ Another significant feature is the relationship between land administration and formal recognition of the customary law community by the regional government, as reflected in Article 14(3):

“Where a customary law community has not yet been formally recognized by the regional government having jurisdiction over the location of the *Tanah Ulayat*, a copy of the *Daftar Tanah Ulayat* as referred to in paragraph (1) may be used as supporting material for the recognition of the customary law community.”²⁷

Article 14(5), however, further provides:

“A copy of the *Daftar Tanah Ulayat* as referred to in paragraph (1) and the recognition of the customary law community as referred to in paragraph (4) shall constitute the basis for the registration of *Tanah Ulayat*.”

Taken together, these provisions introduce a significant institutional innovation: the administrative process may now be initiated before formal recognition of the customary law community by the regional government has been completed. Registration of the land right itself, however, can proceed only after the community has obtained such formal recognition. This approach allows ATR/BPN Ministerial Regulation No. 14 of 2024 to operate more proactively in documenting *tanah ulayat* while preserving the authority of regional governments to determine the formal legal recognition of customary law communities within their respective jurisdictions. Once the land has been recorded in the *Daftar Tanah Ulayat*, the Regulation provides two registration pathways depending on the legal status of the right holder. For a *Kesatuan Masyarakat Hukum Adat* (customary law community as a recognized communal entity), Article 15(1) provides:

“A parcel of *Tanah Ulayat* that has been recorded in the *Daftar Tanah Ulayat* as referred to in Article 13 paragraph (1) may be the subject of an application for *Hak Pengelolaan* by the *Kesatuan Masyarakat Hukum Adat* to the Minister.”²⁸

The use of the word “may” in this provision carries an important legal implication. Registration as *Hak Pengelolaan* (Right of Management, HPL) is a legal option rather than a mandatory condition determining the continued existence of the land as *tanah ulayat*. This policy orientation is further confirmed by Article 16(1), which provides:

“A parcel of *Tanah Ulayat* for which the *Kesatuan Masyarakat Hukum Adat* does not apply for confirmation as *Hak Pengelolaan* shall retain its status as *Tanah Ulayat*.”²⁹

²⁶ Rikardo Simarmata, “The States Position Regarding Registration of Customary Land,” *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021), <https://doi.org/10.54828/ijsls.2021v1n1.3>.

²⁷ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 14 ayat (3).

²⁸ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 15 ayat (1).

²⁹ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 16 ayat (1).

ATR/BPN Ministerial Regulation No. 14 of 2024 therefore does not require all *tanah ulayat* to be transformed into *Hak Pengelolaan*. Land that has been administratively processed and recorded may retain its legal status as Tanah Ulayat. Article 16(2) further permits a *Kesatuan Masyarakat Hukum Adat* to enter into cooperation with third parties pursuant to agreements made in accordance with applicable laws and regulations. A different legal construction applies to a *Kelompok Anggota Masyarakat Hukum Adat* (group of members of a customary law community). Article 17(1) provides:

“A parcel of *Tanah Ulayat* owned by a *Kelompok Anggota Masyarakat Hukum Adat* may be established as *Hak Milik* in the name of the *Kelompok Anggota Masyarakat Hukum Adat* as collectively held land.”³⁰

This provision demonstrates that the registration pathway is differentiated according to the typology of the right holder. *Hak Pengelolaan* is available to the customary law community as a collective entity, whereas collectively held Hak Milik (Right of Ownership) is available to a group or segment of that community. This differentiation reflects an effort by the national legal system to accommodate the complexity and diversity of customary land governance in practice.

Taken as a whole, the legal structure established by ATR/BPN Ministerial Regulation No. 14 of 2024 may be understood as a multi-tiered model of land administration and registration. The first tier recognizes the existence of *hak ulayat* on the basis of social reality and customary law. The second consists of inventory, identification, surveying, mapping, and recording in the Daftar Tanah Ulayat. The third provides an optional pathway for registration as *Hak Pengelolaan* or as Hak Milik over collectively held land. This model differs from an approach that treats certification as the sole form of State recognition of *tanah ulayat*. The distinction is reinforced by Article 30, which provides:

“The registration of *Tanah Ulayat* shall not diminish the applicability of customary law to the relevant parcel of *Tanah Ulayat*.”³¹

Article 31(1) further provides:

“The administration and registration of *Tanah Ulayat* as referred to in Articles 4 through 28 constitute governmental administrative processes.”³²

These two provisions are crucial in defining the proper scope of the State's role. Land registration is, in principle, an administrative mechanism intended to provide certainty within the national legal system rather than an instrument for displacing the customary law that governs the relationship between customary law communities and their land.

The principal innovation introduced by ATR/BPN Ministerial Regulation No. 14 of 2024 therefore lies not in requiring all *tanah ulayat* to be converted into *Hak Pengelolaan* or *Hak Milik*, but in

³⁰ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 17 ayat (1).

³¹ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 30.

³² Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 31 ayat (1).

establishing an administrative pathway through which *tanah ulayat* can acquire an identifiable and legally ascertainable status within the national land system without losing its original character as land controlled under customary law. Recording in the *Daftar Tanah Ulayat* serves as the institutional link between customary control and State land administration, while *Hak Pengelolaan* and collectively held Hak Milik constitute further forms of registration that may be selected according to the characteristics of the relevant customary law community. This legal structure provides the basis for the subsequent analysis of whether ATR/BPN Ministerial Regulation No. 14 of 2024 is capable of delivering substantive legal certainty for customary law communities.

3.2. Legal Certainty in the Registration of *Tanah Ulayat* and the Preservation of the Communal Character of Customary Law Communities

Legal certainty in the registration of Tanah Ulayat following ATR/BPN Ministerial Regulation No. 14 of 2024 cannot be assessed solely by the existence of a certificate. It must also be evaluated in terms of certainty regarding the legal subject, land object, procedure, and legal consequences of registration. Tanah Ulayat differs in character from individual land rights. The legal relationship between customary law communities and their land arises from customary law and intergenerational possession and control. Formalization within the State land administration system should therefore strengthen, rather than replace, that legal relationship.³³

With respect to certainty of the legal subject, ATR/BPN Ministerial Regulation No. 14 of 2024 distinguishes between a Kesatuan Masyarakat Hukum Adat and a Kelompok Anggota Masyarakat Hukum Adat. This distinction determines the form of land right that may be registered. A Kesatuan Masyarakat Hukum Adat may apply for Hak Pengelolaan (Right of Management, HPL), whereas a Kelompok Anggota Masyarakat Hukum Adat may obtain Hak Milik (Right of Ownership) over collectively held land. For the registration of Hak Pengelolaan, Article 18(2) requires the application to specify:

- “a. the parcel of Tanah Ulayat to be registered;
- b. the Kesatuan Masyarakat Hukum Adat as the legal subject;
- c. the legal relationship between the Kesatuan Masyarakat Hukum Adat and the Tanah Ulayat; and
- d. the formal recognition of the existence of the customary law community.”³⁴

This provision provides certainty as to the identity of the right holder while also requiring confirmation of the legal relationship between the community and the land being registered. Formal recognition of the customary law community by the regional government, however, remains a requirement at the registration stage. Certainty regarding the legal subject therefore continues to depend on the community's ability to obtain formal recognition from the regional government. This issue is consistent with the findings of Wulandari and Handayani, who identify the formal recognition mechanism for customary law communities as one of the continuing bureaucratic barriers to the realization of hak ulayat.

³³ Susetyo Nugroho et al., “Kedudukan Produk Klaster 3 Pendaftaran Tanah Sistematis Lengkap Sebagai Produk Pendaftaran Tanah (Studi Kasus PTSL 2023 Kantor Pertanahan Kabupaten Tojo Una-Una Provinsi Sulawesi Tengah),” *Jurnal Pertanahan* 14, no. 1 (2024), <https://doi.org/10.53686/jp.v14i1.249>.

³⁴ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 18 ayat (2).

With respect to certainty of the land object, ATR/BPN Ministerial Regulation No. 14 of 2024 establishes mechanisms for cadastral surveying, mapping, and recording of land parcels. Article 11(3) provides that a spatial review must ensure that a parcel of Tanah Ulayat:

- “a. is not subject to a dispute, conflict, legal proceeding, and/or other encumbrance; and
- b. has a clearly identifiable location, area, or boundaries.”³⁵

This verification process employs overlay techniques that compare spatial planning maps, village boundary maps, forest-area maps, and other relevant supporting maps. From a normative perspective, this mechanism strengthens certainty regarding the land object because a registered parcel is assigned an identifiable and verifiable spatial location and boundary. Boundary certainty is particularly important for customary law communities because it can protect their living territories against unilateral claims by external parties.

The requirement that the land be free from disputes or conflicts, however, may create an unintended barrier. In practice, many Tanah Ulayat areas are precisely those subject to overlapping claims involving private concessions, forest areas, or government strategic projects. Studies examining the implementation of ATR/BPN Ministerial Regulation No. 14 of 2024 indicate that competing interests, complex administrative access, and overlapping land uses remain significant obstacles for customary law communities. Certainty regarding the land object therefore cannot be achieved merely by requiring the land to be dispute-free; it must also be supported by an effective dispute-resolution mechanism capable of determining the competing legal relationships among the parties in a fair manner.

A further dimension is procedural certainty. ATR/BPN Ministerial Regulation No. 14 of 2024 establishes a more structured administrative sequence than the preceding framework, encompassing inventory and identification, surveying and mapping, recording in the *Daftar Tanah Ulayat* (Customary Land Register), and the subsequent registration of land rights. This sequence enhances procedural certainty because customary law communities are provided with a defined pathway through which registration may be pursued. In this regard, Prawira and Saputri observe that registration as Hak Pengelolaan may strengthen administrative certainty through the documentation and digital updating of land data.³⁶

Procedural clarity, however, does not necessarily translate into accessibility. A process that is clearly defined in regulatory terms may still be difficult to navigate for customary law communities, particularly those located in remote areas with limited legal literacy or limited access to land administration services. Sumilat's research indicates that the implementation of ATR/BPN Ministerial Regulation No. 14 of 2024 continues to face constraints arising from inadequate facilities, limited understanding of bureaucratic procedures, and the need for broader public outreach. Legal certainty therefore requires not only explicit rules but also effective and accessible administrative implementation at the community level.

As to the legal consequences of registration, ATR/BPN Ministerial Regulation No. 14 of 2024 provides several possible legal outcomes. Customary land may retain its status as Tanah Ulayat, be registered as Hak Pengelolaan in the name of a *Kesatuan Masyarakat Hukum Adat*, or be recognized as collectively held Hak Milik for a *Kelompok Anggota Masyarakat Hukum Adat*. This framework

³⁵ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 11 ayat (3).

³⁶ Prawira and Saputri, “Kepastian Hukum Sertifikat Hak Pengelolaan Atas Tanah Ulayat Adat Di Kota Sungai Penuh Jambi.”

affords customary law communities a degree of flexibility. The most fundamental provision in this respect is Article 16(1), which states:

“A parcel of *Tanah Ulayat* for which the *Kesatuan Masyarakat Hukum Adat* does not apply for confirmation as *Hak Pengelolaan* shall retain its status as *Tanah Ulayat*.”³⁷

This provision confirms that the legal status of *Tanah Ulayat* exists independently and does not depend on certification as *Hak Pengelolaan*. Registration of a land right should therefore be understood as an optional legal mechanism for securing recognition within the national land system rather than as a constitutive requirement determining the existence of *hak ulayat*. The more fundamental issue is whether such formalization continues to preserve the communal nature of customary land. Article 30 of ATR/BPN Ministerial Regulation No. 14 of 2024 addresses this concern by providing:

“The registration of *Tanah Ulayat* shall not diminish the applicability of customary law to the relevant parcel of *Tanah Ulayat*.”³⁸

Registration is therefore not intended to replace customary law with State land law. Customary norms governing the use, utilization, management, and internal community relations concerning the land remain applicable after registration. The communal principle is also reflected in the registration of *Hak Milik* over collectively held land. Article 17(1) provides:

“A parcel of *Tanah Ulayat* owned by a *Kelompok Anggota Masyarakat Hukum Adat* may be established as *Hak Milik* in the name of the *Kelompok Anggota Masyarakat Hukum Adat* as collectively held land.”³⁹

The *Hak Milik* granted under this provision is therefore not intended to become an individual right held separately by each member but remains attached to the group as collectively held land. Even where a certificate is issued, the designation of the group leader whose name appears on the certificate must be based on the members' written agreement and must specify the leader's position under customary law. This requirement represents an effort to integrate customary structures of representation into formal land documentation.

A potential tension nevertheless remains between administrative legal certainty and substantive legal certainty. Administrative certainty may be achieved once the identity of the legal subject, the land object, and the legal status of the land have been formally recorded. Substantive certainty, by contrast, is realized only where such registration does not erode collective tenure, weaken the authority of customary institutions, or facilitate appropriation by external parties. Consistent with this concern, Prawira and Saputri emphasize that the issuance of *Hak Pengelolaan* certificates can provide meaningful

³⁷ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 16 ayat (1).

³⁸ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 30.

³⁹ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat Pasal 17 ayat (1).

legal protection only where it is based on the consent of the customary law community and preserves the authority of customary leaders.⁴⁰

This issue becomes particularly sensitive in relation to *Hak Pengelolaan*, because land subject to HPL may, in principle, be made available for third-party use through Hak Guna Usaha (Right of Cultivation, HGU), *Hak Guna Bangunan* (Right to Build, HGB), or Hak Pakai (Right of Use). The new regulatory framework continues to place a measure of control in the hands of the HPL holder, particularly with respect to approving transfers or encumbrances of rights. The potential economic benefits associated with such arrangements, however, must be grounded in full collective consent. Without such consent, certification of *Tanah Ulayat* may instead facilitate land commercialization in ways that marginalize the interests of customary law communities.

On this basis, ATR/BPN Ministerial Regulation No. 14 of 2024 normatively provides stronger legal certainty than the preceding regulatory framework, particularly through clearer identification of legal subjects, cadastral identification of land objects, more structured procedures, and multiple legal-status options following administrative recording. The Regulation also expressly preserves the continuing applicability of customary law and does not make *Hak Pengelolaan* the sole form of recognition for *Tanah Ulayat*. This legal certainty nevertheless remains conditional, as its effectiveness depends on formal recognition of customary law communities by regional governments, the resolution of overlapping land claims, communities' practical access to land administration, and respect for their collective decision-making mechanisms.

Legal certainty in the registration of *Tanah Ulayat* following ATR/BPN Ministerial Regulation No. 14 of 2024 should therefore be understood as an integration of administrative and substantive legal certainty. Administrative certainty is achieved through recording, mapping, and the issuance of documentary evidence of rights, whereas substantive certainty requires the continued protection of communal control, the authority of customary institutions, and the applicability of customary law. Where these two dimensions operate in conjunction, land registration can function not merely as a formal instrument of the State but as a means of protecting *hak ulayat* within the national land system.

4. CONCLUSION

ATR/BPN Ministerial Regulation No. 14 of 2024 establishes a new legal framework for the administration and registration of *Tanah Ulayat* through a multi-tiered mechanism. This framework encompasses recognition of the existence of *hak ulayat* on the basis of social reality and customary law; administrative processing through inventory, identification, surveying, mapping, and recording in the *Daftar Tanah Ulayat* (Customary Land Register); and the option of registration as *Hak Pengelolaan* (Right of Management, HPL) for a *Kesatuan Masyarakat Hukum Adat* or as *Hak Milik* (Right of Ownership) over collectively held land for a *Kelompok Anggota Masyarakat Hukum Adat*. This structure demonstrates that registration is not constitutive of the existence of *hak ulayat*, because land that is not submitted for confirmation as *Hak Pengelolaan* retains its status as *Tanah Ulayat*. Accordingly, administrative recording and registration essentially function as instruments of State land administration designed to strengthen the legal position of *Tanah Ulayat* within the national land system without extinguishing the original source of the right, which arises and develops under customary law.

From the perspective of legal certainty, ATR/BPN Ministerial Regulation No. 14 of 2024 strengthens certainty regarding the legal subject, land object, procedure, and legal consequences of *Tanah Ulayat* registration. Such certainty, however, is not absolute, as it remains affected by formal recognition of customary law communities by regional governments, the potential for overlapping

⁴⁰ Prawira and Saputri, "Kepastian Hukum Sertifikat Hak Pengelolaan Atas Tanah Ulayat Adat Di Kota Sungai Penuh Jambi."

claims and disputes concerning the land, and communities' practical access to land administration. Legal certainty in the registration of *Tanah Ulayat* should therefore be understood as an integration of administrative legal certainty and substantive legal certainty. Administrative certainty is achieved through identification, mapping, recording, and the issuance of documentary evidence of rights, whereas substantive certainty requires the continued preservation of the communal character of the land, the authority of customary institutions, and the applicability of customary law to the control and use of *Tanah Ulayat*. Under this framework, land registration can function as an instrument for protecting the rights of customary law communities rather than as a mechanism that replaces or diminishes the existence of *hak ulayat*.

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